Nos. 26-4902, 26-6685 (Consolidated)

In The

United States Court of Appeals

For The Ninth Circuit

L.T., et al., *Plaintiffs-Appellees,* vs. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., *Defendants-Appellants.*	No. 26-4902 D.C. No. Case No. 5:26-cv-00322-SSS-SPx Central District of California, Riverside
L.T., et al., *Plaintiffs-Appellees,* vs. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., *Defendants-Appellants.*	No. 26-6685 D.C. No. Case No. 5:26-cv-00322-SSS-SPx Central District of California, Riverside

On Appeal from the U.S. District Court for Central California
Case No. 5:26-cv-00322-SSS-SPx
The Honorable Sunshine Sykes

PLAINTIFFS-APPELLEES' OPPOSITION TO DEFENDANTS-APPELLANTS' EMERGENCY MOTION UNDER NINTH CIRCUIT RULE 27-3 FOR STAY PENDING APPEAL AND FOR AN IMMEDIATE ADMINISTRATIVE STAY

NICHOLAS REDDICK
nreddick@willkie.com
STEPHEN HENRICK
shenrick@willkie.com
ALYXANDRA VERNON
avernon@willkie.com
JACOB KARIM
jkarim@willkie.com
WILLKIE FARR & GALLAGHER LLP
333 Bush Street
San Francisco, California 94104
Telephone (415) 858-7400

VINCENT R. BIAGIOTTI (*pro hac vice*)
vbiagiotti@willkie.com
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019-6099
Tel: 212-728-8000

IMMIGRANT DEFENDERS LAW CENTER
ALVARO M. HUERTA
ahuerta@immdef.org
CARSON ADRIANNA SCOTT
cscott@immdef.org
ALISON STEFFEL
asteffel@immdef.org
634 S. Spring Street, 10th Floor
Los Angeles, CA 90014
Tel: 213-634-0999

PUBLIC COUNSEL
REBECCA BROWN
rbrown@publiccounsel.org
SOPHIA WRENCH
swrench@publiccounsel.org
AMELIA PIAZZA
apiazza@publiccounsel.org
BELINDA ESCOBOSA
bescobosa@publiccounsel.org
610 South Ardmore Avenue
Los Angeles, CA 90005
Tel: 213-385-2977

COALITION FOR HUMANE IMMIGRANT RIGHTS
CARL BERGQUIST (*pro hac vice*)
cbergquist@chirla.org
2351 Hempstead Road
Ottawa Hills, OH 43606
Tel: 310-279-6025

ADAM REESE
areese@chirla.org
2533 West Third Street, Suite 101
Los Angeles, CA 90057
Tel: 213-353-1333

Attorneys for Plaintiffs-Appellees

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 1

A. The Injunction and the August Stay Proceedings.....1

B. Modifications to Monitor Access Provisions. 2

C. The Orders to Show Cause. 4

D. The Stay Motions and Consolidation. 6

III. LEGAL STANDARD.....6

IV. ARGUMENT.....7

A. The Government's Motion is Procedurally Improper. 7

B. The Government Cannot Establish That Emergency Relief is Warranted..7

C. Defendants Have Not Established Grounds for a Stay Pending Appeal Under *Nken*. 9

1. The Government Is Not Likely to Succeed on the Merits of this Appeal.....9

a. The District Court Retained Authority to Supervise Implementation of the Preliminary Injunction.....10

b. The Challenged Provisions Implement Obligations Already Contained in the Initial Order. 12

c. The Government's Rule 65 Arguments are Unlikely to Succeed..14

d. Monitor Communications Do Not Supplant Judicial Decision-Making. 16

2. The Government Has Not Shown That It Will Be Irreparably Injured Absent a Stay.....19

3. A Stay Would Substantially Injure Plaintiffs.....21

4. The Public Interest Favors Effective, Reviewable Supervision.....23

V. CONCLUSION.....23

TABLE OF AUTHORITIES

Page(s)

Cases

A&M Records, Inc. v. Napster, Inc.,
284 F.3d 1091 (9th Cir. 2002) 10

Al Otro Lado v. Wolf,
952 F.3d 999 (9th Cir. 2020) 6, 19, 20

Armstrong v. Brown
768 F.3d 975 (9th Cir. 2014) 14, 17

Cobell v. Norton,
334 F.3d 1128 (D.C. Cir. 2003).....17

Epic Games, Inc. v. Apple Inc.,
161 F.4th 1162 (9th Cir. 2025) 13

Frew ex rel. Frew v. Hawkins,
540 U.S. 431 (2004).....9

Griggs v. Provident Consumer Disc. Co.,
459 U.S. 56 (1982) (per curiam).....10

Hawaii v. Trump,
871 F.3d 646 (9th Cir. 2017) 14

Leiva-Perez v. Holder,
640 F.3d 962 (9th Cir. 2011) (per curiam) 6

Los Angeles Memorial Coliseum Comm'n v. National Football League,
634 F.2d 1197 (9th Cir. 1980) 8, 19

McClatchy Newspapers v. Central Valley Typographical Union No. 46,
686 F.2d 731 (9th Cir. 1982) 11

Meinhold v. U.S. Dep't of Def.,
34 F.3d 1469 (9th Cir. 1994) 10

Melendres v. Skinner,
113 F.4th 1126 (9th Cir. 2024) 13, 16, 17

Nat. Res. Def. Council, Inc. v. Southwest Marine, Inc.,
242 F.3d 1163 (9th Cir. 2001) 8, 10, 12

Nken v. Holder,
556 U.S. 418 (2009).....6, 9, 20

Ruckelshaus v. Monsanto Co.,
463 U.S. 1315 (1983).....9

Thompson v. Enomoto,
815 F.2d 1323 (9th Cir. 1987) 11

Trump v. CASA, Inc.,
606 U.S. 831 (2025).....21

United States v. Florida,
172 F.4th 1201 (11th Cir. 2026) 17, 18

Youth 71Five Ministries v. Williams,
160 F.4th 964 (9th Cir. 2025) 23

Statutes

28 U.S.C. § 1292(a)(1).....11

Fifth Amendment 1

Rehabilitation Act 1

Rules

Fed. R. App. P. 8.....7

Fed. R. Civ. P. 62.....10

Fed. R. Civ. P. 65.....14

Fed. R. Civ. P. 65(d) 16

Fed. R. Civ. P. 65(d)(1)(A) 14

Fed. R. Civ. P. 65(d)(1)(B)–(C) 15

Fed. R. Evid. 706(b) 18

Other Rules

Ninth Circuit Rule 27-3 7

I. INTRODUCTION

This Court has already denied Defendants' request for an administrative stay, finding that their "month-long delay" in seeking relief "indicates 'the absence of a sufficient exigency to justify' such relief." No. 26-4902, Dkt. 33.1 at 1–2. Defendants' request for a stay pending appeal should likewise be denied.

The record is clear: Defendants did not provide the "reasonable access" to Adelanto and to detained individuals' medical records that the injunction has required since July 16, frustrating the court-ordered monitoring process. The District Court therefore modified the original injunction to ensure the monitors could do their jobs as originally ordered. Defendants now ask this Court to suspend the procedures the district court adopted to make its preliminary injunction's monitoring provisions work. The harm Defendants claim is simply complying with monitoring procedures their own noncompliance necessitated, and contemplated monetary sanctions do not equate to irreparable harm. Meanwhile, a stay would continue to harm class members by undermining the monitoring process. Defendants' request should be denied.

II. BACKGROUND

A. The Injunction and the August Stay Proceedings.

On July 16, 2026, after finding Plaintiffs likely to succeed on their claims that conditions at Adelanto violate the Fifth Amendment and the Rehabilitation Act, the

district court entered a preliminary injunction. *See generally* 1-ER-44–51 ("Initial Injunction Order"). The injunction ordered Defendants to "provide access to two qualified, independent, third-party monitors," to be appointed by the court, specifying that Defendants must ensure the monitors "are able to conduct unannounced, independent inspections" of the facility and "have reasonable access" to the facility and "any physical and electronic health records relevant to the implementation of this order, staff, and detainees." *Id.* ¶ 5. The monitors were ordered to report monthly on Defendants' compliance. *Id.*

Two weeks later, Defendants noticed their appeal of the Initial Injunction Order and filed requests to stay the order in both the district court and this Court. Both requests were denied. 2-ER-255–256; No. 26-4902, Dkt. 22.1 at 7.

B. Modifications to Monitor Access Provisions.

On August 25, the Medical Monitor emailed counsel asking whether "there's a way—without violating proper procedure—for the parties to help us be in direct communication with the Court." 1-ER-234-235. Plaintiffs then sought an emergency hearing on injunction compliance and the monitors' duties following the administrative stay. *Id.* at 229, 233-235. Defendants opposed the request for a hearing, but agreed that "Monitor deadlines and communications can be resolved by revised dates and a protocol." 2-ER-183-184. That same day, the district court did so. 2-ER-168–171. The court's August 28 order clarified when the monitors' first reports

were due (October 1), provided facility access for "any additional persons assisting the monitors" and "the Court and its staff," and delineated the scope of permissible ex parte communications with the monitors. *Id.*

On September 1 and September 4, the parties were heard on modifications to the preliminary injunction's monitoring logistics. 2-ER-64-88. The court further ordered the parties to meet and confer regarding "proposed revised language" to the monitor "grievance" system, and on September 10, the parties filed a joint proposal. On September 11, the court issued its First Amended Preliminary Injunction, 2-ER-125–143, containing the following modifications:

Initial Injunction Order	**First Amended PI**
Inspections. Unannounced inspections and reasonable access to the facility, staff, detainees, and records. ¶ 5(d).	Assisting personnel, inspection equipment, confidential interviews, and accompaniment by Court staff or Marshals "as needed." ¶ 5(d).
Electronic records. Reasonable access to relevant physical and electronic health records. ¶ 5(d).	Read-only, 24/7 access, on-site or remote, and training on electronic-records systems. ¶ 5(f).
Facility entry. Access sufficient to conduct unannounced inspections. ¶ 5(d).	Authorization letter directing expedited security screening and entry within ten minutes, subject to applicable security protocols. ¶ 5(d).
Detainee comments. Free physical and electronic channels for detainees to communicate directly with monitors. ¶ 5(f).	Locked boxes, tablet submissions through Plaintiffs' counsel, confidentiality protections, and explanatory notices. ¶ 5(h).

Reporting and communications. Monthly reports to the Court and parties containing findings and recommendations. ¶ 5(c).	Supplemental reports; communications with the Court, counsel, and class members; quarterly reporting of specified ex parte contacts. ¶ 5(c); *see also* 2-ER-132-133 at (j).
Monitoring scope. Independent monitoring of medical care, disability accommodations, and conditions of confinement, including review of the remedial plan. ¶ 5.	Expressly includes compliance with paragraphs 1–4 of the injunction. ¶ 5.

C. The Orders to Show Cause.

On September 15, the district court issued an Order to Show Cause based on Defendants' failures to provide access to the monitors as ordered. Among other issues, Defendants had not provided remote access to the electronic health records or allowed the Conditions Monitor to use her camera during an on-site inspection. 2-ER-104-105. The court ordered Defendants to explain those failures and warned of possible sanctions. *Id.* at 105. On September 21, Defendants represented that the monitors had been granted remote access to electronic medical records. CR 167. The district court discharged the Order to Show Cause the next day. CR 171.

The monitors' access problems nonetheless persisted. In his October 1 report, the Medical Monitor reported that he could not assess medical conditions at Adelanto because Defendants had not provided full read-only access to medical records and the facility. CR 176 at 2. The Conditions Monitor reported delays

entering the facility, restrictions on photographing conditions, and unanswered records requests. CR 177 at 2–3.

On October 2, the district court issued another Order to Show Cause, this time directing Defendants to respond in writing by October 7 to outstanding records requests from both monitors. The court also directed Defendants to produce the authorization letter required by the First Amended Preliminary Injunction and scheduled an October 9 status conference. CR 178 at 1–4. In their October 7 response, Defendants described the documents and access they had provided, represented that the GEO Group, Inc. ("GEO") had answered the Conditions Monitor's requests, and acknowledged that certain responses remained outstanding or required supplementation. CR 181 at 1–2.

At the October 9 status conference, the district court set two compliance deadlines: (1) an October 13 deadline to provide outstanding photographs to the Conditions Monitor or face sanctions of $500 per day absent good cause; and (2) daily status reports beginning October 12 concerning access to three additional electronic-records modules, warning of sanctions of $500 per day beginning October 17 if access remained unavailable on October 16. No. 26-6685, Dkt. 3.2 ¶ 7. No sanctions have been imposed.

D. The Stay Motions and Consolidation.

Defendants appealed the August 28 and September 11 orders, CR 183, and sought a stay in the district court, CR 185. On October 9, before the district court had ruled, Defendants filed an emergency motion in this Court, seeking an administrative stay by October 13 and a stay pending appeal by October 16. Dkt. 3.1 at xiii. On October 13, this Court denied the request for an administrative stay, explaining that "[t]he government's month-long delay in seeking a stay of the orders at issue . . . indicates 'the absence of a sufficient exigency to justify' such relief." No. 26-4902, Dkt. 33.1 at 1–2 (quoting *Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019)). The Court also consolidated the new appeal with Defendants' appeal of the Initial Injunction Order and ordered expedited briefing. No. 26-4902, Dkt. 32.1 at 1–2.

III. LEGAL STANDARD

A stay pending appeal "is not a matter of right, even if irreparable injury might otherwise result," but "an exercise of judicial discretion." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (citation omitted). The applicant bears the burden of showing (1) "a strong showing that he is likely to succeed on the merits"; (2) that he "will be irreparably injured absent a stay"; (3) that a stay will not "substantially injure the other part[y]"; and (4) "where the public interest lies." *Id.* at 434 (citation omitted). The first two factors are "the most critical." *Id.* (citation omitted). The applicant must

show that irreparable harm is probable, not merely possible, *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011) (per curiam), and likely to occur before the appeal is decided, *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020).

IV. ARGUMENT

A. The Government's Motion is Procedurally Improper.

A party seeking a stay pending appeal must ordinarily seek relief first in the district court. Fed. R. App. P. 8(a)(1)(A). A motion may be made in this Court if moving first in the district court would be impracticable or if the district court denies or fails to afford the requested relief. Fed. R. App. P. 8(a)(2)(A)(ii). Defendants seemingly rely on the latter provision since they did move in the district court. No. 26-6685, Dkt. 4.1 at 7. As in August, they filed their written stay application in the district court on October 9 and sought emergency appellate relief within 24 hours, before Plaintiffs had responded or the district court had ruled. CR 185; No. 26-6685, Dkt. 3.2 ¶ 11. A district court that did not rule within 24 hours has not "failed to afford" relief.

B. The Government Cannot Establish That Emergency Relief is Warranted.

Ninth Circuit Rule 27-3 is reserved for motions in which relief is needed in less than 21 days to avoid irreparable harm. Nothing in this motion meets that standard. Strip away the Government's rhetoric about "rewritten" decrees, and what is at issue is narrow. The amended orders do not alter a single conditions-of-

confinement obligation. They specify how the monitors receive the "reasonable access" the Initial Injunction Order has required since July 16: a letter so the monitors are not held at the gate, permission to carry a camera, a stipulated comment system, and read-only access to health records. Initial Injunction Order ¶ 5(d); First Amended PI ¶ 5(d), (f), (h). These are quibbles, not an emergency.

What the Government calls an emergency is the consequence of its own delay. The Initial Injunction Order issued on July 16, and this Court lifted the administrative stay on August 20. No. 26-4902, Dkt. 22.1 at 7. As early as July 31, GEO staff were telling detained people that they would comply only once "ICE told them to." CR 123 at 12. ICE did not tell GEO about the Medical Monitor's access request until September 2, and did not begin the contract discussions GEO required until September 9. CR 148 ¶¶ 7–8. The Chambers Amended Preliminary Injunction Order and First Amended PI (CR 130 and 147, collectively, the "Amended Orders") and the deadlines that followed are the district court holding the Government to obligations it had been under for nearly two months. A party that waits months to begin complying cannot convert the resulting deadlines into an emergency. *See Nat. Res. Def. Council, Inc. v. Southwest Marine, Inc.*, 242 F.3d 1163, 1168 (9th Cir. 2001) (a party denied a stay "is properly subject to" the court's deadline).

Nor do the deadlines themselves threaten irreparable harm. Coercive sanctions are avoidable by compliance and are monetary in any event. "It is well

established [] that such monetary injury is not normally considered irreparable." *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980).

And the Government's own timeline belies any urgency, as this Court has already held: its "month-long delay in seeking a stay of the orders at issue . . . indicates 'the absence of a sufficient exigency to justify' such relief." No. 26-4902, Dkt. 33.1 at 1-2 (quoting *Doe #1*, 944 F.3d at 1223). A party's "failure to act with greater dispatch tends to blunt his claim of urgency and counsels against grant of a stay." *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1318 (1983). That reasoning applies equally to a stay pending appeal. Defendants attribute the delay to the Solicitor General's authorization process, but they did not seek authorization until September 25–four weeks after the Chambers Amended Preliminary Injunction Order. No. 26-6685, Dkt. 3.1 at 11. Defendants' self-made circumstances are not an emergency.

C. Defendants Have Not Established Grounds for a Stay Pending Appeal Under *Nken*.

1. The Government Is Not Likely to Succeed on the Merits of this Appeal.

A district court is "not reduced to issuing injunctions . . . and hoping for compliance." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004). The Government's merits arguments all rest on the contrary premise.

a. The District Court Retained Authority to Supervise Implementation of the Preliminary Injunction.

Defendants' appeal of the Initial Injunction Order did not freeze the district court's supervision of the injunction. Although a notice of appeal ordinarily divests a district court of jurisdiction over matters involved in the appeal, that rule extends only to "those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam). And the divestiture rule "is not absolute." *Sw. Marine*, 242 F.3d at 1166. Rule 62(d) expressly authorizes a district court to "suspend, modify, restore, or grant an injunction" while an appeal is pending. Fed. R. Civ. P. 62(d). The limit is whether the modification preserves the status quo without materially altering the issues on appeal. *Sw. Marine*, 242 F.3d at 1166–68; *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098–99 (9th Cir. 2002).

Rule 62(d) thus draws a line between implementing existing obligations, which a district court may do while an appeal is pending, and adjudicating new rights, which it may not. In *Southwest Marine*, this Court upheld modifications specifying a testing method and an eighteen-month construction deadline because they effectuated the original injunction. 242 F.3d at 1166–68. The Court also explained that a compliance deadline does not become improper merely because it may arrive before the appeal concludes. *Id.* at 1168. Similarly, *A&M Records* held that a district court may "continue supervising compliance with the injunction"

pending appeal. 284 F.3d at 1099 (citation omitted). It upheld a post-appeal order keeping Napster offline until its filtering complied. *Id.* at 1096–99. And in *Meinhold v. U.S. Dep't of Def.*, 34 F.3d 1469, 1480 n.14 (9th Cir. 1994), this Court held that the district court retained jurisdiction to amend an appealed injunction to clarify its requirements and supervise compliance, even though the amendment broadened the relief. By contrast, in *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734–35 (9th Cir. 1982), the amendment required reinstatement of relief the original judgment never ordered.

This case falls on the implementation side of that line. The Initial Injunction Order established independent monitoring, including unannounced inspections, reasonable access to detainees and records, monthly reports, and judicial consideration of a remedial plan. Initial Injunction Order ¶ 5(a)–(g). The Amended Orders did not revisit the district court's constitutional findings or change the substantive protections afforded the class. They specified how the monitoring already ordered would operate. Defendants may challenge those specifications on appeal, but the original appeal did not deprive the district court of authority to make its injunction effective.[1]

[1] Defendants assume that the Chambers Amended Preliminary Injunction Order is independently appealable under 28 U.S.C. § 1292(a)(1). But an order implementing an existing injunction is not necessarily an appealable modification. See *Thompson v. Enomoto*, 815 F.2d 1323, 1326–27 (9th Cir. 1987) (dismissing an appeal from an order appointing a monitor and defining his responsibilities because the original

b. The Challenged Provisions Implement Obligations Already Contained in the Initial Order.

The district court ordered independent monitoring on July 16. The Initial Injunction Order required Defendants to permit unannounced inspections, provide the monitors "reasonable access" to the facility, records, staff, and detainees, establish channels for detainee comments, and facilitate monthly reports. Initial Injunction Order ¶ 5(c)–(f). The Amended Orders specified how those obligations would operate in practice. *See supra* Part II.B. That is the kind of modification *Southwest Marine* approved: there, the district court converted "reasonably expeditious" construction into an eighteen-month deadline and clarified that testing "at the surface" required sampling the surface microlayer. This Court upheld these changes as "minor adjustments that effectuated the underlying purposes of the original requirements." 242 F.3d at 1166–68.

The district court had already made extensive findings establishing systemic medical-care and inspection-access deficiencies at Adelanto, and the monitoring provisions in the Initial Injunction Order were tailored to those findings. CR 121 at 12–18, 23–37; 1-ER-2–43. The Initial Injunction Order authorized unannounced

---

decree contemplated ongoing compliance supervision). The Chambers Amended Preliminary Injunction Order principally specified procedures for monitors already authorized by the Initial Injunction Order. Whether those procedures independently altered the injunction's terms and force requires more than the order's label.

inspections, access to relevant records, and independent reporting. Initial Injunction Order ¶ 5. The challenged Amended Orders make those responsibilities workable. They specify entry procedures, electronic-records access, and the monitors' authority to use appropriate inspection equipment. First Amended PI ¶ 5(d), (f). These measures implement the district court's monitoring requirements rather than impose new standards for detention conditions. In *Melendres v. Skinner*, 113 F.4th 1126, 1132–33 (9th Cir. 2024), this Court upheld supplemental monitoring procedures imposed to address deficiencies in an existing compliance regime, finding that modification was warranted by the defendants' failures to fully implement prior court orders. Defendants' narrow reading of the Initial Injunction Order also conflicts with this Court's instruction that injunctions must not be interpreted with "narrow literalism" that creates loopholes. *See Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1177 (9th Cir. 2025).

Defendants' procedural objection also fails on the record. The district court heard the parties on September 1 after Defendants filed a written objection. 2-ER-177–200; 2-ER-106–120. The district court docketed a tentative amended order and circulated a revised draft before the September 4 hearing, and heard Defendants' objections to several provisions. No. 26-6685, Dkt. 3.3, Ex. A at 2; 2-ER-53–102 at 12:15–15:24, 22:21–26:8, 33:22–36:12. Defendants' claim that the authorization letter, the ten-minute entry standard, and the Marshals were "never mentioned" is

beside the point: every one of those terms—along with the equipment provision, read-only 24/7 records access, the ex parte channel, and the class notice—appeared in the tentative order Defendants received before the September 4 hearing, with changes from the September 1 hearing marked. No. 26-6685, Dkt. 3.3, Ex. A at 9-12. And as to the camera, Defendants did more than acquiesce: it was agreed upon in the status conference on Sept. 4th. CR 157 at 25:9-23; *see also* CR 177 at 2. That is the notice and opportunity *Armstrong v. Brown* contemplated. 768 F.3d 975, 980–81 (9th Cir. 2014); *see also Hawaii v. Trump*, 871 F.3d 646, 659 n.8 (9th Cir. 2017) (upholding district court's modification of preliminary injunction and noting that arguments not raised before the district court during the modification process were waived).

c. The Government's Rule 65 Arguments are Unlikely to Succeed.

Defendants' argument that the Amended Orders fail to state the reasons for their issuance fares no better. Fed. R. Civ. P. 65(d)(1)(A). The district court had already made extensive findings concerning the conditions at Adelanto and established independent monitoring to ensure compliance with its injunction. 1-ER-13-38; Initial Injunction Order ¶ 5. The challenged provisions specify how that existing monitoring regime would operate, including procedures for facility entry, access to records, and communications with the monitors. Amended Orders. The district court also considered the implementation issues in the September

proceedings before issuing the amended injunction. *See* Amended Orders; *see also* 2-ER-53–102. The amendments thus arose from the district court's ongoing supervision of obligations it had already imposed, not a new adjudication of Plaintiffs' substantive rights.

The orders also satisfy Rule 65(d)'s specificity requirement. The First Amended PI identifies concrete obligations: Defendants must authorize entry within ten minutes; provide read-only electronic-records access; and permit inspections with appropriate personnel and equipment, while requiring compliance with applicable security protocols and system configurations when accessing electronic records. First Amended PI ¶ 5(d), (f). The order also expressly permits electronic-records access "on-site or remote" and makes the detainee-comment system subject to "legitimate security and operational requirements." *Id.* ¶ 5(f), (h). Those directives tell Defendants what they must provide. Their objection concerns the breadth of the requirements, not their clarity. Fed. R. Civ. P. 65(d)(1)(B)–(C). This Court found the July 16 injunction had "specific directives with which to comply." No. 26-4902, Dkt. 22.1 at 5. Orders that replace "reasonable access" with a ten-minute entry window and read-only records access are more specific, not less.

Defendants' argument that Plaintiffs contradicted themselves by defending the Initial Injunction Order while seeking implementation guidance also fails. An injunction can define Defendants' obligations without prescribing every possible

step needed to fulfill them. Plaintiffs' request for implementation guidance was therefore entirely consistent with their position that the Initial Injunction Order satisfied Rule 65(d).

d. Monitor Communications Do Not Supplant Judicial Decision-Making.

Defendants conflate monitoring with adjudication. The monitors gather information and make recommendations; the district court decides whether to adopt them. First Amended PI ¶ 5. This Court recognized exactly that distinction when it denied Defendants' earlier stay request, explaining that the monitors' recommendations "must be adopted by the district court before they become effective." No. 26-4902, Dkt. 22.1 at 5 (citing *Skinner*, 113 F.4th at 1139–40). The Amended Orders preserve that allocation of authority.

Defendants themselves recognized the need for a communications protocol. In opposing Plaintiffs' August 27 request for an emergency hearing, they acknowledged that "[t]he scheduling issues concerning Monitor deadlines and communications can be resolved by revised dates and a protocol." 2-ER-183-184. They further recognized that the district court could "direct its own appointees" on scheduling matters. 2-ER-187. The Chambers Amended Preliminary Injunction Order addressed that recognized need by establishing procedures for communications between the monitors, the court, counsel, and class members. Although Defendants now object to the protocol's particular terms, their earlier

position confirms that clarifying the monitors' communications procedures was an ordinary matter of judicial supervision, not an attempt to transfer adjudicative authority to the monitors.

In *Skinner*, 113 F.4th at 1135–39, this Court upheld a monitor's authority to implement remedial measures because the district court retained authority to review the monitor's decisions. Indeed, the monitor there exercised greater operational authority than the monitors here, who cannot finally adjudicate compliance disputes.

By contrast, *Armstrong* invalidated a provision allowing a court-appointed expert to resolve compliance disputes without judicial review. 768 F.3d at 987–88. But *Armstrong* expressly permitted experts to "make recommendations . . . subject to review by the district court." *Id.* at 987. That is precisely the arrangement here. The monitors may investigate and recommend corrective measures, but only the district court may determine noncompliance or order relief. First Amended PI ¶ 5. And the district court has exercised that authority: when the monitors reported compliance problems, it required Defendants to respond and ultimately discharged its Order to Show Cause without sanctions. 2-ER-103–105; CR 171. The monitors inform the district court's decisions; they do not make them.

Nor do confidential communications transfer judicial authority to the monitors. *Cobell v. Norton*, 334 F.3d 1128, 1141–44 (D.C. Cir. 2003), concerned a monitor whose expansive investigative role raised questions about impartiality.

Skinner distinguished *Cobell* on that basis. 113 F.4th at 1135 n.12. And *United States v. Florida*, 172 F.4th 1201, 1248–49 (11th Cir. 2026), held that authorizing ex parte monitor communications is not inherently improper. The court's proceedings confirm that Defendants retain an opportunity to be heard. The monitors' reports go to both sides. First Amended PI ¶ 5(c). When the monitors reported access problems, the court ordered Defendants to respond, considered their submissions, and discharged the September Order to Show Cause without sanctions. Dkts. 155–171. Rule 706 likewise requires disclosure of the Medical Monitor's findings and permits examination of the expert. Fed. R. Evid. 706(b). Confidential communications do not displace those safeguards or permit coercive relief based on material factual assertions Defendants cannot contest. The record shows judicial supervision, not adjudication by the monitors.

Finally, as in August, the Government "has not meaningfully argued that the district court's findings" are clearly erroneous. No. 26-4902, Dkt. 22.1 at 5. The monitors' reports and the September 15 and October 2 orders document the obstacles the implementing provisions address, 2-ER-103–105, CR 176-178, and the Government's motion does not meaningfully challenge the underlying findings concerning detention conditions. Instead, it principally challenges the district court's authority to adopt the monitoring procedures and the scope of those requirements.

2. The Government Has Not Shown That It Will Be Irreparably Injured Absent a Stay.

Defendants have not shown that continued compliance will cause irreparable harm. They waited 42 days after the Chambers Amended Preliminary Injunction Order and 28 days after the First Amended PI before seeking a stay—delay this Court has already found inconsistent with any claimed exigency. No. 26-4902, Dkt. 33.1. As this Court explained in *Al Otro Lado*, a government that has operated under an injunction for weeks possesses "the best evidence of harms likely to occur"—evidence of what actually happened. 952 F.3d at 1007. Yet Defendants rely chiefly on completed acts: modifying ICE's contract with GEO, providing access to electronic medical records, and disclosing information through the monitoring process. CR 185 at 16–17. A stay cannot undo those acts. And Defendants offer no concrete evidence that continued monitoring pending appeal will cause new, irreparable injury, and the potential for monetary sanctions does not constitute irreparable harm. *See Los Angeles Mem'l Coliseum Comm'n*, 634 F.2d at 1202.

The district court discharged its September Order to Show Cause without sanctions once Defendants reported progress, CR 171, and the October deadlines are conditional: the photographs deadline carried an express good-cause exception, and sanctions on records access attach only if access remains unavailable on October 16. No. 26-6685, Dkt. 3.2 ¶ 7. Each time the district court has imposed a deadline, Defendants have been able to meet it. The Government also holds the contractual

means to provision the remaining read-only access—it negotiated and executed a contract modification with GEO for exactly that purpose. *Id.* ¶ 4; 3-ER-512 ¶ 9. A party that complies pays nothing. Coercive sanctions are the ordinary mechanism for enforcing the injunction, not an irreparable injury a stay exists to prevent, and they cannot justify suspending every implementing provision.

Defendants also fail to substantiate their claimed ongoing harms. They identify no quantified costs of complying with the challenged provisions—a deficiency this Court noted when denying their earlier stay request. No. 26-4902, Dkt. 22.1 at 5–6 & n.2. Burdens of "money, time and energy," however real, "are not enough." *Al Otro Lado*, 952 F.3d at 1007–08 (citation omitted). And as this Court explained, even if the cost of compliance "would amount to irreparable injury to the Government if the Government were ultimately to prevail, that does not entitle it to a stay where the other *Nken* factors do not weigh in its favor." No. 26-4902, Dkt. 22.1 at 6 (citing *Leiva-Perez*, 640 F.3d at 965).

Admitting monitors within ten minutes and providing read-only access to records may require administrative effort, but Defendants have not shown that those burdens will cause irreparable injury. Their objections to inspections, class notices, and confidential monitor communications largely repeat their merits arguments. They identify no specific, imminent harm from continued compliance before the appeal is resolved.

GEO's control over the records system does not establish irreparable harm. No. 26-6685, Dkt. 3.2 ¶¶ 8–9. ICE has already negotiated and executed a contract modification securing electronic-records access. No. 26-6685, Dkt. 3.2 ¶ 4. Defendants claim that on-site records access remains available, No. 26-6685, Dkt. 3.1 at 8, but do not explain how that establishes irreparable harm from providing remote access. Technical difficulties with a single records module may warrant targeted relief. They do not justify suspending the monitoring framework.

Finally, as this Court has already held, "this case does not implicate *Trump v. CASA*, Inc., 606 U.S. 831 (2025)." No. 26-4902, Dkt. 22.1 at 3. Neither the Initial Injunction nor Amended Orders implicate *CASA* because they govern Defendants' obligations "to a certified class of detainees in a single detention facility." *Id.* at 4. Defendants' insistence on recycling failed arguments is telling.

3. A Stay Would Substantially Injure Plaintiffs.

In August, this Court rejected the Government's argument that Plaintiffs would not be harmed by a stay because it was "premised on factual assumptions that the district court found to be false." No. 26-4902, Dkt. 22.1 at 6. The same is true of the Government's argument now that "reasonable access" on paper is access in fact. Staying the amended monitoring provisions would undermine the protections the district court ordered for Plaintiffs. In his October report, the Medical Monitor stated that he could provide no analysis of medical conditions at all, and expected the same

problem for his November report, because Defendants had not provided remote records access or guaranteed physical access. CR 176 at 2. The Conditions Monitor reported that she was held in the lobby, denied her camera, and had to ask the warden to photograph what she found. CR 177 at 2-3. Those photographs document mold growing throughout every general-population shower room on the West side, live larvae on the shower-room floors, and a cracked air-conditioning duct blowing debris through an East-building dorm that she found "does need to be remediated." *Id.* at 6-7. She received them only on October 12–weeks after her visit and only after the district court set a sanctions deadline. CR 189 at 2 n.1. These are not hypothetical concerns. The terms Defendants ask this Court to stay are how the district court learns whether conditions like these are being fixed.

The Government's own account shows why the amended provisions matter. Defendants argue that a stay would leave the original injunction intact and therefore cause Plaintiffs no harm. No. 26-6685, Dkt. 3.1 at 25. But preserving an injunction on paper does not ensure its enforcement. Defendants acknowledge that ICE secured remote access to GEO's electronic health-record system after the district court threatened sanctions and that additional requests for records and information remained outstanding. *Id.* at 7–8. Defendants also emphasize that on-site records access remains available. *Id.* at 8. But they have not shown that on-site access provides the monitors with an equally effective means of reviewing records and

assessing compliance. Suspending the amended provisions would risk perpetuating the very access problems that have already impaired the monitors' work—leaving Plaintiffs without effective oversight while their constitutional claims remain unresolved.

4. The Public Interest Favors Effective, Reviewable Supervision.

"It is always in the public interest to prevent the violation of a party's constitutional rights." No. 26-4902, Dkt. 22.1 at 6 (quoting *Youth 71Five Ministries v. Williams*, 160 F.4th 964, 978 (9th Cir. 2025)). This Court applied that principle to the Initial Injunction Order in August, and it applies with equal force to the provisions at issue here, which enable the district court to assess whether Defendants are providing constitutional conditions as ordered.

V. CONCLUSION

Because the Government has not met its burdens, Appellees respectfully request that the Court deny the motion.

Dated: October 14, 2026

Respectfully Submitted,

WILLKIE FARR & GALLAGHER LLP
By: */s/ Nicholas Reddick*
Nicholas Reddick
Stephen Henrick
Alyxandra Vernon
Jacob Karim
333 Bush Street
San Francisco, California 94104
Telephone (415) 858-7400

VINCENT R. BIAGIOTTI (pro hac vice)
vbiagiotti@willkie.com
787 Seventh Avenue
New York, NY 10019-6099
Tel: 212-728-8000

PUBLIC COUNSEL

By: */s/ Rebecca Brown*
Rebecca Brown
Sophia Wrench
Amelia Piazza
Belinda Escobosa
610 South Ardmore Avenue
Los Angeles, CA 90005
Tel: 213-385-2977

IMMIGRANT DEFENDERS LAW CENTER

By: */s/ Alvaro M. Huerta*
Alvaro M. Huerta
Carson Adrianna Scott
Alison Steffel
634 S. Spring Street, 10th Floor
Los Angeles, CA 90014
Tel: 213-634-0999

COALITION FOR HUMANE IMMIGRANT RIGHTS

By: */s/ Carl Bergquist*
Carl Bergquist
2351 Hempstead Road
Ottawa Hills, OH 43606
Tel: 310-279-6025

Adam Reese
2533 West Third Street, Suite 101
Los Angeles, CA 90057
Tel: 213-353-1333

Attorneys for Plaintiffs-Appellees

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 Times New Roman, a proportionally spaced font, and that it complies with the type-volume limitation of Ninth Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 5,187 words, according to Microsoft Word.

/s/ Nicholas Reddick
Nicholas Reddick