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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CARMEN ARACELY PABLO SEQUEN,
YULISA ALVARADO AMBROCIO,
MARTIN HERNANDEZ TORRES, and
LIGIA GARCIA,

Plaintiffs-Petitioners,

v.

SERGIO ALBARRAN, MARCOS
CHARLES, THOMAS GILES, MONICA
BURKE, KRISTI NOEM, U.S.
DEPARTMENT OF HOMELAND
SECURITY, TODD M. LYONS, SIRCE E.
OWEN, PAMELA BONDI, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, UNITED STATES
DEPARTMENT OF JUSTICE, EXECUTIVE
OFFICE FOR IMMIGRATION AND
REVIEW, UNITED STATES OF AMERICA,

Defendants-Respondents.

Case No. 5:25-cv-06487-PCP

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION, AND STAY OF AGENCY
ACTION UNDER 5 U.S.C. § 705;
MEMORANDUM OF POINTS IN
SUPPORT THEREOF**

Date: November 20, 2025
Time: 10:00 a.m.
Courtroom: 8

Trial Date: None Set

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
INJUNCTION, AND STAY OF AGENCY ACTION UNDER 5 U.S.C. § 705**

PLEASE TAKE NOTICE that on November 20, 2025, at 10:00 a.m. or as soon thereafter as the matter may be heard, in Courtroom 8 of the United States District Court, Northern District of California, San Jose Division, located at 280 South 1st Street, San Jose, California 95113, Plaintiffs-Petitioners Carmen Aracely Pablo Sequen, Yulisa Alvarado Ambrocio, Martin Hernandez Torres, and Ligia Garia, ("Plaintiffs"), on behalf of themselves and those similarly situated (the Plaintiffs") will and hereby do move this Court under Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705 of the Administrative Procedure Act ("APA") for a preliminary injunction and stay of final agency action under 5 U.S.C. § 705 to prevent Defendants from causing further irreparable harm to Plaintiffs before the Court can consider the merits of this case. As set forth in the Memorandum of Points and Authorities in support of this motion, Defendants' actions violate the Fifth Amendment of the United States Constitution and the Administrative Procedure Act.

This Motion is made upon the following grounds: (A) Plaintiffs are likely to succeed on the merits of their Fifth Amendment due process and APA claims, (B) Plaintiffs and the putative class members will suffer irreparable harm absent a restraining order, and (C) the balance of equities and public interest favor a preliminary injunction and administrative stay to preserve the status quo.

The Court should therefore order a stay of the application of the 12-Hour Waiver Memo pending resolution of this matter on the merits.

The Court should also enter a preliminary injunction directing Defendants to bring detention conditions in Hold Rooms at 630 Sansome up to constitutional minimums, including ordering Defendants to:

- (1) Provide members of the provisionally certified Detention Class ("Detention Class members" a bed, including a mattress and clean bedding (blanket, sheet, and pillow), and provide additional blankets when requested, for any individual held overnight or for more than 12 hours;
- (2) Provide Detention Class members held overnight or for more than 12 hours sufficient space to sleep, without having to sleep in a toilet or bathroom area;

- 1 (3) Dim lights in the hold room between 9 p.m. and 7 a.m.;
- 2 (4) Maintain hold rooms at comfortable temperatures;
- 3 (5) Conduct a basic medical screening by a medical professional on each Detention
- 4 Class member prior to placing them in a hold room. Screening will be sufficient to
- 5 identify and begin necessary treatment of those with mental or physical illness and
- 6 injury; to provide access to prescription medication without interruption; to
- 7 recognize, segregate, and treat those with communicable diseases; to provide
- 8 medically necessary special diets; and to recognize and provide necessary services
- 9 to the physically handicapped;
- 10 (6) Provide prompt access to over-the-counter pain medication and, for any Detention
- 11 Class member with a prescription for medication, the right to possess, receive, and
- 12 retain their prescribed medication on their person at all times, consistent with the
- 13 prescription;
- 14 (7) Provide prompt access to medical care when requested by a Detention Class
- 15 member, regardless of the language spoken to make the request, including access to
- 16 the services of licensed medical personnel, without charge, between the hours of 7
- 17 a.m. and 9:30 p.m. In the case of emergencies, respond immediately and provide
- 18 access to emergency medical care at all times;
- 19 (8) Consistent with Directive 11087.2, provide Detention Class members with limited
- 20 English proficiency with written materials in Spanish outlining the process for
- 21 requesting medical attention in their primary language. If a Detention Class
- 22 member is illiterate, or has limited English and Spanish proficiency and speaks a
- 23 language in which written material has not been translated, Defendants will provide
- 24 in-person or telephonic oral translation of the process for requesting medical
- 25 attention;
- 26 (9) Provide adequate supplies of hygiene products to each Detention Class member
- 27 including one bar of soap or equivalent, a toothbrush, toothpaste, a comb or hair
- 28 brush, a small towel or hygienic wipes, and, for any Hold Room containing any

women, feminine hygiene supplies. Individuals must be permitted to keep the provided hygiene products on their person;

(10) Provide any Detention Class member held overnight a change of clean clothes, including clean socks and undergarments;

(11) Perform thorough cleaning services in any occupied Hold Rooms performed at least once per day.

(12) Provide written notice in English and Spanish to any Detention Class member in a Hold Room, within one hour of their arrival, informing them of their right to the provisions noted herein;

(13) If a Detention Class member is illiterate or has limited English and Spanish proficiency and speaks a language in which written material (including the notice of rights required in paragraph (12) above) has not been translated, Defendants will provide in-person or telephonic oral translation. This includes all ICE and facility related information and communications.

(14) Defendants shall not retaliate in any manner against a Detention Class member for complaining about any alleged violation of this order.

This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the Declarations and Exhibits filed concurrently herewith, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

DATED: October 10, 2025

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DATED: October 10, 2025 CARECEN SF

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1 **Other Authorities**

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3 participants has increased over time.”)..... 21
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs request that this Court issue a preliminary injunction to end Defendants’ abusive, inhumane, and plainly unconstitutional treatment of civil detainees whom Defendants keep in temporary Hold Rooms for more than 12 hours in the Immigration and Customs Enforcement (ICE) San Francisco Field Office at 630 Sansome Street in San Francisco (“630 Sansome”). Additionally, Plaintiffs seek an order staying the recent nationwide ICE policy revoking the twelve-hour limitation on detention in the temporary Hold Rooms at 630 Sansome, because it violates the Administrative Procedure Act (“APA”).

As part of Defendants’ terrifying campaign of unprompted mass arrests of Black and brown noncitizens, ICE has converted immigration courthouses and routine reporting check-ins into dragnet arrest operations. Defendants literally drag people from partway through their immigration proceedings into “Hold Rooms” built only to accommodate short-term arrest processing of less than twelve hours, and then they incarcerate people in these ill-equipped rooms for days on end. Predictably, Defendants’ mass arrest campaign has resulted in overcrowded long-term detention centers. Rather than adjust its arrest operations to reduce this self-created bottleneck, in June 2025 Defendants issued a policy change, allowing ICE to hold civil detainees in Hold Rooms for up to 72 hours, or *longer* in “exceptional circumstances.” The waiver did not require changes to Hold Rooms to accommodate multi-day confinement and failed to consider whether there were any—let alone sufficient—preparations undertaken for converting temporary holding cells into long-term detention spaces.

Defendants force putative class members to sleep on floors or metal benches with nothing more than a small sheet of Mylar or plastic as a “blanket.” Defendants maintain frigid temperatures in the Hold Rooms and leave lights on 24 hours a day, keeping putative class members in a state of sleep deprivation. Defendants fail to provide basic medical screenings, respond to requests for medical attention, or offer access to prescribed medications—seriously imperiling people’s health, including that of Plaintiff Hernandez Torres, who has resided in the United States for over thirty years but whose health is now severely compromised after being suddenly arrested by ICE and then

1 deprived of his blood pressure medication overnight. This deprivation caused Mr. Hernandez Torres
2 to suffer a hypertensive crisis and potential stroke that may have left him with permanent brain
3 damage. Defendants unreasonably restrict access to basic hygiene, depriving immigrants of soap,
4 providing limited (if any) access to showers and toothbrushes, and preventing immigrants from
5 changing their clothes even after days of confinement. Defendants do not clean Hold Rooms when
6 they are occupied, which often lasts several days. These abusive conditions call out for prompt
7 judicial intervention to compel Defendants to meet minimum constitutional standards .

8 Defendants’ failure to consider the inevitable results of ICE’s June 2025 policy change—
9 which failed to order any corresponding changes in Hold Rooms to immediately begin
10 accommodating long-term detention—has necessarily caused floor sleeping, sleep deprivation,
11 significant medical risks, and hygiene problems, and plainly violates the APA. Because the 12-hour
12 waiver policy is arbitrary and capricious, the Court should stay its implementation.

13 **II. FACTUAL BACKGROUND**

14 **A. The 2025 12-Hour Waiver Memorandum**

15 At 630 Sansome, Defendant ICE maintains a “Holding Facility” with “Hold Rooms” in
16 which ICE places “individuals awaiting removal, transfer, [EOIR] immigration court hearings,
17 medical treatment, intra-facility movement, or other processing into or out of the facility.” *See*
18 Declaration of David C. Beach In Support of Plaintiffs’ Motion for Preliminary Injunction and Stay
19 of Agency Action Under 5 U.S.C. § 705 (“Beach Decl.”), Exh. A, 2011 ICE Performance-Based
20 National Detention Standards (“2011 PBNDS”), at p. 99, § 2.6, I. However, “No detainee shall be
21 confined in a Hold Room for more than 12 hours.” *Id.* at § 2.6, II.2. These regulations assume Hold
22 Room detention shall be less than 12 hours and therefore preclude ICE from putting beds or
23 mattresses in Hold Rooms. *Id.* at p. 100, V.A.5 (“Bunks, cots, beds and other sleeping apparatus are
24 not permitted inside Hold Rooms.”).

25 Consistent with the 2011 PBNDS, in 2014 ICE’s Office of Enforcement and Removal
26 Operations (“ERO”) issued Policy No. 11087.1, which also limited use of Holding Facilities to 12-
27 hours or less, “[a]bsent exceptional circumstances.” Beach Decl., Exh. B at p. 4, § 4.1, 2.a. Ten
28 years later, on January 31, 2024, ERO published Policy No. 11087.2, “Operations of ERO Holding

Facilities,” (“11087.2”) which directs ERO officers regarding policies and procedures for “holding facilities” within their field offices, such as 630 Sansome. A “Holding Facility” contains Hold Rooms that are primarily used for short-term confinement. Beach Decl., Exh. C at p. 2, § 3.2. “Short-term is defined as a period not to exceed 12 hours, absent exceptional circumstances.” *Id.* at n.3. Moreover, ERO officers were expected to “empty holding facilities upon the conclusion of daily operations[.]” *Id.* at p. 7, § 5.1,1.

In the midst of the overcrowding caused by the Trump Administration’s mass arrest campaign, on June 24, 2025, ICE issued a Memorandum titled “Nationwide Hold Room Waiver,” (hereinafter “12-Hour Waiver Memo”) suspending section 5.1 of Directive 11087.2, which limited Hold Room detention to twelve hours. *See* Beach Decl., Exh. D. The 12-Hour Waiver Memo allows ICE to detain immigrants in Hold Rooms “for up to, but not exceeding, 72 hours, absent exceptional circumstances.” Beach Decl., Exh. D at p. 1. The waiver applies to “all holding facilities operated by ERO, located in ERO field offices, or jointly operated by ERO and Homeland Security Investigations (HSI) in shared offices” *Id.* at p. 1, n 1. The waiver is “effective immediately.” *Id.*

The 12-Hour Waiver Memo contains only three paragraphs of discussion. The Memo references President Trump’s executive orders issued on January 20, 2025. It states:

“As a result of increased enforcement efforts, ERO’s average daily population has significantly increased to over 54,000. This increase has put additional strain on finding and coordinating transfers of aliens to available beds within the required timeline detailed in Directive 11087.2. Further, ERO field offices no longer have the option to discretionarily release aliens, nor decline to take aliens into custody from our counterparts in Homeland Security Investigations (HSI) or U.S. Customs and Border Protection (CBP). **As a result of these constraints, ERO field offices have had to resort to holding aliens in holding facilities beyond than the 12-hour limit.**”

Id. at p. 2 (emphasis added). The 12-Hour Waiver Memo does not include operational guidance to field offices regarding what changes may need to be made to holding facilities to prepare them for long-term use. Instead, it makes the cursory statement that “[a]ll other Hold Room and hold facilities requirements continue to apply.” *Id.* at p. 2. Because all other requirements continue to apply, ICE continues to bar the use of beds or bedding in Hold Rooms, necessarily leading to inhumane and unconstitutional conditions of confinement. *See* Beach Decl., Exh. A at p. 100, § 2.6, V.A.5.

B. Inhumane and Unconstitutional Conditions of Confinement

Plaintiffs and putative class members are civil detainees who were arrested by ICE and confined in Hold Rooms at 630 Sansome. Declarations from Plaintiffs and individuals formerly detained at 630 Sansome establish the horrific conditions ICE subjects these civil detainees to. Shockingly, the putative class of individuals subject to the conditions at 630 Sansome includes children arrested in the Bay Area and taken to the Hold Rooms—some as young as three years old. *See* Beach Decl., Exh. E (describing multiple children arrested and woman and her two children, ages five and ten, who were detained overnight and slept on the floor at 630 Sansome).

ICE routinely holds putative class members over twelve hours in Hold Rooms—often overnight, and sometimes for more than 72 hours. *See, e.g.*, Declaration of Nikolas de Bremaecker in Support of Plaintiffs’ Motion for Provisional Class Certification, ECF No. 33-10 (“de Bremaecker Decl.”) ¶¶ 44–45, Declaration of Jorge Willy Valera Chuquillanqui (“Valera Chuquillanqui Decl.”) ¶ 9, Declaration of Stephanie Quintero (“Quintero Decl.”) ¶ 16, Declaration of Reena Arya (“Arya Decl.”) ¶ 14, Declaration of Victoria Sun (“Sun Decl.”) at ¶ 7. The Hold Rooms are made of metal and do not have any beds, forcing detainees to sleep on the concrete floor or on the angled metal benches along the walls. *See, e.g.*, Declaration of Ismael David Caicedo-Ruiz (“Caicedo-Ruiz Decl.”) ¶ 6, Declaration of Juan Edelmar Alva Alva (“Alva Alva Decl.”) ¶ 8, Declaration of David Rafael (“Colon Solano Decl.”) ¶ 6, Declaration of Mayra Mendez (“Mendez Decl.”) ¶¶ 12–13. When the Hold Rooms become crowded, immigrants are forced to sleep on the floor near the toilet. *See* Valera Chuquillanqui Decl. at ¶ 13, Declaration of Martin Hernandez Torres (“Hernandez Torres Decl.”) ¶ 11. At most, ICE has provided some detainees thin “yoga mats” to sleep on, which are often dirty and too short to fit detainees’ whole bodies. *See, e.g.*, Declaration of Carmen Aracely Pablo Sequen (“Pablo Sequen Decl.”) ¶ 6 (“The mat I was given to sleep on was very small, only about 2 centimeters thick, and very dirty.”), Caicedo-Ruiz Decl. at ¶ 7, Declaration of Jose Carlos (“Cordero Pelico Decl.”) ¶ 9, Mendez Decl. at ¶ 13. ICE does not provide any bedding or blankets, instead providing only a small sheet of Mylar or plastic. *See, e.g.*, Declaration of Ligia Garcia (“Garcia Decl.”) ¶ 15, Alva Alva Decl. at ¶ 10, Pablo Sequen Decl. at ¶ 7.

ICE maintains frigid temperatures in the Hold Rooms, and the thin sheets of plastic or Mylar

1 are insufficient to keep detainees warm. *See, e.g.*, Declaration of Paula Andrea Salcedo Aceros
 2 (“Salcedo Aceros Decl.”) ¶ 9 (“The room was very cold like a freezer. I was given a thin aluminum
 3 blanket to cover myself but it did not keep me warm.”), Declaration of Keymaris Alvarez Miranda
 4 (“Alvarez Miranda Decl.”) ¶ 8, Declaration of Yessica Alejandra Malagon Torres (“Malagon Torres
 5 Decl.”) ¶ 6. ICE never turns the lights off in the Hold Rooms, forcing detained immigrants to try to
 6 sleep in constant illumination. *See, e.g.*, Pablo Sequen Decl. at ¶ 6, Hernandez Torres Decl. at ¶ 12,
 7 Garcia Decl. at ¶ 14, Caicedo-Ruiz Decl. at ¶ 9, Alva Alva Decl. at ¶ 8, Valera Chuquillanqui Decl.
 8 at ¶ 12. Any of these conditions alone would deprive detainees of sleep, but combined they result in
 9 torturous sleep deprivation. *See, e.g.*, Mendez Decl. at ¶ 14 (“The entire time I was detained in the
 10 room, I do not think I slept more than a few hours total. I lost track of what time it was. I felt
 11 frustrated and weak and disoriented. My head started to hurt. I cannot think about the feeling without
 12 coming to tears because it felt like an endless night.”), Caicedo-Ruiz Decl. at ¶ 8, Alva Alva Decl.
 13 at ¶ 10, Valera Chuquillanqui Decl. at ¶ 12, Cordero Pelico Decl. at ¶ 13, Pablo Sequen Decl. at ¶ 6,
 14 Hernandez Torres Decl. at ¶¶ 10–14.

15 The Hold Rooms contain open communal toilets with no privacy, forcing detained
 16 immigrants to urinate and defecate in front of each other in the small room; at most, the toilet may
 17 have a small wall approximately 3 feet on one side, which fails to provide detainees privacy when
 18 using the toilet. *See, e.g.*, Pablo Sequen Decl. at ¶ 8, Garcia Decl. at ¶ 17, Alva Alva Decl. at ¶ 14,
 19 Declaration of Jaqueline Karina Mendoza Nunez (“Mendoza Nunez Decl.”) ¶ 8, Malagon Torres
 20 Decl. at ¶ 8, Alvarez Miranda Decl. at ¶ 9, Colon Solano Decl. at ¶ 7. ICE does not clean the toilets
 21 or room despite dozens of immigrants passing through the rooms and sharing the single toilet for
 22 days. *See, e.g.*, Valera Chuquillanqui Decl. at ¶ 17, Mendoza Nunez Decl. at ¶ 8.

23 Defendants provide no medical care whatsoever onsite at 630 Sansome and regularly deprive
 24 detained immigrants of access to basic medical attention and prescribed medications. Defendants
 25 do not conduct medical screening or intake at 630 Sansome to identify illnesses and risks, prevent
 26 injury, or arrange for access to medication. *See, e.g.*, Hernandez Torres Decl. at ¶¶ 4, 5, 7, 15–17,
 27 Garcia Decl. at ¶¶ 9–10, Alva Alva Dec at ¶ 15, Mendoza Nunez at ¶ 11. Defendants frequently
 28 prevent detainees from accessing their prescription medication, even when attorneys bring the

1 medication to 630 Sansome themselves. *See* Declaration of Jordan Weiner in Support of Plaintiffs’
 2 Motion for Provisional Class Certification, ECF No. 33-2 (“Weiner Decl.”) ¶ 13, de Bremaecker
 3 Decl. at ¶ 33, Declaration of Martha Ruch (“Ruch Decl.”) ¶ 20. Detainees report the poor conditions
 4 in the cells often worsen their medical issues. *See, e.g.* Alva Alva Decl. at ¶ 18. Defendants routinely
 5 ignore detainees’ requests for medical attention; in some instances, ICE agents at 630 Sansome have
 6 refused to address urgent medical issues unless the detained immigrant could ask for help in English.
 7 *See, e.g.*, Valera Chuquillanqui Decl. at ¶ 7, Alva Alva Decl. at ¶ 17.

8 Defendants also deny putative class members access to basic hygiene products and
 9 opportunities to bathe. Detainees are not given a change of clothes and are often forced to spend
 10 days in the Hold Room wearing the same clothes they were arrested in, which become soiled over
 11 time. *See, e.g.*, Caicedo Ruiz Decl. at ¶ 12; Alva Alva Decl. at ¶ 13; Mendoza Nunez at ¶ 9. Detainees
 12 often are not provided with any soap to wash their hands or bodies. *See, e.g.*, Hernandez Torres
 13 Decl. at ¶ 6, Alva Alva Decl. at ¶ 12; Mendoza Nunez at ¶ 9; Malagon Torres at ¶ 10; Alvarez
 14 Miranda Decl. at ¶ 9. There are no showers in the Hold Room and detained immigrants describe
 15 being unable to bathe while held there. *See, e.g.*, Pablo Sequen Dec at ¶ 9; Valera Chuquillanqui
 16 Dec at ¶ 18; Alva Alva Decl. at ¶ 11; Mendoza Nunez at ¶ 9; Malagon Torres at ¶ 9; Alvarez Miranda
 17 Decl. at ¶ 9. At most, some detainees have been allowed to go to another room where they are
 18 allowed five minutes to wash themselves, but this is only once every few days, and detainees are
 19 forced to put their dirty clothes back on after washing themselves. *See, e.g.*, Valera Chuquillanqui
 20 Decl. ¶ 11; Salcedo Aceros Decl. ¶ 10. ICE also fails to provide detainees with a toothbrush and
 21 toothpaste. *See, e.g.*, Mendoza Nunez Decl. at ¶ 9. Malagon Torres Decl. at ¶ 9. Occasionally, some
 22 immigrants have been provided with a single opportunity to brush their teeth during their multi-day
 23 detention, but they are only allowed to brush their teeth under an ICE officer’s supervision, and the
 24 toothbrush is immediately taken away from them. *See, e.g.*, Pablo Sequen Dec ¶ 10; Valera
 25 Chuquillanqui Decl. ¶ 19; The lack of hygiene is particularly appalling in the unsanitary conditions
 26 of the rooms, where immigrants have described stench from the open toilet as well as other people
 27 being clearly ill and vomiting. Cordero Pelico Decl. ¶ 14; Malagon Torres Decl. ¶ 10.

III. LEGAL STANDARD

A plaintiff seeking a preliminary injunction “must establish that [1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “[I]f a plaintiff can only show that there are ‘serious questions going to the merits’—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the ‘balance of hardships tips sharply in the plaintiff’s favor and the other two Winter factors are satisfied.’” *All. for the Wild Rockies v. Peña*, 865 F.3d 1211, 1217 (9th Cir. 2017) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)).

The APA authorizes district courts to review final agency action. 5 U.S.C. § 704. District courts are authorized to stay, or “postpone,” agency actions “to the extent necessary to prevent irreparable injury,” or to otherwise issue a stay “to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. “Courts—including the Supreme Court—routinely stay already-effective agency action under Section 705.” *Texas v. Biden*, 646 F. Supp. 3d 753, 770 (N.D. Tex. 2022) (citing, *inter alia*, *West Virginia v. EPA*, 577 U.S. 1126 (2016) (mem. op.)). To grant interim relief under the APA, the standard is the “familiar four-factor test on both a motion for a temporary restraining order and a motion for a preliminary injunction.” *E. Bay Sanctuary Covenant v. Trump*, 349 F. Supp. 3d 838, 854–55 (N.D. Cal. 2018) (issuing nationwide TRO under the APA), *aff’d*, 950 F.3d 1242 (9th Cir. 2020), *aff’d sub nom. E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640 (9th Cir. 2021), *aff’d*, 950 F.3d 1242 (9th Cir. 2020), *aff’d*, 993 F.3d 640 (9th Cir. 2021).

IV. ARGUMENT

This Court should issue a preliminary injunction and stay the agencies’ challenged actions because (A) Plaintiffs are likely to succeed on the merits of their Fifth Amendment and APA claims, (B) putative class members will suffer irreparable harm absent a restraining order, and (C) the balance of equities and public interest favor interim relief to preserve the status quo.

A. Plaintiffs Are Likely to Succeed on the Merits of Counts Three Through Six

Plaintiffs are likely to succeed in showing (1) the conditions of confinement at 630 Sansome

1 violate the putative class members’ Fifth Amendment due process rights, and (2) Defendants’ 12-
2 Hour Waiver for Hold Room detention violates the APA.

3 **1. Plaintiffs Are Likely to Succeed on Their Claims Regarding Inhumane**
4 **Conditions at 630 Sansome (Counts Three, Four, and Five)**

5 Plaintiffs, on behalf of the putative class, are likely to succeed on their claims regarding the
6 punitive conditions at 630 Sansome. Defendants’ practices of denying putative class members beds,
7 sleep, access to reasonable medical care, and basic hygiene supplies plainly violate putative class
8 members’ Fifth Amendment due process rights.

9 The Fifth Amendment demands higher standards for confinement of civil immigration
10 detainees than for people in prison, or even those in pretrial detention, and protects people in civil
11 detention from conditions that “amount to punishment of the detainee.” *Bell v. Wolfish*, 441 U.S.
12 520, 535 (1979). “This standard differs significantly from the standard relevant to convicted
13 prisoners, who may be subject to punishment so long as it does not violate the Eighth Amendment’s
14 bar against cruel and unusual punishment.” *Pierce v. County of Orange*, 526 F.3d 1190, 1205 (9th
15 Cir. 2008). In the immigration context, “[t]he civil nature of Plaintiffs’ confinement provides an
16 important gloss on the meaning of ‘punitive’”—ICE must afford putative class members “‘more
17 considerate treatment’ than even pretrial detainees, who are being criminally detained prior to trial.”
18 *Unknown Parties v. Nielsen*, 611 F. Supp. 3d 786, 796 (D. Ariz. 2020) (“*Nielsen*”) (issuing
19 permanent injunction addressing inhumane conditions in immigration detention) (*quoting*
20 *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982)). “The Court must presume detainees are
21 subjected to punishment if they are confined in conditions identical to, similar to, or more restrictive
22 than those under which the criminally convicted are held.” *Nielsen*, 611 F. Supp. 3d at 796.

23 The rights of the putative class members are violated by (a) the sleeping conditions at 630
24 Sansome, (b) the lack of basic medical intake and services at 630 Sansome, and (c) unsanitary
25 conditions and the denial of basic hygiene products. Finally, (d) these conditions are presumptively
26 punitive and thus unconstitutional.

27 **a. Sleeping Conditions at 630 Sansome Violate Due Process (Count**
28 **Three)**

The sleeping conditions at 630 Sansome are plainly unconstitutional. In immigration

1 detention, the Fifth Amendment demands that “[d]etention facilities (and prisons) must provide
 2 detainees held overnight with beds *and* mattresses. The absence of *either* violates detainees’ due
 3 process rights.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at
 4 *7 (D. Ariz., Nov. 18, 2016) (“*Johnson*”) (granting TRO against Customs and Border Patrol)
 5 (internal citations and quotations omitted) (emphasis in original) (*citing Thompson v. City of Los*
 6 *Angeles*, 885 F.3d 1439, 1448 (9th Cir. 1989)). Thin yoga mats do not meet this standard, even in
 7 short term detention: “the use of floor mattresses—*i.e.*, mattresses without bed frames—is
 8 unconstitutional without regard to the number of days a prisoner is so confined.” *Id.* (*citing Lareau*
 9 *v. Manson*, 651 F.2d 96, 105 (2d Cir. 1981)).

10 Short-term Hold Rooms that subject putative class members to conditions of confinement
 11 which are substantially worse than detainees face upon commitment to a long-term immigration
 12 detention facility or a criminal detention facility presumptively violate the Constitution. *Nielsen*,
 13 611 F. Supp. 3d at 793–94 (*citing Lynch v. Baxley*, 744 F.2d 1452, 1461 (11th Cir. 1984)). In long-
 14 term immigration detention, the ICE PBNDS require that detainees are given beds and a standard
 15 issue of bedding. The PBNDS state “standard issues shall be, at a minimum: (1) bedding: one
 16 mattress, one blanket and one pillow (additional blankets shall be issued, based on local indoor-
 17 outdoor temperatures); (2) linens: two sheets and one pillowcase; and (3) towel: one towel.” Beach
 18 Decl., Exh. A at p. 328, § 4.5. Because Defendants deny the detainees in the 630 Sansome Hold
 19 Rooms beds and bedding, the conditions of confinement at 630 Sansome are worse than the
 20 conditions in Defendants’ long-term immigration detention.

21 Moreover, in criminal detention, if a detention lasts long enough to encompass sleep, the
 22 Constitution demands the provision of a bed or mattress. *See Thompson*, 885 F. 3d. at 1448 (stating
 23 two nights in jail “with neither a bed nor even a mattress unquestionably constitutes a cognizable”
 24 due process violation); *see also, e.g., Union County Jail Inmates v. Di Buono*, 713 F.2d 984, 996–
 25 97 (3d Cir. 1983) (minimum constitutional standards in jail required elimination of “unsanitary and
 26 humiliating” practice of forcing detainees to sleep on floor mattresses), *cert. denied*, 465 U.S. 1102
 27 (1984); *Thomas v. Baca*, 514 F. Supp. 2d 1201, 1216 (C.D. Cal. 2007) (“[T]he Court finds that
 28 requiring inmates to sleep on the floor deprives them of a minimum measure of civilized treatment

1 and access to life’s necessities because access to a bed is an integral part of the ‘adequate shelter’
 2 mandated by the Eighth Amendment.”); *Robertson v. Merced Cnty.*, No. 1:24-CV-00009-BAM
 3 (PC), 2024 WL 6068026, at *5 (E.D. Cal. May 6, 2024) (“Jail deputies have a duty to ensure that
 4 pretrial detainees are provided with adequate bedding and that the denial of such necessities is
 5 sufficiently serious to violate the Fourteenth Amendment.”).

6 Detained people are held at 630 Sansome in rooms made of metal, where they are forced to
 7 sleep on hard angled metal benches, directly on the floor, or, at most, on very thin and dirty “yoga
 8 mats.” *See, e.g.*, Pablo Sequen Decl. at ¶ 6, Hernandez Torres Decl. at ¶ 9–10, Caicedo-Ruiz Decl.
 9 at ¶ 6, Alva Alva Decl. at ¶ 8, Mendez Decl. at ¶ 13, Valera Chuquillanqui Decl. at ¶ 13. Defendants’
 10 denial of beds to putative class members in Hold Rooms puts them in a worse position than if
 11 Defendants placed them in long-term detention with the minimal constitutional standards for
 12 convicted criminals. This is a clear constitutional violation. Moreover, based on these inhumane
 13 conditions, the court must *presume* that Defendants’ treatment of Plaintiffs and putative class
 14 members in Hold Rooms is punitive. *Nielsen*, 611 F. Supp. 3d at 796 (citing *Sharp v. Weston*, 233
 15 F.3d 1166, 1172–73 (9th Cir. 2000) (finding that *Youngberg* required that individuals civilly
 16 confined at a commitment center receive “more considerate” treatment than inmates at the
 17 correctional center in which the commitment center was located).

18 Constant illumination in the 630 Sansome detention cells contributes to sleep deprivation
 19 and violates putative class members’ due process rights. The Ninth Circuit has held “[t]here is no
 20 legitimate penological justification for requiring inmates to suffer physical and psychological harm
 21 by living in constant illumination. This practice is unconstitutional.” *Keenan v. Hall*, 83 F.3d 1083,
 22 1090 (9th Cir. 1996) (cleaned up), *opinion amended on denial of reh’g*, 135 F.3d 1318 (9th
 23 Cir.1998); *see Grenning v. Miller-Stout*, 739 F.3d 1235, 1238 (9th Cir. 2014) (continuous lighting
 24 in prison cells violates the Eighth Amendment). Again, the court must assume Defendants intend to
 25 punish putative class members—civil detainees—because Defendants’ activities violate the
 26 standards even for criminal detention spaces. *Nielsen*, 611 F. Supp. 3d at 796; *see also Keenan*, 83
 27 F.3d at 1090.

28 The frigid temperatures in the 630 Sansome detention cells also create unconstitutional,

1 punitive sleeping conditions, particularly where immigrants are only provided with pieces of mylar
 2 or plastic to cover their bodies, instead of blankets. *See Wilson v. Seiter*, 501 U.S. 294, 304 (1991)
 3 (“[C]onditions of confinement may establish an Eighth Amendment violation in combination when
 4 each would not do so alone . . . for example, a low cell temperature at night combined with a failure
 5 to issue blankets.”) (internal quotations and emphasis omitted); *Micenheimer v. Soto*, No. CV 13-
 6 3853-CJC (JEM), 2013 WL 5217467, at *5 (C.D. Cal. Sept. 16, 2013) (“Prisoners have a right to
 7 protection from extreme cold. . . . [the] violation depends on the severity of the cold, the duration of
 8 the prisoner’s exposure, the presence of an alternative means to warmth (*i.e.*, a blanket or jacket),
 9 the efficacy of that alternative, and the presence of other uncomfortable conditions.”) (cleaned up).
 10 In recent litigation, immigration officials have already admitted that Mylar “blankets” are
 11 insufficient in cold environments. *Johnson*, 2016 WL 8188563, at *8 (“Defendants admit that the
 12 Mylar sheets do not provide insulation but merely prevent evaporation . . . The efficacy of the Mylar
 13 blanket depends on comfortable room temperatures being maintained at Border Patrol stations.”).
 14 Defendants’ consistent practice of denying sufficient bedding or blankets, combined with subjecting
 15 Plaintiffs and the putative class to cold temperatures, prevents them from adequate sleep. *See, e.g.*,
 16 Garcia Decl. at ¶¶ 13–16, Salcedo Aceros Decl. at ¶ 9, Alva Alva Decl. at ¶ 10, Alvarez Miranda
 17 Decl. at ¶ 8, Malagon Torres Decl. at ¶ 7. These conditions fall below conditions in criminal
 18 detention and are thus unacceptable for civil detainees. *See Bell*, 441 U.S. at 535; *Pierce*, 526 F.3d
 19 at 1205; *Nielsen*, 611 F. Supp. 3d at 796.

20 The inhumane conditions detailed herein are not unique. Recently, the United States District
 21 Court for the Southern District of New York issued a preliminary injunction to remedy similar
 22 conditions in ICE’s Hold Rooms in New York, finding that forcing detainees to sleep on the floor
 23 with “only an aluminum blanket,” “laying in proximity to open toilets,” during “periods of excessive
 24 . . . cold, coupled with the lights left on throughout the night,” “even for short periods, deprives
 25 detainees of a basic human need and poses an unreasonable risk of harm to their physical and
 26 psychological well-being.” *Mercado v. Noem*, No. 25-CV-6568 (LAK), 2025 WL 2658779, at *28–
 27 29 (S.D.N.Y. Sept. 17, 2025). Here too, the sleeping conditions Defendants have created in the 630
 28 Sansome Hold Rooms must be enjoined.

b. Lack of Basic Medical Care at 630 Sansome Violates Due Process (Count Four)

Defendants’ failure to provide even basic medical screening and care onsite at 630 Sansome violates the due process rights of putative class members. When the government “takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989); *see also Castillo v. Barr*, 449 F. Supp. 3d 915, 920 (C.D. Cal. 2020) (granting TRO and explaining “[i]f the Government fails to provide for a detainee’s basic human needs, including medical care and reasonable safety, the Due Process Clause is violated. Indeed, the Due Process Clause mandates that civil immigration detainees are entitled to more than minimal human necessities.”) (citations omitted). This requirement includes conducting medical screening for short-term detention. *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1335, 1338–39 (D. Ariz. 2014) (jail officials “must provide a system of ready access to adequate medical care” through a system of medical screening upon entry to the facility, even in where “[t]he length of stay for most pretrial detainees is relatively short.”). In *Graves*, where “[a]pproximately 40% of inmates [were] released within 24 hours of booking,” county jail officials were nonetheless subject to an injunction that required:

Defendants shall provide a receiving screening of each pretrial detainee, prior to placement of any pretrial detainee in the general population. The screening will be sufficient to identify and begin necessary segregation, and treatment of those with mental or physical illness and injury; to provide necessary medication without interruption; to recognize, segregate, and treat those with communicable diseases; to provide medically necessary special diets; and to recognize and provide necessary services to the physically handicapped.

Id. at 1330.

Unsurprisingly, this requirement also applies to short-term immigration detention, where “[d]enying, delaying, or mismanaging intake screening violates the Constitution.” *Johnson*, 2016 WL 8188563 at *13 *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (*citing Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1188–90 (9th Cir. 2002)). Because “the Government owes a duty to Petitioners, as civil immigration detainees, to reasonably abate known risks,” *see Castillo*, 449 F. Supp. at 920 (*citing Castro v. Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016)), “[p]roper intake screening is critical to identifying newly arriving detainees with urgent or emergent health care

1 needs . . . [and] to identify continuity of care issues like medication or prescription needs, or to
 2 identify medical or mental health conditions that require referrals.” *Johnson*, 2016 WL 8188563 at
 3 *14. Important to this putative class action is the principle that “[i]nadequate health and safety
 4 measures at a detention center cause cognizable harm to every detainee at that center.” *Castillo*, 449
 5 F. Supp. at 920 (citing *Parsons v. Ryan*, 754 F.3d 657, 679 (9th Cir. 2014)). In addition to
 6 constitutional requirements, ICE’s own detention standards recognize the requirement to conduct
 7 medical screening immediately upon intake. *See* Beach Decl., Exh. A at p. 49, § 2.1 (when a detainee
 8 is “admitted” to a facility, “[m]edical and mental health screening shall be conducted to identify
 9 requirements for medical care, special needs and housing, and to protect the health of others in the
 10 facility.”).

11 Defendants make no effort to identify and address immigrants’ medical needs when they
 12 enter 630 Sansome, and the facility lacks any onsite medical supplies or medical professionals.
 13 Defendants systematically take people into custody without screening them to identify medical and
 14 mental health needs, immediate medical risks, communicable illnesses, injuries, allergies, or
 15 medication access needs. *See, e.g.*, Hernandez Torres Decl. ¶ 5, Salcedo Aceros Decl. ¶ 11, Colon
 16 Soriano Decl. ¶ 8, Alvarez Miranda Decl. ¶ 7, Alva Alva Decl. ¶ 15, Mendoza Nunez Decl. ¶ 11.
 17 These practices put immigrants at risk and subject them to worse conditions than they would face
 18 in long-term immigration detention or even criminal detention.

19 Defendants’ practice of denying immigrants access to their prescribed medications also
 20 violates the putative class members’ due process rights. In the criminal context, failure to provide
 21 prescription medications—even for a few days or hours—can be unconstitutional. *See, e.g.*,
 22 *Wiertella v. Lake Cnty., Ohio*, 141 F.4th 775, 781–82 (6th Cir. 2025) (finding due process violation
 23 where jail official “was aware that Wiertella had been booked without his medications [and] that he
 24 was on medications that needed to be continuously administered . . . Yet [] did nothing to ensure
 25 that Wiertella received his blood-pressure medications—or any medication other than for his
 26 diabetes—in a timely manner.”); *Bd. v. Farnham*, 394 F.3d 469, 481 (7th Cir. 2005) (finding
 27 constitutional violation where county jail failed to provide plaintiff with his inhaler, which he needed
 28 renewed every two days); *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575 (3d Cir. 2003)

(Plaintiff stated a Fourteenth Amendment due process claim where he was deprived of insulin for twenty-one hours); *see also Est. of Wilson by & through Jackson v. Cnty. of San Diego*, 729 F. Supp. 3d 1039, 1055–58 (S.D. Cal. 2024) (collecting cases regarding denial of prescription medications during intake interviews and booking). ICE’s own standards for Hold Rooms recognize the importance of access to prescription medications, even for short term confinement. ICE’s Policy Directive 11087.2—which governs Hold Room standards for detention of *less* than twelve hours—requires that ERO officers must “[a]llow detainees to keep personal inhaled medication on their person and have access to other prescribed medication as necessary.” Beach Decl., Exh. C, at p. 9, § 5.7. Nonetheless, Defendants do not comply with this requirement.

As a matter of policy and practice, ICE agents at 630 Sansome deny immigrants access to their prescription medications. *See, e.g.* Hernandez Torres Decl. at ¶¶ 4–5, 7, 15–17; Garcia Decl. at ¶¶ 9–10, Caicedo Ruiz Decl. at ¶ 14. ICE agents have refused to provide access to prescription medications even when attorneys attempt to intervene. *See* Weiner Decl. at ¶ 13 (describing “a woman who needed to take medication that evening for a chronic kidney condition, and she did not have access to her medication. An LRCL attorney tried unsuccessfully to advocate for her to get her medication. Another one was a woman had recently been in a car accident and needed medication to manage her pain, which she was not provided”); de Bremaeker Decl. at ¶ 33 (“I had another client who had urgent medical needs and took daily prescription medication. ICE did not permit her to have access to her prescription medication the entire time she was detained at the San Francisco Field Office.”); Ruch Decl. at ¶ 20 (“For example, one older person who had multiple health concerns and had recently survived heart surgery was unable to access his prescription medications until after he was transferred to a detention facility in Kern county.”).

The consequences of medication deprivation, even for a short time, can be devastating. For example, Plaintiff Hernandez Torres was deprived of his blood pressure medication overnight, causing him to have a hypertensive crisis and potential stroke that may have caused permanent brain damage. Hernandez Torres Decl. ¶¶ 4, 5, 7, 15–24. Individuals deprived of their prescription medication can suffer adverse symptoms or needless pain, which are considered serious and unconstitutional harms. *See, e.g., Wiertella*, 141 F.4th at 782 (“If an inmate experiences symptoms

1 of depression because he is not timely receiving his psychiatric medication, this can constitute
 2 serious harm. An inmate who suffers pain needlessly has suffered serious harm. And the interruption
 3 of a prescribed plan of treatment could constitute a constitutional violation.”) (internal quotations
 4 omitted). Defendants’ refusal to allow immigrants access to their prescription medications at 630
 5 Sansome—in violation of their own policy—is needlessly harsh, punitive, and not reasonably
 6 related to any legitimate government interest.

7 Again, Defendants’ denial of basic medical care has been the subject of a preliminary
 8 injunction elsewhere. In New York, a district court found “inadequate medical care” where there
 9 was “delayed or absent treatment in response to several serious medical needs” including the “failure
 10 to provide one detainee blood pressure mediation for the duration of his detention [which] resulted
 11 in dangerously high blood pressure.” *See Mercado*, 2025 WL 2658779, at *30. The civil detainees
 12 at 630 Sansome suffer from the same constitutional deprivation.

13 **c. Unsanitary Conditions and Denial of Basic Hygiene Products**
 14 **Violate Due Process (Count Five)**

15 Even in the criminal context, detained people “have the right to personal hygiene supplies
 16 such as toothbrushes and soap.” *Keenan*, 83 F.3d at 1091; *see also Daigre v. Maggio*, 719 F.2d
 17 1310, 1312 (5th Cir. 1983) (“[T]he Eighth Amendment forbids deprivation of the basic elements of
 18 hygiene.”) (collecting cases). Detained immigrants at 630 Sansome describe having nowhere to
 19 bathe. *See, e.g., Pablo Sequen Decl. at ¶ 9, Valera Chuquillanqui Decl. at ¶ 18, Mendoza Nunez*
 20 *Decl. at ¶ 9, Malagon Torres Decl. at ¶ 9, Alvarez Miranda Decl. at ¶ 11. Others describe being*
 21 *taken to a separate room and given a single opportunity for a short shower during multiple days of*
 22 *confinement, but with no soap and no change of clothes. Alva Alva Decl. ¶ 13. In the Hold Rooms,*
 23 *detained immigrants often are not provided with soap to wash their hands or bodies. See, e.g., Alva*
 24 *Alva Decl. at ¶ 12; Mendoza Nunez Decl. at ¶ 9; Malagon Torres Decl. at ¶ 10; Alvarez Miranda*
 25 *Decl. at ¶ 9. Detained immigrants are not provided with a change of clothes, forcing them to remain*
 26 *in the same soiled clothes for days. See, e.g., Pablo Sequen Decl. ¶ 12, Caicedo Ruiz Decl. at ¶ 12;*
 27 *Alva Alva Decl. at ¶ 13; Mendoza Nunez Decl. at ¶ 9. Detained immigrants are not given a*
 28 *toothbrush or toothpaste to keep. Mendoza Nunez Decl. at ¶ 9; Malagon Torres Decl. at ¶ 9. Some*

1 immigrants describe being given a single opportunity to brush their teeth during their multiple days
2 at 630 Sansome, but each time, ICE took the toothbrush away from them as soon as they were
3 finished. Pablo Sequen Decl. at ¶ 10; Valera Chuquillanqui Decl. at ¶ 19.

4 Detained immigrants describe sharing a single, open toilet in the Hold Room, forcing them
5 to urinate and defecate in front of each other. Pablo Sequen Decl. at ¶ 8; Alva Alva Decl. at ¶ 14;
6 Valera Chuquillanqui Decl. at 16; Mendoza Nunez Decl. at ¶ 8; Malagon Torres Decl. at ¶ 8; Alvarez
7 Miranda Decl. at ¶ 10; Colon Solano Decl. at ¶ 7. ICE agents at the facility do not regularly clean
8 the toilet, despite it being used continuously by all immigrants cycling through the room, including
9 at least one who was vomiting from the stress of her arrest. Malagon Torres Decl. at ¶ 10 (“One
10 woman detained in the same room as me was very anxious about the detention and began vomiting
11 in front of us. It took all I had not to vomit as well.”); Valera Chuquillanqui Decl. at ¶ 17; Mendoza
12 Nunez Decl. at ¶ 8. The toilet filled the room with stench. Cordero Pelico Decl. at ¶ 14. Detained
13 immigrants at 630 Sansome are forced to clean the toilet themselves to avoid getting sick, sometimes
14 using dry wads of toilet paper. Valera Chuquillanqui Decl. at ¶ 17.

15 The types of unsanitary conditions Plaintiffs have endured at 630 Sansome have been
16 ordered remedied in New York. A preliminary injunction was issued recently where detainees in
17 ICE’s Hold Rooms “were denied basic hygiene items, such as clean clothing, and adequate soap,
18 sanitary wipes, toilet paper, toothbrushes, and menstrual products . . . [b]ecause an unsanitary
19 environment and the denial of basic personal hygiene items deprive detainees of minimal civilized
20 measure of life’s necessities and subject them to unreasonable health and safety risks.” *See Mercado*,
21 2025 WL 2658779, at *29 (quotations and brackets omitted). Defendants should be enjoined from
22 subjecting immigrants to humiliating sanitary conditions in San Francisco as they were in New
23 York.

24 **d. The Punitive Conditions in the 630 Sansome Hold Rooms Are**
25 **Not Rationally Related to Any Legitimate Government Interest**

26 Defendants will be unable to meet their burden to show that the presumptively punitive
27 conditions in the 630 Sansome Hold Rooms are rationally related to cognizable government interests
28 and are not excessive in relation to these interests. *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1080

(N.D. Cal. 2024). Fourteenth Amendment due process claims are evaluated under an objective deliberate indifference standard. *Gordon v. County of Orange*, 888 F.3d 1118, 1124–35 (9th Cir. 2018) (applying *Castro*, 833 F.3d at 1060 (en banc)). As set forth above, the conditions at 630 Sansome are presumptively punitive because they are worse than the conditions in long-term immigration detention or criminal detention. *Nielsen*, 611 F. Supp. 3d at 796. Plaintiffs also “can demonstrate punitive conditions by showing that the challenged condition is: (1) expressly intended to punish or (2) not rationally related to a legitimate government objective or is excessive to that purpose.” *Pimentel-Estrada v. Barr*, 458 F. Supp. 3d 1226, 1250–51 (W.D. Wash. 2020); *see also Jones v. Blanas*, 393 F.3d 918, 933–34 (9th Cir. 2004) (holding that conditions are punitive where they are “employed to achieve objectives that could be accomplished in so many alternative and less harsh methods”); *King v. Cnty. of Los Angeles*, 885 F.3d 548, 558 (9th Cir. 2018) (discussing the *Jones* presumptions and explaining, “[e]ven if legitimate, non-punitive interests are identified, conditions of confinement may still be excessive if they are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods.”).

First, an intent to punish Plaintiffs and the putative class can be inferred from Defendants’ own statements and actions. Another district court opined that “[s]tatements from senior [DHS] officials suggest that harsh conditions of confinement are a deliberate feature of the enforcement program intended to induce self-deportation.” *Mercado*, 2025 WL 2658779, at *33. Defendant Noem has acknowledged that ICE uses “notoriously harsh” detention spaces to encourage self-deportation rather than mitigating flight risk or danger to the community—the only two constitutionally permissible bases for detention. *See id.*; *see also* ECF. No. 32, Amended Compl. at ¶ 57. In addition, Defendants have acted deliberately by virtue of the 12-Hour Waiver Memo, which allows the inference that ICE “knew, or should have known, that facilities like [ERO Hold Rooms]—which lack essential features of long-term detention centers such as beds, showers, and attorney consultation rooms, among others—would be forced to hold many more detainees for much longer periods, essentially serving as *de facto* detention centers.” *Mercado*, 2025 WL 2658779, at *31. In this context, “[t]he deteriorating conditions that resulted when the population in these holding facilities increased sharply did not come, or at least should not have come, as a surprise.”

1 *See id.* (discussing deliberate indifference).

2 Second, punitive conditions can be inferred because there is no legitimate government
3 interest or exigency that justifies Defendants’ inhumane and degrading practices of depriving
4 immigrants of medication and basic medical intake, failing to provide basic hygienic supplies, or
5 forcing immigrants to sleep on dirty mats on the floor in frigid rooms that are constantly illuminated.
6 The overcrowding caused by Defendants’ mass arrest campaign does not suffice as a rationale for
7 inhumane detention conditions. Defendants cannot create a problem and then claim that self-
8 imposed problem as a rationale for infringing on constitutional rights, *see Immigrant Defs. L. Ctr.*
9 *v. Noem*, 145 F.4th 972, 993 (9th Cir. 2025), and even “periodic [immigration] surges along the
10 border [are] a chronic condition and not an exigent exception to justify unconstitutional conditions
11 of confinement.” *Nielsen*, 611 F. Supp. 3d at 815. “[A]dministrative convenience and resource
12 constraints . . . cannot lawfully excuse the imposition on the presumptively innocent of genuine
13 privations and hardship” in the ICE Hold Rooms. *Mercado*, 2025 WL 2658779, at *33.

14 **2. Plaintiffs Are Likely to Succeed in Showing Defendants’ 12-Hour**
15 **Waiver Memo Violates the Administrative Procedure Act (Count Six)**

16 Plaintiffs are also likely to succeed on their claims challenging the 12-hour waiver memo
17 under the APA because (a) it is final agency action, (b) it is contrary to a constitutional right; and
18 (c) it is arbitrary and capricious. Finally, (d) the 12-hour waiver memo is contributing to
19 deteriorating conditions of confinement for immigrants across the country.

20 **a. The 12-Hour Waiver Memo Is Final Agency Action**

21 To determine if an agency’s action is final, the Ninth Circuit “look[s] to factors such as
22 whether the action amounts to a definitive statement of the agency’s position, whether it has a direct
23 and immediate effect on the day-to-day operations of the subject party, and if immediate compliance
24 . . . is expected.” *Prutehi Litekyan: Save Ritidian v. United States Dep’t of Airforce*, 128 F.4th 1089,
25 1108 (9th Cir. 2025) (“*Prutehi Litekyan*”). The 12-Hour Waiver Memo easily meets the criteria for
26 final agency action. The 12-Hour Waiver Memo directly impacted the day-to-day operations of the
27 agency and was “effective immediately” upon issuance, allowing ICE to substantially increase the
28 length of immigrants’ detention in Hold Rooms. This undoubtedly resulted in legal consequences

1 for immigrants, whom ICE has detained in excess of 12 hours—and in some cases, over 72 hours—
 2 in its Hold Rooms. *See, e.g.,* de Bremaecker Decl. at ¶¶ 44–45, Valera Chuquillanqui Decl. at ¶ 9,
 3 Quintero Decl. at ¶ 16, Arya Decl. at ¶ 14; *see also* *Torres v. United States Dep’t of Homeland Sec.*,
 4 411 F. Supp. 3d 1036, 1069 (C.D. Cal. 2019) (“The Court assumes that the rights of detainees and
 5 obligations of detention contract facilities would flow from any agency action regarding detention
 6 standards compliance and enforcement.”).

7 **b. The 12-Hour Waiver Memo is Contrary to a Constitutional**
 8 **Right**

9 The APA allows a reviewing court to set aside an agency action that is contrary to a
 10 constitutional right. 5 U.S.C. § 706(2)(B); *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 984 (C.D. Cal.
 11 2024). As discussed above, the Memo’s failure to address the minimal constitutional requirements
 12 for overnight detention necessarily results in violations of detainees’ constitutional rights. That
 13 alone provides reason for the court to stay implementation of the 12-Hour Waiver Memo.

14 **c. The 12-Hour Waiver Memo Is Arbitrary and Capricious**

15 ICE’s 12-Hour Waiver Memo is arbitrary and capricious because (1) it fails to consider an
 16 important aspect of the problem by failing to contend with the humanitarian and operational
 17 consequences of turning short-term Hold Rooms into long-term detention centers, which results in
 18 abusive, inhumane, and unconstitutional conditions of confinement; and (2) it fails to consider viable
 19 alternatives to alleviate overcrowding and lack of long-term bed space.

20 **i. The 12-Hour Waiver Memo Is Arbitrary and Capricious**
 21 **Because it Fails to Consider Important Constitutional**
 22 **and Humanitarian Implications**

23 An agency decision is arbitrary and capricious when it “entirely fail[s] to consider an
 24 important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463
 25 U.S. 29, 43 (1983). Likewise, an agency decision is arbitrary and capricious if it is unreasonable or
 26 not reasonably explained. *Ohio v. Env’tl Prot. Agency*, 603 U.S. 279, 292 (2024). Here, the 12-Hour
 27 Waiver Memo fails to adequately contemplate—or even mention—constitutional minimums for
 28 overnight detention, the conflict between overnight detention and ICE’s own regulations for Hold
 Rooms, compliance with ICE’s own regulations for longer-term detention exceeding 12 hours, and
 how extending detention in Hold Rooms inevitably risks constitutional violations, absent changes

1 to accommodate human needs in overnight detention.

2 ICE’s regulations specifically define Hold Rooms as rooms for temporary detention that do
3 not allow “bunks, cots, beds and other sleeping apparatus.” Beach Decl., Exh. A at p. 100, § 2.6,
4 V.A.5.¹ The 12-Hour Waiver Memo does not address this policy contradiction or limitation on Hold
5 Rooms in any way. It does not consider any of the inherent physical and operational limitations of
6 short-term holding cells—such as cramped spaces, lack of beds, lack of shower facilities, and lack
7 of medical support staffing and infrastructure. The ICE 12-Hour Waiver Memo contains no
8 discussion of the constitutional and humanitarian requirements that accompany extended detention
9 in Hold Rooms. Implementation of the waiver necessarily results in overnight detention that lacks
10 beds and appropriate bedding, results in sleep deprivation, and does not adequately account for
11 detainees’ medical needs, in violation of the Fifth Amendment. *Supra* at § II.A.1. ICE’s failure to
12 consider this problem at all, particularly when the waiver directly conflicts with its own existing
13 policies, makes the 12-Hour Waiver Memo arbitrary and capricious.

14 To engage in “reasoned decision-making,” agencies must “look at the costs as well as the
15 benefits” of their actions. *State Farm*, 463 U.S. at 54. The humanitarian costs of long-term
16 confinement in short-term holding cells—fundamentally designed to operate without medical
17 services, beds, or basic sanitary provisions—are staggering. Extended detention in Hold Rooms
18 causes human suffering below constitutional standards, *see supra* Section IV.A.1., and the 12-Hour
19 Waiver Memo should be stayed for its failure to address such inevitable consequences.

20 **ii. The 12-Hour Waiver Memo Is Arbitrary and Capricious**
21 **for Failing to Consider Alternatives**

22 The 12-Hour Waiver Memo is also arbitrary and capricious because it fails to consider
23 alternatives within existing ICE policy to address current capacity issues. *See Centro Legal de la*
24 *Raza v. Exec. Off. For Immigr. Rev.*, 524 F. Supp. 3d 919, 963 (N.D. Cal. 2021) (“To be regarded
25 as rational, an agency must also consider significant alternatives to the course it ultimately

26 _____
27 ¹ Consistent with these limitations, the PBNDS states repeatedly that “[a]n individual may not be
28 confined in a facility’s hold room for more than 12 hours” and “[a]n individual may not be held in a
hold room for more than 12 hours.” Beach Decl., Exh. A at p. 99, 101, § 2.6 at I., V.B.

1 chooses.”). When changing existing policy, an agency decision is arbitrary and capricious if it fails
 2 to consider alternatives that preserve the status quo, including those “within the ambit of the existing
 3 policy *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 5 (2020) (DHS
 4 memo violated the APA when it rescinded the Deferred Action for Childhood Arrivals program
 5 based on its provisions of federal benefits, as the “memorandum contain[ed] no discussion of
 6 forbearance [of deportation] or the option of retaining forbearance without benefits. [DHS
 7 Secretary] Duke entirely failed to consider that important aspect of the problem. That omission alone
 8 renders Acting Secretary Duke’s decision arbitrary and capricious.”).

9 The 12-Hour Waiver Memo plainly states that overcrowding in detention centers—and thus
 10 the need for extended detention in short-term Hold Rooms—derives from ICE’s self-imposed
 11 decision not to exercise its own discretion. The Memo states, without elaboration, that “ERO field
 12 offices no longer have the option to discretionarily release aliens, nor decline to take aliens into
 13 custody from our counterparts in Homeland Security Investigations (HSI) or U.S. Customs and
 14 Border Protection (CBP). As a result of these constraints, ERO field offices have had to resort to
 15 holding aliens in holding facilities beyond than the 12-hour limit.” Beach Decl., Exh. D at p. 2. The
 16 “constraints” cited by ICE are entirely self-imposed, and failure to consider ways to alleviate those
 17 constraints, rather than force immigrants to spend extended periods in ill-equipped short-term
 18 holding cells, does not constitute “rational connection between the facts found and the choice made.”
 19 *State Farm*, 463 U.S. at 43 (citation omitted). Importantly, Defendants cannot actively facilitate
 20 overcrowding in detention centers and then claim no responsibility or control over it. *See Immigrant*
 21 *Defs. L. Ctr.*, 145 F.4th at 993 (finding likelihood of success on APA claim in part because “the
 22 government cannot actively facilitate a breakdown in ongoing or potential attorney-client
 23 relationships, and then claim no responsibility or control over it.”) (cleaned up).

24 Here, ICE did not consider existing alternatives, such as using its option to discretionarily
 25 release immigrants, to decline custody from HSI and CBP, or to release or simply not arrest low-
 26 risk immigrants on ICE’s Alternatives to Detention (“ATD”) programs, which have been in place
 27
 28

1 for over twenty years.² Here, in most cases, the government has previously determined that the
 2 putative class members were not a danger to the community or a flight risk, and were therefore
 3 appropriate for Release on Recognizance or the heightened requirements of an Order of Supervision.
 4 Many, if not all, of the putative class members would be well-suited to various ATD programs,
 5 including, if necessary, the Intensive Supervision Program (“ATD-ISAP”). Their temporary release
 6 under these programs would ease the burden on ICE detention facilities that are over capacity.
 7 Failure to consider other existing alternatives renders ICE’s policy change arbitrary and capricious.

8 **d. The 12-Hour Waiver Memo Has Contributed to a Nationwide Humanitarian Crisis**

9 Across the country, “the waiver of the 12 hour rule and the pressure to hold detainees for
 10 longer periods in hold rooms not intended for such use has been driven by the pressure to remove
 11 [noncitizens] at unprecedented speed.” *See Mercado*, 2025 WL 2658779, at *5. Because the waiver
 12 was issued due to already-crowded detention spaces and because it failed to consider whether there
 13 were any—let alone sufficient—preparations undertaken for converting temporary holding cells into
 14 long-term detention spaces, inhumane Hold Room conditions resulting from the 12-hour waiver
 15 have been reported across the country. *See Beach Decl.*, Exh. F (describing immigrants sleeping on
 16 cold floors in a room with an open toilet in an ICE Hold Room in Broadview, Illinois); Exh. G
 17 (describing overcrowding, lack of medical care, lack of showers and bedding, and forced floor
 18 sleeping in the ICE Hold Rooms in Miami, Florida); Exh. H (describing floor sleeping and lack of
 19 medical attention in ICE Hold Rooms in Atlanta, Georgia); Exh. I (describing forced floor sleeping
 20 and lack of medical care, food, and basic hygiene for up to a week in the ICE Hold Rooms in
 21 Chantilly, Virginia); Motion for Preliminary Injunction, *Vasquez Perdomo v. Noem*, Case No. 2:25-
 22 cv-05605, ECF No. 127 at 14-15 (C.D. Cal. July 28, 2025) (describing dayslong, overcrowded
 23 detention in inhumane conditions related to sleep, hygiene, and medical care in short-term ICE
 24 detention space in Los Angeles). The squalid conditions in ERO Hold Rooms have been the subject
 25 of other recent litigation in New York and Maryland, although neither court has yet been asked to
 26

27 ² <https://www.ice.gov/features/atd> (ATD-ISAP has been in place since 2004 and the number of
 28 participants has increased over time.”)

1 issue an administrative stay. *See Mercado*, 2025 WL 2658779 at *31; *D.N.N. v. Baker*, No. 1:25-
2 CV-01613-JRR, 2025 WL 2098633, at *14 (D. Md. July 25, 2025) (assuming without deciding “that
3 a common question exists as to . . . violation of the APA and Fifth Amendment by the Government’s
4 waiver of the 12-hour hold room utilization time at the Baltimore Field Office.”).

5 An administrative stay of ICE’s arbitrary and capricious, reckless waiver of the twelve-hour
6 limitation on Hold Room detention is urgently necessary to avoid the nationwide humanitarian crisis
7 in ERO Hold rooms, particularly when “[t]here is no suggestion that the pressure to increase arrests
8 has diminished” or that “previously available options such as discretionary release or of ICE
9 declining detainees taken into custody by other agencies will be restored . . . In short, the heat
10 remains on, and the temperature is likely to rise.” *Mercado*, 2025 WL 2658779, at *25.

11 **B. The Balance of Equities and the Public Interest Favor Preliminary Relief**

12 The final two *Winter* factors—the balance of equities and public interest—“merge when the
13 Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh
14 in favor of ordering an injunction to bring the conditions at 630 Sansome into compliance with
15 constitutional minimums and granting a stay of the 12-Hour Waiver Memo.

16 “The public has a strong interest in upholding procedural protections against unlawful
17 detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention
18 are staggering.” *Pablo Sequen v. Kaiser*, No. 25-CV-06487-PCP, 2025 WL 2203419, at *3 (N.D.
19 Cal. Aug. 1, 2025). “Generally, public interest concerns are implicated when a constitutional right
20 has been violated, because all citizens have a stake in upholding the Constitution.” *Preminger v.*
21 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005). In addition to the potential hardships facing putative
22 class members in the absence of the injunction, the court “may consider . . . the indirect hardship to
23 their friends and family members.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (*citing*
24 *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008)).
25 Absent an injunction, class members’ friends and family may suffer from their extended
26 confinement in the 630 Sansome Hold Rooms. Cardenas Castellanos Decl. ¶ 5, Salcedo Aceros ¶ 15,
27 Alva Alva Decl. ¶ 21 (“When my five-year-old daughter found out I had been arrested, she became
28 physically ill from the stress of not knowing what would happen to me. It still affects both of us to

1 this day.”). The public interest is served by protecting the rights of immigrants in detention at 630
 2 Sansome.

3 Defendants will face minimal, if any, hardship from a stay of the 12-Hour Waiver Memo.
 4 Such a stay would simply put Defendants in the same position they were in before the waiver was
 5 issued in June 2025 and would preserve the status quo of the past ten years. *See Immigrant Defs. L.*
 6 *Ctr.*, 781 F. Supp. 3d at 1043 (“The status quo to be restored is the last peaceable uncontested status
 7 existing between the parties *before* the dispute developed.”) (cleaned up) (emphasis in original); *see*
 8 *also* Beach Decl., Exh. B (first instituting 12-hour limit on Hold Rooms in 2014). Moreover, if ICE
 9 reverts to its use of other ATD programs to ease overcrowding instead of extended detention, the
 10 government stands to gain enormous fiscal benefits. *Hernandez*, 872 F.3d at 996 (The “costs to the
 11 public of immigration detention are ‘staggering’ . . . Supervised release programs cost much less by
 12 comparison.”).

13 **V. THE COURT SHOULD NOT REQUIRE PLAINTIFFS TO PROVIDE SECURITY**
 14 **PRIOR TO THE ISSUANCE OF PRELIMINARY RELIEF**

15 Federal Rule of Civil Procedure 65(c) provides that a court may grant preliminary injunctive
 16 relief “only if the movant gives security in an amount that the court considers proper to pay the costs
 17 and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R.
 18 Civ. P. 65(c). However, “[d]espite the seemingly mandatory language, Rule 65(c) invests the district
 19 court with discretion as to the amount of security required, *if any*.” *Johnson v. Couturier*, 572 F.3d
 20 1067, 1086 (9th Cir. 2009) (citation omitted) (emphasis in original). A district court “has discretion
 21 to dispense with the security requirement altogether if requiring security would effectively deny
 22 access to judicial review, and courts routinely impose either no bond or a minimal bond in cases
 23 involving public interests.” *Arevalo v. Trump*, 785 F. Supp. 3d 644, 668 (C.D. Cal. 2025) (internal
 24 citation omitted). “That is particularly true when, as here, a plaintiff seeks to vindicate a
 25 constitutional right.” *Id.*; *see also Miller v. Carlson*, 768 F. Supp. 1331, 1340–41 (N.D. Cal.1991)
 26 (bond waived as plaintiffs were “indigent persons” and the preliminary injunction “is consistent
 27 with public policy”). Here, plaintiffs seek to vindicate constitutional rights consistent with the
 28 government’s own existing policies and obligations. Plaintiffs are receiving pro bono representation,

1 unable to post bond, and in the case of Mr. Hernandez Torres, currently incarcerated in long-term
 2 immigration detention, making it practically impossible to post security. *See* Hernandez Torres Decl.
 3 at ¶ 28. Accordingly, this Court should waive the security requirement.

4 **VI. CONCLUSION**

5 For the reasons stated above, the Court should enter a preliminary injunction directing
 6 Defendants to bring detention conditions in Hold Rooms at 630 Sansome up to constitutional
 7 minimums and issue a stay of the 12-Hour Waiver Memo pending resolution of this matter on the
 8 merits.

9 DATED: October 10, 2025

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE
 SAN FRANCISCO BAY AREA

11 By: /s/ Marissa Hatton

MARISSA HATTON

ANDREW NTIM

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17 DATED: October 10, 2025

CARECEN SF

18 By: /s/ Laura Victoria Sanchez

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DATED: October 10, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

By: /s/ Neil K. Sawhney
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DATED: October 10, 2025

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ATTESTATION

I, David C. Beach, am the ECF user whose identification and password are being used to file the PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION, AND STAY OF AGENCY ACTION UNDER 5 U.S.C. § 705; MEMORANDUM OF POINTS IN SUPPORT THEREOF. In compliance with LR 5-1(i)(3), I hereby attest that all parties have concurred in this filing.

DATED: October 10, 2025

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/ David C. Beach
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Attorneys for Plaintiffs-Petitioners