

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

**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.

No. 26-4902

D.C. No.

5:26-cv-00322-SSS-SP

Central District of California,
Riverside

L.T., et al.,

Plaintiffs-Appellees,

v.

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ENFORCEMENT, et al.,

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Riverside

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

**REPLY IN SUPPORT OF EMERGENCY MOTION
FOR STAY PENDING APPEAL**

**Stay pending appeal requested before
5:00 p.m. on Friday, October 16, 2026**

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION.....	1
II. ARGUMENT	3
A. Plaintiffs Fail to Rebut That the District Court Lacked Jurisdiction to Enter CR 130 and CR 147	3
1. Plaintiffs Fail to Rebut Divestiture	3
2. Plaintiffs Fail to Rebut That the Orders Are Not Enforcement.....	4
3. Plaintiffs Fail to Rebut That the Orders Are Modifications, Not Clarifications	5
B. Plaintiffs Fail to Rebut the Rule 65(d) and Ex Parte Defects	5
1. Plaintiffs Fail to Rebut That the Orders State No Reasons and Are Not Specific	5
2. Plaintiffs Fail to Rebut the Ex Parte Channel.....	7
3. Plaintiffs Fail to Rebut That Defendants Preserved Their Objections	9
C. Plaintiffs Fail to Rebut Irreparable Harm	9
D. Plaintiffs Fail to Rebut That a Stay Will Not Substantially Injure the Class	12
E. Plaintiffs Fail to Rebut the Public Interest	13
III. CONCLUSION	13

TABLE OF AUTHORITIES

	PAGE
Cases	
<i>A&M Records, Inc. v. Napster, Inc.</i> , 284 F.3d 1091 (9th Cir. 2002).....	3
<i>Arc of Cal. v. Douglas</i> , 757 F.3d 975 (9th Cir. 2014).....	10
<i>Armstrong v. Brown</i> , 768 F.3d 975 (9th Cir. 2014).....	6, 8
<i>Cobell v. Norton</i> , 334 F.3d 1128 (D.C. Cir. 2003).....	8
<i>Doe #1 v. Trump</i> , 944 F.3d 1222 (9th Cir. 2019).....	10
<i>Doe #1 v. Trump</i> , 957 F.3d 1050 (9th Cir. 2020).....	13
<i>Epic Games, Inc. v. Apple Inc.</i> , 161 F.4th 1162 (9th Cir. 2025)	5
<i>Frew ex rel. Frew v. Hawkins</i> , 540 U.S. 431 (2004).....	3
<i>FTC v. Enforma Nat. Prods., Inc.</i> , 362 F.3d 1204 (9th Cir. 2004).....	9
<i>Gen. Bldg. Contractors Ass’n v. Pennsylvania</i> , 458 U.S. 375 (1982).....	12
<i>Gon v. First State Ins. Co.</i> , 871 F.2d 863 (9th Cir. 1989).....	2
<i>Griggs v. Provident Consumer Disc. Co.</i> , 459 U.S. 56 (1982).....	9

<i>Hawaii v. Trump</i> , 871 F.3d 646 (9th Cir. 2017).....	9
<i>Hughes v. United States</i> , 342 U.S. 353 (1952).....	10
<i>L.A. Mem’l Coliseum Comm’n v. NFL</i> , 634 F.2d 1197 (9th Cir. 1980).....	12
<i>McClatchy Newspapers v. Cent. Valley Typographical Union No. 46</i> , 686 F.2d 731 (9th Cir. 1982).....	4
<i>Meinhold v. U.S. Dep’t of Def.</i> , 34 F.3d 1469 (9th Cir. 1994).....	3
<i>Melendres v. Skinner</i> , 113 F.4th 1126 (9th Cir. 2024)	4, 8
<i>Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.</i> , 242 F.3d 1163 (9th Cir. 2001).....	3, 5, 6, 12
<i>Shillitani v. United States</i> , 384 U.S. 364 (1966).....	11
<i>Simon v. City & Cnty. of San Francisco</i> , 135 F.4th 784 (9th Cir. 2025)	4
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2025).....	12
<i>United States v. Florida</i> , 172 F.4th 1201 (11th Cir. 2026)	8
<i>United States v. Int’l Bhd. of Teamsters</i> , 899 F.2d 143 (2d Cir. 1990)	11
Rules	
Fed. R. App. P. 8(a).....	11
Fed. R. Civ. P. 53	8

Fed. R. Civ. P. 62(d).....	3
Fed. R. Civ. P. 62.1	2
Fed. R. Civ. P. 65(d).....	5
Fed. R. Evid. 706	8, 9
9th Cir. R. 27-3	11
Regulations	
28 C.F.R. § 0.20(b)	11

I. INTRODUCTION

Plaintiffs told this Court one thing and the district court the opposite: On August 17, they represented that CR 104 “commands discrete, measurable outcomes”; ten days later, they complained *ex parte* to the district court that the monitors “cannot fulfill their Court-ordered obligations without further direction from the Court.” No. 26-4902, Dkt. 20.1 at 11; CR 123 at 4; Mot. 19. Plaintiffs now call that a request for “implementation guidance.” Resp. 15–16. That U-turn became CR 130 and CR 147, adding terms the Monitors wanted, construed as the court preferred, and enforced at \$500 a day.

The emergency is also of the district court’s making, requiring immediate accommodation of the Monitors’ evolving requests. CR 104 requires “reasonable access” to health records. *Id.* at 6. On-site access is available, CR 191 at 5:24–6:6, and the court acknowledged that if the Medical Monitor “was local and able to go down to the facility, none of these problems would be as . . . urgent or as apparent,” and that nothing prevents him “from accessing this information if he were to go to the facility” *Id.* at 11:24–12:14. Plaintiffs admit that on-site access “could be more reasonable.” *Id.* at 13:19–24. Yet the court set a \$500-a-day clock,

from October 17, on remote access to a system ICE “cannot grant access” to; GEO controls it. CR 193 at 1; CR 191 at 16:20–17:19; CR 148 ¶¶ 5–6. That is a new term, not supervision—enforced against a party that cannot perform it.

Although Plaintiffs relabel, they concede the point: The district court “modified the original injunction,” Resp. 1; its orders “replace ‘reasonable access,’” Resp. 15; and a label cannot hide altered “terms and force,” Resp. 12 n.1. That is a modification. *Gon v. First State Ins. Co.*, 871 F.2d 863, 866 (9th Cir. 1989); Mot. 14–15.

CR 104 ¶ 5 contains none of the added terms: not a word about remote or 24/7 access, “any electronic records,” a ten-minute letter, the Marshals, “any materials, items, or equipment,” ex parte communications, a class notice, detainees’ comments routed through Plaintiffs’ counsel, or monitors’ remit extending from “paragraph 4” to “paragraphs 1 through 4.” *Compare* CR 104 at 5–6, *with* CR 147 at 4–9. The motion’s core stands unrebutted: Rule 62.1 (Mot. 10–11); the court’s disclaimer of enforcement (Mot. 12–13); the “four corners” rule (Mot. 14–15); “micromanag[ing]” Adelanto (Mot. 20–22); the Marshals, comment system, serial amendment, and waived bond (Mot. 23–25).

The Court should grant the motion.

II. ARGUMENT

A. Plaintiffs Fail to Rebut That the District Court Lacked Jurisdiction to Enter CR 130 and CR 147

1. Plaintiffs Fail to Rebut Divestiture

Plaintiffs concede, Resp. 10, that Rule 62(d) action may not “materially alter[] the issues on appeal.” They suggest paragraph 5 is not an aspect “involved in the appeal.” *Id.* Not so: No. 26-4902 challenges the monitors’ charter and access to a facility GEO runs, Dkt. 23.1 at 50–57; CR 130 and CR 147 rewrote both—adding terms the merits panel will not have reviewed. Mot. 11–12. That is modification, not supervision.

Plaintiffs rely on enforcement cases, but that reliance is misplaced. *Napster* upheld a filter ordered *after* the court “determined that Napster was not in satisfactory compliance.” *A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1096 (9th Cir. 2002). *Meinhold*’s amendment came “in the wake of [a] motion for contempt.” *Meinhold v. U.S. Dep’t of Def.*, 34 F.3d 1469, 1480 n.14 (9th Cir. 1994). *Frew* says only that an injunction “may be enforced,” but not enlarged. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004). And *Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1168 (9th Cir. 2001), held a party “properly subject to” a

deadline only after it failed to show the deadline “impermissibly modifies the original injunction by increasing its burdens” The court disclaimed enforcement and called the amendments accommodations for its monitors, Mot. 12–13, and still says so: The monitor “wants to be able to access all of this information remotely” “because he isn’t local.” CR 191 at 11:17–23.

2. Plaintiffs Fail to Rebut That the Orders Are Not Enforcement

Enforcement presupposes a command the decree already contains. Mot. 12–14. A decree without a camera, remote access, or ten-minute gate cannot be “enforced” by ordering them in the first instance, and Plaintiffs’ own line puts relief “the original judgment never ordered” beyond the district court’s power. Resp. 11; *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46*, 686 F.2d 731, 735 (9th Cir. 1982). An order resting on conduct the district court conceded “does not violate the strict terms of the injunction” “goes beyond merely enforcing the injunction previously issued and has the ‘practical effect’ of modifying the original injunction.” *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 814–15 (9th Cir. 2025). *Melendres v. Skinner*, unlike the preliminary stages here, followed a bench trial, a permanent injunction, and a contempt

adjudication. 113 F.4th 1126, 1129–31 (9th Cir. 2024).

3. Plaintiffs Fail to Rebut That the Orders Are Modifications, Not Clarifications

Plaintiffs view added terms as “minor adjustments” like *Southwest Marine’s*, Resp. 12, but there the post-trial decree already contained the terms refined: “in a reasonably expeditious manner” became eighteen months; “at the surface” became a sampling method. 242 F.3d at 1165–67. Here the court said CR 104’s text “makes it seem that the independent monitors are only to ensure compliance with the remedial plan,” called that reading “not correct,” and extended their remit to “paragraphs 1 through 4.” CR 157 at 19:25–20:4; CR 147 at 4. *Epic Games*, Resp. 13, concerns contempt for violating an injunction’s “spirit,” not writing new terms into one. *Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1177 (9th Cir. 2025), *cert. granted in part*, No. 25-1311 (U.S. June 30, 2026).¹

B. Plaintiffs Fail to Rebut the Rule 65(d) and Ex Parte Defects

1. Plaintiffs Fail to Rebut That the Orders State No Reasons and Are Not Specific

Plaintiffs answer Rule 65(d)(1)(A) with CR 121’s findings and the

¹ Whether CR 130 is independently appealable, Resp. 11–12 n.1, changes nothing: each term is before this Court through CR 147.

September conferences. Resp. 12, 14–15. CR 121’s findings preceded every added term and mention none; CR 130 issued before its “emergency hearing”; CR 147’s “Status Conference” is not a statement of reasons in the order itself; and the only source CR 147 cites—“conversations with the monitors”—is privileged. Mot. 16–17. This Court stayed CR 104 for the same defect. No. 26-4902, Dkt. 15.1 at 1.

On specificity, Resp. 15, the motion challenges *different* terms: “any materials, items, or equipment needed,” the Marshals “as needed,” and “any electronic records that will help facilitate their general duties.” CR 147 at 5–6; Mot. 18. Those terms do not “tell Defendants what they must provide,” Resp. 15; the court kept “any electronic records” without knowing “how their system works.” CR 157 at 14:3–13.

Plaintiffs say every added term appeared in a tentative order before the September 4 hearing. Resp. 13–14. One, CR 130 preceded any hearing, and Defendants’ deadline to respond to CR 123. CR 128; CR 130 at 1. Two, no hearing took evidence; *Southwest Marine* requires “a full and fair hearing,” 242 F.3d at 1167, and *Armstrong*’s court “identified its specific concerns” at one, 768 F.3d 975, 980 (9th Cir. 2014). Three, the draft never said “remote”: It guaranteed “read-only, 24/7 access to any

electronic records,” No. 26-6685, Dkt. 3.3 at 10, which became “[o]n-site or remote” in CR 147 after Defendants objected and conditioned remote access on GEO’s protocols. CR 157 at 12:15–13:11, 14:3–9. Nor was the camera “agreed upon,” Resp. 14: Defendants opposed “free photographic use” and offered “an actual camera” only as a fallback, subject to their objections, CR 157 at 23:1–13, 25:9–18, 26:5–8; the court entered “any materials, items, or equipment needed” regardless. CR 147 at 5–6.

2. Plaintiffs Fail to Rebut the Ex Parte Channel

The orders convert ex parte requests into decree. Mot. 19–22. Plaintiffs say the district court “decides whether to adopt” monitor recommendations. Resp. 16. The Medical Monitor’s first report recommended nothing; it adjudicated compliance: “I am unable to provide the Court with any analysis . . . due to Defendants’ *failure to fully comply with the Court’s order* to provide . . . *remote access* to medical records and guarantee physical access to the facility.” CR 176 at 2 (emphases added). He had not visited the facility, CR 191 at 12:4–7; the Conditions Monitor did, with no “guarantee.” CR 177 at 2–7. The next day the court ordered Defendants to show cause on twenty-four monitor requests. CR 178 at 1, 3. So too in September: The \$250-a-day warning issued—the day CR 147

was entered—because “[t]he Medical Monitor has informed the Court,” CR 146 at 1, and the order to show cause on what “ha[d] come to the Court’s attention through its communications with the Medical and Conditions Monitors,” CR 155 at 2. That is the investigative monitor *Cobell v. Norton* rejected, 334 F.3d 1128, 1141–44 (D.C. Cir. 2003), and *Melendres* distinguished, 113 F.4th at 1135 n.12.

Armstrong, Resp. 17, approved experts limited “to making recommendations subject to review by the district court.” 768 F.3d at 987. Review requires a record; paragraph 5(j)(1) seals it. The protocol Defendants contemplated, Resp. 16, had “every substantive communication . . . docketed, both sides heard” CR 127 at 8. The reports may “go to both sides,” Resp. 18, but the quarterly disclosure of ex parte contacts excludes “those with the Court.” CR 147 at 9. *United States v. Florida*, 172 F.4th 1201, 1249 (11th Cir. 2026), upheld a post-trial Rule 53 master’s ex parte contacts under a rule that contemplates them and requires an order defining their circumstances, a preserved record, and de novo review. Fed. R. Civ. P. 53(b)(2)(B)–(D), (f)(3). *Florida* approved safeguards, not ¶ 5(j)(1)’s secrecy.

Rule 706, Resp. 18, requires the court’s expert to “advise the parties

of any findings the expert makes” and permits cross-examination. Fed. R. Evid. 706(b). Paragraph 5(j)(1) overrides both, and this Court requires “a record of *ex parte* communications.” *FTC v. Enforma Nat. Prods., Inc.*, 362 F.3d 1204, 1215 (9th Cir. 2004).

3. Plaintiffs Fail to Rebut That Defendants Preserved Their Objections

Plaintiffs say Defendants waived by participating and stipulating. Resp. 8, 14. Participation does not restore the “control” an appeal removes, *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); Mot. 22, and *Hawaii*, their waiver case, reviewed a modification entered on the plaintiffs’ motion. *Hawaii v. Trump*, 871 F.3d 646, 653–54 (9th Cir. 2017). No one moved here. The stipulated comment system implemented CR 104’s grievance mandate, which the court refused to vacate despite Defendants’ objections. CR 144; CR 157 at 33:22–37:11; CR 170 at 6, CR 181 at 1 n.1. Compliance under protest is not consent.

C. Plaintiffs Fail to Rebut Irreparable Harm

The harm is detailed here. Mot. 22–25. Plaintiffs’ “best evidence of harms likely to occur,” Resp. 19, has come to pass: two orders to show cause, a deferred sanctions deadline, CR 160, a contract with non-party GEO renegotiated under threat of contempt, and a clock that starts

October 17—a month before this appeal is fully briefed. No. 26-4902, Dkt. 32.1 at 2. The administrative-stay ruling, No. 26-6685, Dkt. 6.1 at 1–2, is not “a decision as to the merits of the motion for stay pending appeal,” *Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019), and where harm “becomes apparent gradually,” waiting is “prudent rather than dilatory.” *Arc of Cal. v. Douglas*, 757 F.3d 975, 990–91 (9th Cir. 2014).

Plaintiffs say Defendants waited months to comply. Resp. 8. Their source, CR 148 ¶¶ 7–8, says ICE relayed the request to GEO on September 2 and began contract talks September 9, “[w]hile no court order was in place requiring remote access.” CR 147 said, on September 11, “on-site or remote,” CR 147 at 6—language Plaintiffs say “expressly permits” on-site access, Resp. 15—and the court has read it as remote: sanctions threatened that day and contempt four days later, Mot. 15, and on October 9 a \$500-a-day clock on three more modules of GEO’s system, CR 193 at 1; CR 191 at 16:20–17:19. Reading one alternative out of disjunctive decree language is “a substantial modification of the original decree.” *Hughes v. United States*, 342 U.S. 353, 356–57 (1952) (detailing why a decree offering a safeguarded alternative could not be read to require the one the court later preferred).

The order to show cause was discharged on September 22 only after the government renegotiated its contract with GEO under threat of contempt. CR 148 ¶¶ 8–9; CR 171. Three days later an appeal authorization was requested. 28 C.F.R. § 0.20(b); No. 26-6685, Dkt. 3.2 ¶ 5. Defendants sought a stay below the day the clock was set; the court deferred ruling instead, CR 193 at 2, doubting “any basis for the stay” existed. CR 191 at 22:7–16. Defendants moved in this Court the next day. A court that defers relief past the date the harm begins has “failed to afford the relief requested,” Fed. R. App. P. 8(a)(2)(A)(ii), and the harm begins October 17, inside Circuit Rule 27-3’s twenty-one days.

The “completed acts” Plaintiffs say a stay “cannot undo,” Resp. 19, prove the harm, and more is scheduled: The October 17 clock runs on access ICE “cannot grant,” CR 148 ¶¶ 5–6, and for which ICE “is awaiting clarification from GEO,” CR 194 at 2; the clock is “conditional,” Resp. 19—only on GEO’s act. Sanctions “avoidable by compliance,” Resp. 8, 20, assume the contemnor can comply; coercive contempt “depends upon the ability of the contemnor to comply,” *Shillitani v. United States*, 384 U.S. 364, 371 (1966), and may not use the contemnor “as a ‘hostage’ to put pressure on third parties,” *United States v. Int’l Bhd. of Teamsters*, 899

F.2d 143, 147 (2d Cir. 1990). That ICE once obtained a contract modification, Resp. 20–21, proves it can ask, not that it controls, *Gen. Bldg. Contractors Ass’n v. Pennsylvania*, 458 U.S. 375, 393 (1982).

Plaintiffs say Defendants quantified no costs. Resp. 20. The sanctions are quantified: \$500 a day, CR 193 at 1, unsecured, CR 147 at 9. *L.A. Mem’l Coliseum Comm’n v. NFL*, 634 F.2d 1197, 1202 (9th Cir. 1980), concerned recoverable lost revenue; the injury here is the loss of “the benefit of a successful appeal” *Sw. Marine*, 242 F.3d at 1168. *CASA*, Resp. 21, here turns not on whether CR 104 is a universal injunction,² but on authority: The government “suffer[s] irreparable harm” from injunctions that “likely exceed the authority conferred” on the court. *Trump v. CASA, Inc.*, 606 U.S. 831, 860 (2025). Plaintiffs also recognize “[t]echnical difficulties with a single records module may warrant targeted relief.” Resp. 21.

D. Plaintiffs Fail to Rebut That a Stay Will Not Substantially Injure the Class

A stay leaves every term of CR 104 in force. Mot. 25–26. Plaintiffs concede the added terms “do not alter a single conditions-of-confinement

² CR 104 is a universal injunction all the same. *See* No. 26-4902, Dkt. 23.1 at 18, 60, 67.

obligation.” Resp. 7–8. If “reasonable access” fell short in fact, Resp. 21, the remedy was a motion to enforce CR 104, as the court prescribed. Mot. 26. The Conditions Monitor’s report—lobby wait and all, Resp. 22—shows CR 104 at work: an unannounced inspection and findings on paragraph 1 and 2 matters a stay leaves untouched. CR 177 at 2–7. The Medical Monitor’s complaint is remote access, which on-site access cures. CR 176 at 2; CR 191 at 11:24–12:14.

E. Plaintiffs Fail to Rebut the Public Interest

Plaintiffs invoke constitutional rights, Resp. 23, but no one contends the Fifth Amendment requires *remote access* to nonparty GEO’s records system, a ten-minute gate, or a privileged ex parte channel to chambers on pain of contempt. The interest in “maintaining the status quo while the appeal is pending,” *Doe #1 v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020), is the interest in one decree, reviewed once. Mot. 26.

III. CONCLUSION

The Court should grant the motion.

Dated: October 15, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify this reply 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 2,762 words, according to Microsoft Word.

/s/ *Pushkal Mishra*
PUSHKAL MISHRA