CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney

PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division

DOUGLAS JOHNS (CABN 314798)
Assistant United States Attorney

60 South Market Street, Suite 1200
San Jose, California 95113
Telephone: (415) 846-8947
FAX: (408) 535-5081
Douglas.Johns@usdoj.gov

Attorneys for Defendants-Respondents

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. 25-cv-06487-PCP **RESPONDENTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND STAY OF AGENCY ACTION** Date: December 9, 2025 Time: 10:00 a.m. Courtroom: Courtroom 8 – 4th Floor Honorable P. Casey Pitts United States District Judge

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I. INTRODUCTION

Petitioners cannot establish that they are entitled to preliminary relief to enjoin the operation of Respondents' facility at 630 Sansome Street in San Franciso, California ("630 Sansome") or to stay the Nationwide Hold Room Waiver ("Detention Policy"). *See* Pls.' Mot. for Prelim. Inj. and Stay of Agency Action ("Mot."), ECF No. 64. As a threshold matter, Petitioners' claims are not justiciable because they lack standing, their claims are not ripe, and their claims are moot. Petitioners lack a sufficient interest in this case to enjoin the operation of 630 Sansome or stay the Detention Policy. But Petitioners' motion fails for other reasons. Petitioners' failure to demonstrate that they will suffer irreparable harm in the absence of a preliminary injunction is fatal, and the Court should deny the motion for that reason alone. And Petitioners are not likely to succeed on the merits. Their constitutional claims challenging conditions of confinement at 630 Sansome cannot be joined in this habeas case, and they cannot satisfy the objective deliberate indifference standard. Nor are Petitioners likely to succeed on the merits of their claims challenging the Detention Policy under the Administrative Procedure Act ("APA") because it is not final agency action and, moreover, it is reasoned, rational, and furthers a legitimate interest of the United States. A preliminary injunction is an "extraordinary remedy" that is never awarded as of right, and Petitioners have failed to meet their heavy burden in this case where there has been no factual findings or discovery.

II. OBJECTIONS TO EVIDENTIARY SUBMISSIONS

A. Objections to Declarations from Attorneys.

Petitioners submit declarations from attorneys to support their motion about 630 Sansome and Respondents' immigration policies. *See* Declarations of Martha Ruch, Reena Arya, Stephanie Quintero, Victoria Sun, ECF Nos. 66-69.[1] Respondents object to these declarations on the following grounds: (1) lack of foundation – Fed. R. Evid. 602; (2) hearsay – Fed. R. Evid. 801(c); and (3) speculation.

Each declarations attempts to explain, among many things, the conditions at 630 Sansome and speculate about Respondents' policies, but some of those explanations are based on hearsay from third

[1] Petitioners also rely on declarations that they proffered in support of their motion for class certification. *See* Mot. at 4 (citing Decl. of Nikolas de Bremaeker, ECF No. 33-10). Mr. de Bremaeker's declaration suffers from the same defects. *See* ECF No. 33-10 at (describing the "observations" of unspecified "staff," a "clear chilling effect" without stating any foundation, unspecified clients, and discussions with unnamed "staff").

parties and speculation; they are not based on the personal knowledge of the declarant. *See, e.g.,* Ruch Decl. at 2-3, ECF No. 66 (describing observations of a separate agency attorney); Arya Decl. at 2, ECF No. 67 (describing the observations of "one of our attorneys"); Quintero Decl. at 1, ECF No. 68 (describing what the declarant "heard" from unspecified "people" and "reports"). These same declarations contain hearsay in other ways, purporting to describe conversations or discussions with unspecified or unnamed "people" or "individuals." *See, e.g.,* Ruch Decl. at 2-3 (describing conversations both the declarant and unnamed "staff" have had with unnamed "people"); Arya Decl. at 2 (describing unnamed or unspecified "immigrants"); Quintero Decl. at 2 (describing unnamed or unspecified "people" and "individuals" who have been detained based on unspecified "reports"); Sun Decl. at 1, ECF No. 69 (describing an interaction with an unnamed and unspecified person). And these same declarations make generalized statements about the alleged effects of Respondents' policies that lack any foundation. *See, e.g.,* Ruch Decl. at 2 (describing the "chilling effect" of courthouse arrests); Arya Decl. at 2 (describing "chilling effect" based on unspecified "AOD attorneys"). The Court should not consider these inadmissible submissions.

B. Objections to News Articles.

To further support their motion, Petitioners submit five news articles purporting to bear on the conditions at 630 Sansome. *See* Decl. of David C. Beach at 2-3, Exs. E, F, G., H. I, ECF No. 65. But these articles are irrelevant under Fed. R. Evid. 401 since they lack any foundation (Fed. R. Evid. 602) and are based on hearsay (Fed. R. Evid. 801(c)). Four of the articles are not about 630 Sansome. *See* Decl. of David C. Beach, Exs. F, G, H, I, ECF Nos. 65-6-65-9. Instead, they are about alleged conditions at other facilities in the United States and therefore are irrelevant. *See id.* (describing alleged conditions at a facility in Illinois, Florida, Georgia, and Virginia). But all five articles are inadmissible hearsay and, thus, should be disregarded. Newspaper articles are hearsay by their very nature and inadmissible if offered to prove the truth of the matter asserted. *See Larez v. City of L.A.*, 946 F.2d 630, 642 (9th Cir. 1991); *see also AFMS LLC v. United Parcel Service Co.*, 105 F.Supp.3d 1061, 1070 (C.D. Cal. 2015) (same). The content of newspaper articles is inadmissible hearsay. *See Larez v. City of L.A.*, 946 F.2d 630, 642-44 (9th Cir. 1991).

III. FACTUAL BACKGROUND

A. Declaration of National Emergency and President Trump's Executive Orders.

Among President Trump's priorities was to enforce the immigration laws of the United States, and he changed the approach of the United States with respect to immigration enforcement. On January 20, 2025, the first day of his administration, President Trump declared a national emergency at the Southern Border of the United States. *See* Proclamation No. 10886, 90 Fed. Reg. 8327 (Jan. 20, 2025) ("National Emergency Declaration"). He also issued two Executive Orders relating to immigration that are relevant to Petitioners' challenges in their motion.

First, on January 20, 2025, President Trump issued Executive Order 14159, "Protecting the American People Against Invasion," to "faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people." *See* Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025). President Trump ordered the Secretary of Homeland Security to "promptly take all appropriate action and allocate all legally available resources . . . to detain removable aliens" and "ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country." *Id.* at 8445.

Second, and also on January 20, 2025, President Trump issued Executive Order 14165, "Securing Our Borders" because of the "large-scale invasion" of the United States by "illegal aliens from nations and regions all around the world" including "potential terrorists, foreign spies, members of cartels, gangs, and violent transnational criminal organizations, and other hostile actors with malicious intent." *See* Exec. Order No. 14165, 90 Fed. Reg. 8467 (Jan. 20, 2025). Under Executive Order 14165, it is the policy of the United States to "secure the borders of our Nation" through "[d]etaining to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States," and "[r]emoving promptly all aliens who enter or remain in violation of Federal law." *Id.* Like Executive Order 14159, President Trump ordered the Secretary of Homeland Security to "detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States" and "terminate" the "practice

commonly known as 'catch-and-release,' whereby illegal aliens are routinely released into the United States shortly after their apprehension for violations of immigration law." *Id.* at 8468.

B. Detention Policy.

On June 24, 2025, ICE issued the Nationwide Hold Room Waiver ("Detention Policy") in response to President Trump's declaration of a national emergency and two Executive Orders. *See* Decl. of Andrew Kaskanlian ("Kaskanlian Decl.") ¶ 5, Ex. O, ECF No. 110. As a result of President Trump's National Emergency Declaration and his two related Executive Orders, the daily population of detained aliens increased. *See id.* And immigration field officers no longer had, or have, the option to release aliens or decline to release aliens into custody from other agencies. *See id.* at 2. The Detention Policy "allows for aliens who are recently detained, or are being transferred to or from a court, detention facility, or holding facility, or other agency to be housed in a holding facility, for up to, but not exceeding 72 hours, absent exceptional circumstances." *See id.* The Detention Policy will remain in effect for "one calendar year," although Respondents have discretion to extend that date. *See* Kaskanlian Decl. ¶ 5, Ex. O.

Under the Detention Policy, Respondents remain committed to ensuring the safety of detainees. *See id.* at 2. Respondents must follow the existing and extensive policies, procedures, and guidance governing holding facilities. *See id.* at 2; Kaskanlian Decl. ¶ 5, Exs. R-S. Respondents will only hold detainees "for the least amount of time required for their processing, transfer, release, or repatriation." *See id.* at 2; *see also* Kaskanlian Decl. ¶ 16. The amount of time a particular detainee is detained varies based on different factors such as detention center availability, arrest numbers, and transportation schedules. *See* Kaskanlian Decl. ¶¶ 12, 16-17. While some detainees may be held longer than 12 hours, many detainees are released or transferred under twelve hours. *See* Kaskanlian Decl. ¶ 15; *see also, e.g.*, ECF No. 71 (David Solano transferred within six hours); ECF No. 72 (Jacqueline Nunez transferred within 5.5 hours); ECF No. 76 (Kaymaris Miranda transferred within 4.5 hours); ECF No. 82 (Yessica Torres transferred within 6.5 hours).

C. Actual Conditions at 630 Sansome.

DHS and ICE have holding facilities around the United States to process aliens who have been arrested for immigration violations including, but not limited to, arrests pursuant to final removal orders.

See Kaskanlian Decl. ¶ 7. Aliens are processed at holding facilities until they are transferred to an ICE detention facility. *See id.* The ICE Holding Facility at 630 Sansome Street in San Francisco is one of these holding facilities. *See id.* at ¶ 6. 630 Sansome is critical to the mission of Enforcement and Removal Operations ("ERO") San Francisco. *See id.* at ¶ 13. ERO San Francisco could not execute its arrest and detention authority and comply with existing policies to enforce the laws of the United States under the Immigration and Nationality Act ("INA") without the operation of 630 Sansome. *See id.*

630 Sansome is governed by ERO Directive 11087.2, "Operations of ERO Holding Facilities," and ICE Detention Standards, in addition to Executive Orders based on national emergencies. *See id.* at ¶ 5, Exs. N-O. Under ERO Directive 11087.2, Respondents are required to annually assess holding facilities, including 630 Sansome, to validate compliance with national policies and procedures. *See id.* at ¶ 8. On March 31, 2025, Respondents completed that assessment, *see id.*, and it was determined that Sansome had no deficiencies. *See id.* at ¶¶ 5, Ex. P, 8. 630. Sansome was compliant with every inspection standard including, but not limited to: "Holding Facility Supervision and Monitoring; Upgrades to Facilities and Technologies; Placement of Detainees with Specialized Needs; Property and Written/Electronic Logs; and Evacuation Plan, Medical Emergencies, and Sexual Abuse and Prevention." *See id.* at ¶ 8.

The facilities at 630 Sansome consist of, among other things, six large cells and three small cells. *See id.* at ¶ 9. The sitting capacity of the large cells is 30 people, but the sleeping capacity is ten. *See id.* The sitting capacity of the small cells is three people, but the sleeping capacity is one person. *See id.* ERO rarely uses the small cells. *See id.* If ERO must use the small cells, it does so to segregate people who are a safety risk. *See id.* In addition to a window and metal bench, each cell has a toilet and a sink that is separated from the rest of the cell by a privacy wall. *See id.* at ¶ 14. The lights are kept on continuously for the safety of the detainees as required by the ICE National Detention Standards. *See id.* The continuous lighting supports continuous observation by staff, rapid response in case of emergencies, and incident prevention and reduces opportunities for self-harm, assault, harassment, or intimidation. *See id.* Officers frequently monitor the cells by reviewing video camera footage, and officers cannot adequately review video camera footage if the lights are dimmed. *See id.* at ¶ 17.

ERO conducts a risk assessment of each person when he or she is detained based on, among other factors, age, sex, criminal history, and gang affiliation. *See id.* at ¶ 10. ERO conducts that assessment to ensure the safety of all detainees. *See id.* ERO decides where to detain a person based on their sex, and the results of the risk assessment. *See id.* at ¶¶ 10-11.

At 630 Sansome, and consistent with decades of prior practices, ERO provides mattress pads and blankets to detainees who happen to be held overnight. *See id.* at ¶ 18. In addition to bedding, ERO provides detainees with a sweatsuit, sanitary products, undergarments, water, a set of toiletries, and three daily meals that consider a detainee's dietary restrictions. *See id.* at ¶¶ 19-23. If requested, ERO offers detainees a private bathroom with a shower every morning. *See id.* at ¶ 22.

Contract detention officers clean the cells each day while detainees are present. *See id.* at ¶ 32. If detainees are kept in cells for more than one day, contract detention officers temporarily move detainees out of the cells to clean them. *See id.* When the cells are vacant, janitorial services clean the cells. *See id.*

When detainees are arrested, ERO asks if they have any medical conditions, require ongoing medical treatment, or will need any medication. *See id.* at ¶ 24. ERO allows a detainee's family to bring medication to people who need it including both prescription and over-the-counter medication *See id.* And when detainees arrive at the holding facility, ERO asks them again about their medical conditions and history. *See id.* at ¶ 25. ERO provides detainees with questionnaires about medication, drugs, and alcohol and asks them to complete the questionnaires. *See id.* at ¶¶ 5, Ex. T, 25. In addition to the questionnaires, ERO asks detainees if they have drug or alcohol issues or if they require ongoing medical treatment. *See id.* at ¶ 25. ERO offer interpreter services through the ERO language line when needed. *See id.*

ERO keeps medication available and distributes it based on the needs of a detainee. *See id.* at ¶ 26. If a detainee has a serious medical issue, that detainee is permitted to place unlimited phone calls about the medication and medical issue. *See id.* If a detainee has a serious medical issue, ERO will prioritize his or her transfer to a detention facility to meet his or her medical needs. *See id.* at ¶¶ 26, 27. ERO transfers detainees with medical emergencies to San Francisco General Hospital. *See id.* at ¶ 27. 630 Sansome has an assigned Field Medical Coordinator who is available 24 hours a day. *See id.*

From June to September 2025, during the time when Petitioners were detained, the average detainee population at 630 Sansome was between 10 and 11 people. *See id.* at ¶ 12. However, the detainee population may change based on several factors, including the availability at detention facilities and flight schedules. *See id.* However, the population has not exceeded the capacity of the cells. *See id.* As of October 7, 2025, 630 Sansome had only 7 detainees. *See id.*

630 Sansome prioritizes detainees accessing their attorneys. *See id.* at ¶ 30. All detainees can make a free phone call when they arrive at 630 Sansome as well as place collect calls at any time. *See id.* at ¶¶ 28-30. ERO provides detainees with a free phone call if the detainee cannot reach an attorney. *See id.* at ¶ 30. And attorneys are provided access to their clients when they arrive at 630 Sansome. *See id.* Attorneys can meet with their clients in the visitation room or a private room if requested. *See id.* ERO assists detainees and attorneys with any paperwork that needs to be executed. *See id.*

Around the holding facility, ERO displays photographs of its operation requirements as well as posters relating to the rights of detainees inside 630 Sansome. *See id.* at ¶¶ 5, Ex. R, 8. Each detainee is also provided with the ICE National Detainee Handbook which includes, among other things, information related to contacting consulate offices, inspectors general, pro bono attorneys, free legal aid groups, and the ICE Detention Removals and Information Line. *See id.* at ¶ 31.

D. Petitioners' Relevant Allegations.

Petitioners are four aliens who entered the United States without being inspected or admitted. *See* Pls.' Am. Compl. ("FAC") at 34-40, ECF No. 32. Three of the Petitioners were detained at 630 Sansome, but Ambrocio has not been detained there. No Petitioner is currently detained at 630 Sansome. And there is no evidence that Petitioners will be detained at 630 Sansome in the future. Because of the Court's orders granting injunctive relief, Sequen, Ambrocio, and Garcia cannot be detained at 630 Sansome. *See* Orders, ECF Nos. 7, 27, 36, 90 (temporary restraining orders and preliminary injunctions). Torres is detained in the Eastern District of California. *See* Declaration of Sellenia Olson ("Olson Decl.") ¶¶ 12-15, ECF No. 108. There is no evidence that he will return to 630 Sansome because he is being detained for the required 90-day period, and he has a removal order. *See id.*

Petitioners proffer 13 declarations from aliens who were previously detained at 630 Sansome. *See* Declarations, ECF Nos. 70-82, 93. Petitioners' supporting declarations highlight that each alien had a different experience at 630 Sansome. For example, several former detainees who submitted declarations on behalf of Petitioners were detained at 630 Sansome far less than 12 hours. *See, e.g.*, ECF No. 71 (David Solano transferred within six hours); ECF No. 72 (Jacqueline Nunez transferred within 5.5 hours); ECF No. 76 (Kaymaris Miranda transferred within 4.5 hours); ECF No. 82 (Jessica Torres transferred within 6.5 hours).

IV. RELEVANT PROCEDURAL BACKGROUND

This case presents a rich, yet convoluted, background. The Court has entered two preliminary injunctions (on an original habeas petition for one Petitioner (Sequen) and on habeas claims for two other Petitioners (Ambrocio and Garcia) added in an amended complaint). And pending before the Court are a motion to dismiss, a motion for class certification, a third preliminary injunction motion, and two motions to stay. But Respondents only include the relevant procedural background for this motion.

On October 10, 2025, Petitioners filed their motion (1) seeking a stay of the Detention Policy and (2) enjoining the challenged conditions at 630 Sansome. *See generally* Mot. Petitioners moved for an order shortening Respondents' time to respond to it, which Respondents opposed, and the Court denied. *See* ECF Nos. 84, 87, 89. In their motion, Petitioners seek a stay of Respondents' Detention Policy and to enjoin alleged conditions at 630 Sansome and mandate that Respondents take action on as many as 13 different issues. *See* Mot. at 2, 3.

On October 16, 2025, Petitioners filed another motion to stay Respondents' policies pertaining to courthouse arrests, a separate policy that Petitioners seek to challenge through their amended complaint. *See* Pls.' Mot. for Stay of Agency Action, ECF No. 94. On October 24, 2025, Respondents filed their motion to dismiss and motion to sever. *See* Resp'ts' Mot. to Dismiss and Mot. to Sever, ECF No. 106. The Court has not made any factual findings as to the alleged conditions at 630 Sansome. The parties have not engaged in any discovery.

V. LEGAL STANDARD

"A preliminary injunction is an 'extraordinary remedy' that is never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) and *Winter*, 555 U.S. at 20). A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). And where a petitioner seeks mandatory injunctive relief — seeking to alter the status quo — "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319–20 (9th Cir. 1994). A mandatory injunction "goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 1320 (internal quotations and alteration omitted). A mandatory injunction "should not be issued unless the facts and law clearly favor the moving party." *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979). The postponement or staying of agency action under the APA is governed by the preliminary injunction factors. *See Nat'l TPS Alliance v. Noem*, 150 F.4th 1000, 1015 (9th Cir. 2025).

VI. ARGUMENT

A. Petitioners' Claims Are Not Justiciable.

"Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). And "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016) (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). Federal courts may only act in the context of a justiciable case or controversy. *See Benton v. Maryland*, 395 U.S. 784, 788 (1969). Courts must consider the threshold issue of jurisdiction before addressing the merits of a case. *Steel v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998).

When Petitioners filed their motion for a preliminary injunction and stay, they were not detained at 630 Sansome. Sequen had not been detained at 630 Sansome for over two months. *See* Decl. of Carmen Sequen, ECF No. ECF No. 70. Ambrocio has never detained at 630 Sansome. *See* FAC; *see also* Decl. of Yulisa Ambrocio, ECF No. 33-11. And Torres is detained in the Eastern District of California because of a removal order. *See* Olson Decl. ¶¶ 6-15. On September 16, 2025 and October 15, 2025, the Court granted Ambrocio, Garcia, and Sequen's motions for a preliminary injunction. *See* Orders Granting Prelim. Inj., ECF Nos. 27, 90. Under these orders, Respondents cannot detain Ambrocio, Garcia, or Sequen at 630 Sansome unless they are provided a pre-detention bond hearing before a neutral immigration judge where the Government bears the burden of demonstrating by "clear and convincing evidence" that they are a flight risk or danger to the community and "that no conditions other than detention would be sufficient to prevent such harms." *See id.* at 16, ECF No. 27; at 24, ECF No. 90.

Given these circumstances, Petitioners' claims are not justiciable. First, Petitioners lack standing, and they lack standing to pursue injunctive relief. Second, Petitioners' claims are not ripe because they involve uncertain or contingent future events. Third, Petitioners' claims are moot.

1. Petitioners Lack Standing and Lack Standing to Pursue Injunctive Relief.

"Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy" that "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc.*, 578 U.S. at 338. Standing exists only where the plaintiff demonstrates that (1) he has suffered an "injury in fact" that is concrete, particularized, and actual or imminent, (2) the injury is "fairly traceable" to the defendant's conduct, and (3) the injury can be "redressed by a favorable decision." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (same). "[A] plaintiff must demonstrate standing separately for each form of relief sought." *See Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC)*, 528 U.S. 167, 185 (2000). To have standing, a party "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

Petitioners lack standing because (1) they are no longer detained at 630 Sansome and have not been at least a month (*See* FAC); (2) they have received relief from the Court prohibiting their future

detention (*See* ECF Nos. 7, 27, 36, 90); and (3) in the case of Torres, he is being detained at a different facility in the Eastern District of California for the 90-day required removal period. *See* Olson Decl. ¶¶ 12-15. Even more significant, for these same reasons, Petitioners lack standing to pursue injunctive relief, which is the very relief sought in their motion for a preliminary injunction and stay. *See generally* Mot. Petitioners must have standing for each form of relief sought. *See Friends of the Earth*, 528 U.S. at 185 ("a plaintiff must demonstrate standing separately for each form of relief sought").

2. Petitioners' Claims Are Not Ripe.

The doctrine of ripeness "is a means by which federal courts may dispose of matters that are premature for review because the plaintiff's purported injury is too speculative and may never occur." *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). For a claim to be ripe, the plaintiff must be subject to a "genuine threat of imminent prosecution." *See Clark v. City of Seattle*, 899 F.3d 802, 813 (9th Cir. 2018). The central concern of the ripeness inquiry is "whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Richardson v. City and County of Honolulu*, 124 F.3d 1150, 1160 (9th Cir. 1997).

For the same reasons expressed, Petitioners' claims are no longer ripe. Because of the Court's orders (ECF Nos. 7, 27, 36, 90) and Torres' detention in the Eastern District of California as a result of his removal order (Olson Decl.), Petitioners' claims involve uncertain or contingent future events. There is no evidence that Petitioners will be detained at 630 Sansome, be detained longer than 12 hours, or experience any of the challenged conditions at 630 Sansome. Indeed, for most of the challenged conditions, Petitioners' FAC does not even allege that any of the Petitioners actually experienced those conditions. Ambrocio has never been detained at 630 Sansome. Importantly, Petitioners' claims for injunctive relief, which is the subject of their motion for a preliminary injunction and stay, are no longer ripe.

3. Petitioners' Claims Are Moot.

Mootness is "the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness)." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980). A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *See*

Already, LLC v. Nike, Inc., 568 U.S. 85, 91 (2013). To avoid mootness, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

For the same reasons expressed above, and especially in the context of this motion, Petitioners' claims are moot. Because Petitioners cannot be detained at 630 Sansome under the Court's orders for any amount of time, their claims challenging the conditions there—and the injunctive relief they seek—are moot. *See* ECF Nos. 7, 27, 36, 90. Further, all of Torres' claims became moot when he was transferred out of 630 Sansome to the Eastern District of California where he is being detained and has a removal order. *See* Olson Decl. ¶¶ 6-15. There is no longer a "live" controversy for the purpose of staying the Detention Policy or enjoining the conditions at 630 Sansome.

B. Petitioners Cannot Satisfy the Requirements to Stay the Detention Policy.

To stay the Detention Policy, Petitioners must satisfy the requirements for preliminary relief. *See Nat'l TPS Alliance*, 150 F.4th at 1015. And the "sole" purpose of a preliminary injunction is to "preserve the status quo ante litem pending a determination on the merits." *See Sierra Forest legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir. 2009). Here, preserving the status quo would be allowing the Detention Policy to remain in force while the parties litigate the merits of the case. Putting that aside, Petitioners cannot satisfy the requirements for the Court to stay the Detention Policy.

1. Petitioners Are Unlikely to Succeed on the Merits that the Detention Policy Violates the APA.

Petitioners argue that the Detention Policy violates the APA because (1) it is final agency action; (2) it is contrary to a constitutional right; (3) it is arbitrary and capricious; and (4) it is "contributing to deteriorating conditions of confinement for immigrants across the country." *See* Mot. at 18. All four of Petitioners' arguments lack merit and do not support the granting of the "extraordinary remedy" of a preliminary injunction. *See Winter*, 555 U.S. at 24.

(a) The Detention Policy Is Not Final Agency Action and Is Not Reviewable Under the APA.

The APA limits judicial review to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Not all agency conduct is qualified as "final agency action" under the

APA. *See Ctr. for Biological Diversity v. Haaland*, 58 F.4th 412, 417 (9th Cir. 2023). "An agency action is "final" only if it both (1) "mark[s] the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature," and (2) is "one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)). Day-to-day operations of federal agencies are generally not considered final agency action, and thus not subject to APA review. *See Lujan*, 497 U.S. at 899. Agency action is not subject to judicial review where the action "is committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *see also Lincoln v. Vigil*, 508 U.S. 182, 190–91 (1993).

A principal feature of the removal system is the broad discretion exercised by immigration officials. *Arizona v. United States*, 567 U.S. 387, 396 (2012); *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (removal decisions "are frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary"). Indeed, "any policy *toward aliens* is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) (emphasis added). A decision to waive an internal policy is grounded in the Executive Branch's "broad power over the creation and administration of the immigration system," which necessarily includes discretion to determine where individuals will be detained to execute their removal orders. *Kerry v. Din*, 576 U.S. 86, 106 (2015) (Kennedy, J., concurring in judgment).

The Executive Branch's discretionary authority to administer the removal process is further reinforced by the statute that governs judicial review of removal orders—8 U.S.C. § 1252. That statute is replete with provisions "aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the *theme* of the legislation." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999) (emphasis added) (citing, *e.g.*, 8 U.S.C. § 1252(a)(A); § 1252(a)(2)(B); § 1252(a)(2)(C), § 1252(b)(4)(D)). This concern with protecting the Executive Branch's discretion also appears in 8 U.S.C. § 1231(g), which gives the Attorney General broad latitude to "arrange for *appropriate* places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g) (emphasis added).

Petitioners are challenging ICE's decision to waive an internal policy for "one calendar year" in response to President Trump's declaration of a national emergency and two Executive Orders to enforce the immigration laws of the United States. *See* Kaskanlian Decl. ¶ 5, Ex. O. Petitioners' challenge is not a challenge to discrete, identifiable, final "agency action." Instead, it is an impermissible challenge to the day-to-day operational decisions and conduct that the Supreme Court in *Lujan* advised do not fall within the APA's ambit. *See Lujan*, 497 U.S. at 899.

Petitioners' arguments that the Detention Policy qualifies as "final agency action" and is subject to APA review would have sweeping and untenable consequences. *See* Mot. at 18-19. A court could not review such decisions without bringing within the scope of the APA virtually every aspect of ICE's continuing and constantly changing operations at its facilities. Every time Respondents wished to alter their own policy, they would have to seek a court's permission and convince the court, through detailed submissions, that the change was due to a sufficient need. ICE's decision to issue the Detention Policy and temporarily waive the prior 12-hour policy was internal, based on its expertise, and in response to a national emergency and two separate Executive Orders. *See* Kaskanlian Decl. ¶ 5, Ex. O.

Even if ICE's decision to waive the prior policy qualifies as a challengeable "agency action," it is not "final" for the purposes of the APA and is not reviewable under the APA. An agency action is "final" only if it both (1) marks the consummation of the agency's decisionmaking process; and (2) is "one by which rights or obligations have been determined, or from which legal consequences will flow." *See Ctr. for Biological Diversity*, 58 F.4th at 417. The Detention Policy does not mark the "consummation of the agency's decisionmaking process." *See* Kaskanlian Decl. ¶ 5, Ex. O. The Detention Policy will be in effect "for one calendar year" and was issued to promote the enforcement of immigration laws. *See id.* The Detention Policy also provides ICE with considerable discretion about how to implement and apply it, which supports that it is not reviewable under the APA.

(b) The Detention Policy Is Reasoned, Rational, and Neither Arbitrary Nor Capricious.

The Federal Government "has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012); *see* U.S. Const. art. I § 8, cl. 4 (granting Congress the power to "establish an uniform Rule of Naturalization"). The INA grants broad

discretionary authority to the Executive Branch to administer the removal process and the decision to waive an internal policy is not a final agency action within the meaning of the APA. *See Perez Perez v. Wolf*, 943 F.3d 853, 860 (9th Cir. 2019) ("Review under the APA is unavailable when 'statutes preclude judicial review' and when the 'agency action is committed to agency discretion by law.'" (internal quotations omitted)) (quoting 5 U.S.C. § 701(a)(1)-(2)).

With regard to review of agency policies, the Supreme Court has held that "[t]he scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* An agency must examine the relevant data and "articulate a satisfactory explanation for its action." *See F.C.C. v. Fox Television Studios, Inc.*, 556 U.S. 502, 513 (2009). "And of course the agency must show that there are good reasons for the new policy." *Id.* at 515. "But it need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates." *Id.* at 515 (emphasis in original).

Congress has codified in the INA the Executive Branch's constitutional and inherent authority to investigate, arrest, and detain aliens who are suspected of being, or found to be, unlawfully present in or otherwise removable from the United States to effectuate their removal. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. The INA authorizes federal immigration officials to make civil immigration arrests with an administrative warrant, 8 U.S.C. § 1226(a), and without a warrant, 8 U.S.C. § 1357(a). Consistent with that authority and the Executive Branch's "broad" and "undoubted power" over the enforcement of this Nation's immigration laws, *Arizona v. United States*, 567 U.S. 387, 394 (2012), ICE has long exercised its detention authority in executing removal operations, including the considerations that go into determining

where an alien under a removal order is detained, transferred, or removed. These decisions necessarily "implicate our relations with foreign powers and require consideration of changing political and economic circumstances." *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 348 (2005) (internal quotation marks omitted).

As a starting point, Petitioners offer no evidence or analysis to dispute the authority of President Trump to issue the National Emergency Declaration or his two Executive Orders that serve as the foundation of the Detention Policy. *See* Mot. Although Petitioners acknowledge ICE issued the Detention Policy in response to President Trump's Executive Orders (Mot. at 3), they do not dispute that those Executive Orders were proper, appropriate, or justified. Indeed, in response to an election, President Trump took steps to apply and enforce the immigration laws of the United States by declaring a national emergency and issuing Executive Orders, which in turn necessitated the Detention Policy. *See* Kaskanlian Decl. ¶ 5, Ex. O. Petitioners' arbitrary and capricious argument should fail as a threshold matter because they do not the refute the underlying reasons justifying the Detention Policy.[2]

The Detention Policy is reasoned, rational, and supported by evidence. As an initial matter, the Detention Policy explicitly states why ICE issued it: in response to President Trump's declaration of a national emergency and two Executive Orders whose aims were to "Protect[] the American People Against Invasion" and to "Secur[e] Our Borders." *Id.* The Detention Policy also states its purpose and why it was necessary to waive the prior policy. It explains that as a "result of increased enforcement efforts, ERO's average daily population has significantly increased to over 54,000," which has put "additional strain on finding and coordinating transfers of aliens to available beds within the required timeline detailed in Directive 11087 .2." *Id.* at 2. And under the INA and the policies of President Trump's administration,

[2] Petitioners object to the use of the Detention Policy by arguing that the administration should have considered alternatives. *See* Mot. at 20-21 (describing alternatives to detention such as discretionarily releasing aliens, declining custody, and not arresting certain aliens). But they overlook that the Detention Policy addresses those alternatives. Under the INA and as result of President Trump's policies and Executive Orders, which Petitioners never address or dispute, "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)." *See* Kaskanlian Decl. ¶ 5, Ex. O. In the end, the fact that Petitioners have a preferred policy choice does not equate to an APA violation.

"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)." *Id.* Because of those constraints, "ERO field offices have had to resort to holding aliens in holding facilities beyond than the 12-hour limit." *Id.*

The Detention Policy also is rational and stresses ICE's commitment to comply with other applicable policies. For example, the policy makes clear that ICE will only hold detainees "for the least amount of time required for their processing, transfer, release, or repatriation as operationally feasible." *Id.* And ICE will continue to apply its current requirements "to ensure the safety, security and humane treatment of those in custody in hold rooms and hold facilities." *Id.* The Detention Policy will only remain in effect for "one calendar year." *Id.*

Thus, the Detention Policy satisfies the requirements of the APA, as it is neither arbitrary nor capricious. DHS and ICE exercised their judgment in determining a necessary change to existing policy given the volume of individuals currently moving through facilities. The decision made by DHS and ICE to waive the 12-hour policy is exactly the type of discretionary authority considered by the INA. It was a rational outcome given the influx of individuals moving through facilities, and it cannot be found to be sufficiently arbitrary and capricious so as to produce a claim under the APA.

(c) There Is No Constitutional Right for Aliens to Be Detained Less Than Twelve Hours.

Petitioners further allege that the Detention Policy is "contrary to a constitutional right" and cite a single district court case, *Kidd v. Mayorkas*, 734 F.Supp.3d 967 (C.D. Cal. 2024), in support of that argument. *See* Mot. at 19. The Federal Government "has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona*, 567 U.S. at 394. This broad power includes the power to detain aliens. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1231, 1357. There is no constitutional right for an alien to be detained less than 12 hours, and Petitioners have cited no law supporting that such a right exists. *See* Mot. The one case cited by Petitioners, *Kidd*, is not a case about the length of detention. Rather, *Kidd* concerned a challenge to ICE's "knock and talk" policy arising under the Fourth Amendment. *See Kidd*, 734 F.Supp.3d at 972-73. The Detention Policy is not contrary to a constitutional right. In fact, the

Detention Policy states that it will maintain the current policies and practices to "safety, security, and humane treatment" of all detainees. *See* Kaskanlian Decl. ¶ 5, Ex. O.

(d) The Detention Policy Is Not Contributing to Deteriorating Conditions.

Petitioners' final argument to support staying the Detention Policy is that it has allegedly "contributed to a nationwide humanitarian crisis." *See* Mot. at 22. Petitioners cite news articles and reference disputes in Illinois, Florida, Georgia, Virginia, New York, Maryland, and Los Angeles. *See* Mot. at 22-23. Petitioners' argument underscores why they their claims are not justiciable. As explained, they no longer have a stake in this litigation because of the Court's orders and Torres' mandatory detention in the Eastern District of California. *See* Orders, ECF Nos. 7, 27, 36, 90; *see also* Olson Decl. ¶¶ 12-15. But they must have standing, which requires that a party "assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *See Warth*, 422 U.S. at 500. Petitioners are plainly attempting to challenge the Federal Government's local and national immigration policies on behalf of third parties because they lack standing in this case. That is improper.

Petitioners' arguments also fail because they are based on hearsay and irrelevant facts. News articles are hearsay and, moreover, media reports about select other detention facilities around the country are simply irrelevant to the conditions at 630 Sansome. The facility in question in this case is 630 Sansome, which is operated by ERO San Francisco. *See generally* Kaskanlian Decl. But Petitioners offer no facts connecting conditions at other nationwide holding facilities with those at ERO San Francisco's operation of 630 Sansome. *See generally* Mot.

2. Petitioners Have Not Demonstrated Irreparable Harm to Support Staying the Detention Policy.

The Supreme Court's "frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction." *See Winter*, 555 U.S. at 22 (emphasis in original). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* Conclusory or speculative allegations are not enough to establish a likelihood of irreparable harm. *Herb Reed Enters., LLC v. Florida*

Entm't Mgmt., Inc., 736 F.3d 1239, 1250 (9th Cir. 2013); *see also Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) ("Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction."); *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985) (finding irreparable harm not established by statements that "are conclusory and without sufficient support in facts").

In their motion, Petitioners offer no evidence or argument demonstrating how they will suffer irreparable harm in the absence of an injunction. *See generally* Mot. Instead, on one line, Petitioners summarily conclude without any explanation that unnamed and unspecified "putative class members will suffer irreparable harm absent a restraining order." *See* Mot. at 7. Because no class has been certified, Petitioners cannot rely on unnamed and unspecified "class members" to justify a preliminary injunction now. Petitioners' failure to demonstrate irreparable harm is fatal to their motion because it is a required element for both issuing a preliminary injunction and staying agency action. *See Winter*, 555 U.S. at 20 (requiring a party seeking a preliminary injunction to "establish" that "he is likely to suffer irreparable harm in the absence of preliminary relief").

Petitioners' failure to address the required element of irreparable harm is not only telling but reflects the actual consequences of the Court's previous orders providing them relief. *See* Orders, ECF Nos. 7, 27, 36, 90. Petitioners cannot demonstrate irreparable harm to support stay of the Detention Policy because the Court has prohibited them from being detained at 630 Sansome. *See id.* And in the case of Torres, he is detained in the Eastern District of California. *See generally* Olson Decl.

3. The Detention Policy Advances a Legitimate Government Interest and Supports the Enforcement of Immigration Laws.

When the Government is a party, the balance of equities and public interest merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Further, where a moving party only raises "serious questions going to the merits," the balance of hardships must "tip sharply" in their favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)). The Government has a compelling interest in the steady enforcement of its immigration laws. *See, e.g.*, *Demore v. Kim*, 538

U.S. 510, 523 (2003); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws).

Here, the government has a compelling interest in the steady enforcement of its immigration laws. *See Noem v. Vasquez Perdomo*, 606 U.S. —, 2025 WL 2585637, at *4-5 (2025) (Kavanaugh, J., concurring) (finding that balance of harms and equities tips in favor of the government in immigration enforcement given the "myriad 'significant economic and social problems' caused by illegal immigration"). To that end, the Detention Policy advances the Federal Government's interest in detaining aliens to implement President Trump's Executive Orders, enforce immigration laws, and respond to a national emergency. Once again, Petitioners offer no argument or analysis to dispute the authority or justification of those Executive Orders, the Federal Government's desire to enforce immigration laws, or the response to a national emergency. And Respondents would suffer considerable prejudice and hardship if the Court stays the Detention Policy and limits the operation of 630 Sansome, which is critical to ERO San Francisco's mission to enforce the immigration laws of the United States. *See* Kaskanlian Decl. ¶¶ 7, 13. Without 630 Sansome, ERO San Francisco cannot execute its detention authority and enforce the United States' immigration laws to the fullest extent possible. *See id.* On balance, the public interest favors maintaining the status quo and not staying the Detention Policy.

C. Petitioners Do Not Satisfy the Requirements for a Preliminary Injunction to Stop the Operation of 630 Sansome.

As with the Detention Policy, Petitioners fail to establish the required elements to support a preliminary injunction that would stop the operation of 630 Sansome. Petitioners are unlikely to succeed on the merits of their claims and, once again, have failed to demonstrate any irreparable harm in the absence of an injunction – a dispositive element. Finally, the public interest favors allowing 630 Sansome to continue operation and preserve the status quo.

1. Petitioners Are Unlikely to Succeed on the Merits of Their Claims Challenging the Alleged Conditions of 630 Sansome.

Petitioners are unlikely to succeed on merits of their claims challenging the conditions at 630 Sansome for at least three reasons.[3] First, under Ninth Circuit precedent, Petitioners cannot challenge the conditions of their confinement in this habeas case. Second, Petitioners cannot satisfy demonstrate that the conditions at 630 Sansome are unconstitutional. Third, Petitioners' requested relief is ambiguous, ignores that Respondents already have policies addressing their challenges, and fails to consider the concerns of all detainees, including safety.

(a) Petitioners Cannot Allege Claims Challenging the Conditions of Their Confinement in This Habeas Case.

The Ninth Circuit differentiates between core habeas claims and claims challenging conditions of confinement. *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016). Core habeas claims (1) go directly to the constitutionality of the physical confinement itself; and (2) seek either immediate release from that confinement or the shortening of its duration. *See Pinson v. Carvajal*, 69 F.4th 1059, 1069 (9th Cir. 2023). A habeas claim is one challenging the fact of confinement rather than the conditions of confinement. *See Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024). "The Ninth Circuit has long held that the "the writ of habeas corpus is limited to attacks upon the legality or duration of confinement" and "does not cover claims based on allegations 'that the terms and conditions of ... incarceration constitute cruel and unusual punishment.'" *See Pinson*, 69 F.4th at 1065 (quoting *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979)). As even this Court has ruled, claims regarding conditions of confinement cannot proceed in a habeas action. *See Allen v. S.V,S.P. – P.I.P.*, No. 24-cv-03197-PCP, 2025 WL 1101519, at *1 (N.D. Mar. 31, 2025).

Here, however, Petitioners are explicit that they are asserting both "claims related to conditions of confinement" (FAC at 42) and "claims related to petition for writ of habeas corpus" (FAC at 50). Under this established Ninth Circuit precedent and orders issued by this Court, Sequen, Ambrocio, and Garcia cannot allege claims regarding conditions of confinement in their habeas actions. The Ninth Circuit has

[3] The Government has presented an additional submission to the Court explaining that underscore why Petitioners are unlikely to succeed on the merits. *See* ECF No. 106 (Resp'ts' Mot. to Dismiss and Mot. to Sever).

held that conditions of conferment claims must be brought in an action separate from a habeas action. For that reason, Petitioners are unlikely to succeed on the merits of their claims challenging conditions of confinement in this case.

(b) The Conditions at 630 Sansome Are Constitutional.

Based on Supreme Court precedent, alien detainees enjoy fewer constitutional protections than civilians detained in the United States. *See, e.g.*, *Mathews v. Diaz,* 426 U.S. 67, 79-80 (1976) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."); *Demore v. Kim,* 538 U.S. 510, 521-22 (2003); *Reno v. Flores*, 507 U.S. 292, 305-306 (1993); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *United States v. Verdugo-Urquidez,* 494 U.S. 259, 273 (1990). And in *Bell v. Wolfish*, the Supreme Court's conclusion that the conditions were constitutional was "further buttressed by the detainees' length of stay" in which detainees were typically released within sixty days—a far more extensive duration of time than any detainee" at 630 Sansome. 441 U.S. 520, 543 (1979) ("We simply do not believe that requiring a detainee to share toilet facilities and this admittedly rather small sleeping place with another person for generally a maximum period of 60 days violates the Constitution"). So long as the conduct at issue served the latter purpose and was not excessive, it was not an impermissible "punishment." *Id*. at 538-39. Because the petitioners' confinement in *Wolfish* reasonably served a legitimate governmental interest, their claims failed. *Id*. at 560-62. The Supreme Court held that conditions imposed on detainees that are "reasonably related to a legitimate Governmental objective . . . , without more, [do not] amount to 'punishment.'" *Id.* at 539.

To prevail on their due process claims, Petitioners must satisfy the objective deliberate indifference standard. *See Gordon v. Cnty. of Orange,* 888 F.3d 1118, 1124-35 (9th Cir. 2018); *see also* Mot. at 17 (same). Petitioners must prove that the policy "reflects deliberate indifference" to their constitutional rights. *See Castro v. Cnty. of L.A.,* 833 F.3d 1060, 1073 (9th Cir. 2016) (en banc) (quotation marks and citation omitted). Under that objective reasonableness standard, "a plaintiff must 'prove more than negligence but less than subjective intent—something akin to reckless disregard.'" *Russell v. Lumitap,* 31 F.4th 729, 739 (9th Cir. 2022) (quoting *Castro v. Cnty. of L.A.,* 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc)). Although the deliberate indifference standard requires more than minimal necessities, it

does not require conditions of confinement free from discomfort. *See Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004); *Bell*, 441 U.S. at 537. More specifically, and to prove a claim based on inadequate medical care, Petitioners must prove the following four elements: "(i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries." *See Gordon*, 888 F.3d at 1125.

Petitioners present no evidence of deliberate indifference.[4] On the contrary, as the Government's evidentiary submissions demonstrate, ERO San Francisco has policies to ensure the safety of detainees (Kaskanlian Decl. ¶¶ 10, 11, 14), policies to ensure that detainees are transferred after no longer than 12 hours (*Id.* at ¶¶ 15, 17), policies to make sure that detainees receive appropriate sleeping materials, clothing, and hygiene products (*Id.* at ¶¶ 18, 19, 21), and policies to provide detainees with appropriate medical treatment and care (*Id.* at ¶¶ 24-27). The Government's evidentiary submissions undermine Petitioners' allegations of alleged deliberate indifference.

Indeed, at the last required assessment of 630 Sansome, the results showed that it was compliant with every standard. *See* Kaskanlian Decl. ¶ 8. And as to their allegation that there is inadequate medical care, the facts concerning Torres undermine this assertion. ERO San Francisco conducted a medical intake for him. *See* Torres Decl. ¶ 4. And when Torres had a medical emergency, ERO San Francisco transported him to the hospital. *See id.* at ¶¶ 21-24. "[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed," *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), and that standard is satisfied here.

[4] At a minimum, Petitioners' submissions confirm that experiences at 630 Sansome vary, and a preliminary injunction would be premature without further factual development. As noted by several cases cited by Petitioners, the district court granted relief after substantial factual development. *See Unknown Parties v. Nielsen*, 611 F.Supp.3d 786, 797 (D. Ariz. 2020) (injunctions issued after a trial and consideration of expert testimony at an evidentiary hearing); *see also Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *1 (D. Ariz. Nov. 18, 2016) (preliminary injunction issued after an evidentiary hearing and submission of expert declarations).

Petitioners' claims also fail because their detention serves the legitimate governmental interest of protecting the public and ensuring that the nation's immigration laws are enforced. The Supreme Court has consistently recognized that preventing detained aliens from absconding and ensuring that they appear for removal proceedings, as well as protecting the community from dangerous criminal aliens, are legitimate governmental objectives. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018); *Demore*, 538 U.S. at 520-522; *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Nor is detention pending removal an "excessive" means of achieving those interests. For over a century, the Supreme Court has affirmed detention as a "constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523 (listing cases).

(c) Petitioners Requested Relief Is Ambiguous, Ignores Current Policies, and Fails to Consider the Concerns of All Detainees.

A final reason why the Court should not enjoin the operation of 630 Sansome is that Petitioners' requested relief is ambiguous, ignores Respondents' current policies, and fails to consider concerns like safety. For example, Petitioners seek an order to "[m]aintain hold rooms at comfortable temperatures." *See* Mot. at 3(4). Since whether a particular temperature is "comfortable" will naturally elicit conflicting views, that requested relief is neither a reasonable ask, nor is it manageable. Petitioners also seek orders relating to medical intakes (Mot. at 3(5)), medical care (Mot. at 3(7)), and interpreter services (Mot. at 3(8)). But Respondents already have policies on each of these issues *See* Kaskanlian Decl. ¶¶ 24-27. To the extent Petitioners challenge the implementation or effectiveness of Respondents' policies, that is a separate inquiry and not appropriate for a preliminary injunction without any factual development. And finally, the relief sought by Petitioners does not consider the needs of all detainees. To illustrate, Petitioners challenge the lighting at 630 Sansome. *See* Mot. at 3(3), 10-11. But 630 Sansome is a facility used to hold detainees until they can be transferred to a detention facility and sometimes only for a few hours. *See* Kaskanlian Decl. ¶¶ 7, 14. The lighting promotes safety and "reduces opportunities for self-harm, assault, harassment, or intimidation under cover of darkness." *See id.* Petitioners fail to address any of the practical consequences of their requested relief, which further supports not granting a preliminary injunction at this stage in the case.

2. Petitioners Have Not Demonstrated Irreparable Harm to Support Stopping the Operations of 630 Sansome.

Demonstrating irreparable harm in the absence of a preliminary injunction is a dispositive element. *See Winter*, 555 U.S. at 20. However, and as with the Detention Policy, Petitioners proffer no analysis or evidence that they will suffer irreparable harm in the absence of an injunction. *See* Mot. Petitioners summarily conclude that "putative class members will suffer irreparable harm." *See* Mot. at 7. But a class has not been certified. And no Petitioner is detained at 630 Sansome or will be in the foreseeable future based on the Court's orders and Torres' detention in the Eastern District of California. Moreover, and in the context of 630 Sansome, Petitioners cannot satisfy the irreparable harm standard. Because, and as demonstrated by some of Petitioners' submissions, a detainee may be held at 630 Sansome for a few hours, many, if not most, of Petitioners' requested relief is irrelevant or moot. *See* Mot. at 3-4 (seeking an order dimming lights, providing bedding, hygiene products, and an overnight change of clothes). Not only have Petitioners failed to demonstrate irreparable harm, but they cannot.

3. 630 Sansome Supports the Public Interest of the United States Enforcing Immigration Laws.

Once again, the Government has a compelling interest in the steady enforcement of its immigration laws and remedying problems caused by illegal immigration. *See Noem v. Vasquez Perdomo*, 606 U.S. —, 2025 WL 2585637, at *4-5 (2025) (Kavanaugh, J., concurring). Here, and as with the Detention Policy, the operation of 630 Sansome advances the Federal Government's interest in implementing President Trump's Executive Orders, enforcing immigration laws, and responding to a national emergency. As a practical matter, granting Petitioners' motion would stop the operation of 630 Sansome. And without 630 Sansome, ERO San Francisco and Respondents cannot execute its detention authority and force the United States' immigration laws to the fullest extent possible. Kaskanlian Decl. ¶¶ 7, 13. The public interest favors maintaining the status quo and not stopping the operation of 630 Sansome.

VII. CONCLUSION

The Court should deny Petitioners' motion. Petitioners fail to establish the required elements to support stopping the operations of 630 Sansome or staying the Detention Policy.

DATED: October 24, 2025

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Douglas Johns
DOUGLAS JOHNS
Assistant United States Attorney

Attorneys for Respondents-Defendants