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16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

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

20 Plaintiffs-Petitioners,

21 v.

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

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

CLASS ACTION

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION, AND STAY OF AGENCY
ACTION UNDER 5 U.S.C. § 705**

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

Trial Date: None Set

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I. INTRODUCTION

Plaintiffs seek preliminary relief from the inhumane conditions at the San Francisco Field Office at 630 Sansome Street in San Francisco (“630 Sansome”) and a stay of the 12-Hour Waiver Memo that allows for extended confinement in the short-term “hold rooms” there. Despite upheaving the twelve-hour limit on hold room detention that stood for over ten years, Defendants do not make even a cursory attempt to argue that they considered humanitarian impacts or necessary operational changes to hold rooms when waiver was implemented. Nor do they reconcile the conflict between extended hold room detention and ICE’s *current* national standards prohibiting such detention. Defendants’ appeals to federal immigration priorities cannot salvage the hasty and irrational waiver: the government cannot sweep the Constitution aside in service of its desire to arrest and detain immigrants at a rate it cannot safely or legally handle. To the extent the waiver is Defendants’ response to an overloaded immigration detention system, that problem is entirely self-made and does not justify mass, extended confinement in inhospitable spaces not designed or intended for long-term detention. ICE hold rooms across the country are in crisis, and irreparable harm will continue to mount if the 12-Hour Waiver Memo is not stayed.

Defendants do not deny many of the conditions described by Plaintiffs and former detainees, such as forced floor sleeping and lack of onsite medical care, nor do they argue that the described conditions are constitutional. They produce a single self-serving declaration that is too unspecific and unreliable to meaningfully undercut Plaintiffs’ evidence. Plaintiffs have submitted extensive first-hand evidence of Defendants’ practices of sleep deprivation, lack of medical screening and care, and unsanitary and unhygienic conditions at 630 Sansome. Without an injunction, individuals detained there will continue to suffer irreparable harm from these conditions. A stay of the 12-Hour Waiver Memo and a preliminary injunction are in the public interest.

II. EVIDENTIARY OBJECTIONS

Defendants object to declarations from legal services providers and news articles offered in support of Plaintiffs’ motion. It is well settled that “[d]ue to the urgency of obtaining a preliminary injunction at a point when there has been limited factual development, the rules of evidence do not apply strictly to preliminary injunction proceedings.” *See Herb Reed Enters. v. Fla. Ent. Mgmt.*,

1 *Inc.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013); *see also Univ. of Texas v. Camenisch*, 451 U.S. 390,
 2 395 (1981) (“[A] preliminary injunction is customarily granted on the basis of procedures that are
 3 less formal and evidence that is less complete than in a trial on the merits.”). A district court “may
 4 give even inadmissible evidence some weight, when to do so serves the purpose of preventing
 5 irreparable harm before trial.” *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).
 6 For this reason, courts may consider news articles. *Flathead-Lolo-Bitterroot Citizen Task Force v.*
 7 *Montana*, 98 F.4th 1180, 1189-90 (9th Cir. 2024). Declarations from detainees’ attorneys also are
 8 the exact type of evidence that is useful in considering whether a preliminary injunction should
 9 issue. *Mercado v. Noem*, No. 25-CV-6568, 2025 WL 2658779, at *6, *9 (S.D.N.Y. Sept. 17, 2025)
 10 (issuing preliminary injunction related to New York ICE Hold Rooms based in part on attorney
 11 declarations).

12 **III. STANDING AND JURISDICIONAL ISSUES**

13 Defendants’ arguments on justiciability are reproduced in their Opposition to Plaintiffs’
 14 Motion for Provisional Class Certification, *compare* ECF No. 111, Opposition (“Opp.”) at 9-12 *with*
 15 ECF No. 109 at 14-16. To avoid duplication, those arguments are addressed in Plaintiffs’ Reply in
 16 Support of Class Certification. *See* ECF No. 115 at 4-7. Similarly, Defendants’ arguments
 17 concerning Plaintiffs’ inclusion of habeas and non-habeas claims in this action were raised in their
 18 Opposition to Plaintiffs’ Motion for Provisional Class Certification, *compare* Opp. at 21-22 *with*
 19 ECF No. 109 at 24-25, and those arguments also are addressed in Plaintiffs’ Reply in Support of
 20 Class Certification. *See* ECF No. 115 at 13-14.

21 **IV. PLAINTIFFS HAVE MET THEIR BURDEN TO SHOW OF LIKELIHOOD OF** 22 **SUCCESS ON THEIR APA CHALLENGE TO THE 12-HOUR WAIVER MEMO**

23 **A. The 12-Hour Waiver Memo Is Final Agency Action**

24 The June 24, 2025 memorandum titled “Nationwide Hold Room Waiver” (“12-Hour Waiver
 25 Memo”) constitutes final agency action. Agency action is final if it “mark[s] the consummation of
 26 the agency’s decision making process” and is “one by which rights or obligations have been
 27 determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-78
 28 (1997) (quotation omitted); *see also Ctr. for Biological Diversity v. Haaland*, 58 F.4th 412, 417 (9th

1 Cir. 2023) (explaining that finality is interpreted flexibly and focuses on “the practical and legal
2 effects of the agency action”). The 12-Hour Waiver Memo was issued by ICE’s Assistant Director
3 of Custody Management as a formal memorandum transmitted to all Field Office Directors and had
4 immediate, nationwide effect. *Cf. Abbott Labs v. Gardner*, 387 U.S. 136, 151 (1967) (explaining
5 agency action is final where it is definitive, issued in a formal manner, “made effective upon
6 publication,” and not merely the ruling of a subordinate agency official). As a direct result, Plaintiffs
7 suffered the consequences of overnight detention in facilities ill-suited for that purpose. Defendants
8 cite the 12-Hour Waiver Memo’s initial one-year duration, but that conflates *temporariness* with
9 *tentativeness*. A tentative policy statement is one that has not yet created legal consequences and
10 remains subject to ongoing agency deliberation, but a policy that is in effect and has consequences—
11 like the 12-Hour Waiver Memo—is final, even if it has an end date. *See generally San Francisco*
12 *Herring Ass’n v. Dep’t of the Interior*, 946 F.3d 564, 578-79 (9th Cir. 2019).

13 **B. The 12-Hour Waiver Memo Is Reviewable Under the APA**

14 Section 701(a)(2)’s bar on judicial review of agency action “committed to agency discretion
15 by law” is a “very narrow exception.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S.
16 402, 410 (1971); *cf. Lincoln v. Vigil*, 508 U.S. 182, 191 (1993) (explaining § 701(a)(2) applies in
17 “rare circumstances” where “a court would have no meaningful standard against which to judge the
18 agency’s exercise of discretion”) (*citing Heckler v. Chaney*, 470 U.S. 821, 830 (1985)). Defendants
19 invoke the government’s “broad discretion” in immigration enforcement, *Opp.* at 13, but agency
20 policies governing discretion in the immigration context are subject to APA review. *See, e.g., Biden*
21 *v. Texas*, 597 U.S. 785, 798-807 (2022); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17-19
22 (2020). Moreover, Plaintiffs do not challenge Defendants’ discretion to “arrange for appropriate
23 places of detention for aliens.” 8 U.S.C. § 1231(g)(1). Rather, Plaintiffs contend that, whatever
24 places Defendants choose to use, they must adequately consider the humanitarian, operational, and
25 constitutional consequences of authorizing those facilities to hold people for longer than 12 hours.

26 **C. The 12-Hour Waiver Memo Is Arbitrary and Capricious**

27 Arbitrary and capricious review “focuses on the reasonableness of an agency’s decision-
28 making *processes*.” *CHW W. Bay v. Thompson*, 246 F.3d 1218, 1223 (9th Cir. 2001) (emphasis in

original). Defendants provide no reasonable explanation of the processes that led to extending hold room detention length *six-fold* without mandating any operational changes to account for important aspects of the problem, including the logistical, humanitarian, and constitutional implications of long-term confinement in short-term holding cells. To assert that the 12-Hour Waiver Memo was well-reasoned, Defendants simply refer to the text of the Memo itself. But an assertion that a policy “is essentially self-explanatory” does not suffice to show that a sudden departure from past practice is acceptable. *See Washington v. U.S. Dep’t of Homeland Sec.*, 614 F. Supp. 3d 863, 879 (W.D. Wash. 2020).

Defendants’ conclusory statement that they will continue to apply “current requirements” in hold rooms completely fails to address that current requirements are tailored to brief detention, not overnight and multi-night detention. For example, ICE’s own national standards prohibit hold room detention over twelve hours and state that “[b]unks, cots, beds and other sleeping apparatus are not permitted inside Hold Rooms,” which plainly contradicts constitutional minimums for overnight detention. *See* ECF No. 65, Exh. A, PBNDS at 99–100, § 2.6. at I, V.A.5; ECF No. 64 (“Mot.”) at 8-9 (discussing constitutional requirements of beds and mattresses). Defendants make no attempt to resolve the conflict between the 12-Hour Waiver Memo and current requirements. “[A]n internally inconsistent analysis is arbitrary and capricious.” *Nat’l Parks Conservation Ass’n v. E.P.A.*, 788 F.3d 1134, 1141 (9th Cir. 2015).

Defendants also fail to demonstrate that alternatives to avoid long-term confinement in hold rooms were considered. *See Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919, 963 (N.D. Cal. 2021) (“To be regarded as rational, an agency must also consider significant alternatives to the course it ultimately chooses.”). Extended confinement in ill-equipped cells does not further the government’s “steady enforcement of its immigration laws.” Opp. at 20. Indeed, for over ten years, the operation of ICE Enforcement and Removal Operations (“ERO”) hold rooms relied on the requirement that detention in these spaces lasts no longer than twelve hours.¹

¹ *See* ECF No. 65, Exh. A, PBNDS at p. 99, 101, § 2.6 at I, V.B. As recently as March 31, 2025—less than three months before the 12-Hour Waiver Memo’s issuance—ICE required field offices to report any “incident(s)” of holding individuals over twelve hours in a hold room. *See* Kaskanlian

Defendants cite nothing in the Immigration and Naturalization Act (“INA”) or January 20, 2025, Executive Orders (“EOs”) that mandates that ICE make new arrests at rates beyond its capacity to detain people in accordance with the Constitution. Defendants’ argument that the January EOs serve as the foundation for the 12-Hour Waiver is undercut by the fact that, two months *after* the EOs were issued, ICE continued to require field offices to report on all non-compliant “incident(s)” involving detention over 12 hours, rather than taking any steps to plan or measure preparedness for extended detention up to 72 hours. Kaskanlian Decl. ¶ 8, Exh. P at 5. Defendants do not cite any source for the purported end of all discretionary release, beyond the 12-Hour Waiver Memo’s circular and conclusory reasoning; neither the INA nor EOs expressly eliminate such discretion. Moreover, the government’s desire to implement policies favoring mass arrests and eschewing discretionary release authority cannot justify violating constitutional rights. *See Mercado*, 2025 WL 2658779, at *36 (“Defendants have chosen to use the [ICE ERO hold rooms] as a *de facto* medium term detention facility while failing to comply with the Constitution and their own nationwide standards governing detention facilities. The logistical difficulties defendants invoke flow from that their [*sic*] own decisions.”).

D. The 12-Hour Waiver Memo Is Contrary to Constitutional Rights in Civil Detention

Plaintiffs need not show that the 12-Hour Waiver Memo contradicts a specific right to detention of less than twelve hours. It is enough that there is a constitutional “violation *resulting* from the agencies’ policy and practice.” *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 984 (C.D. Cal. 2024) (emphasis added). The constitutional violations in hold rooms—including unsanitary conditions and sleep deprivation in rooms expressly designed to be inhospitable to overnight detention—are caused by extended periods of detention authorized by the 12-Hour Waiver Memo.

Decl. ¶ 8, Exh. P at 5 (“In the past 12 months, were any detainees housed in this holding facility for longer than 12 hours? If Yes, please explain the circumstances surrounding the incident(s).”). The implication is that, prior to June 2025, any hold room detention lasting over twelve hours amounted to an incident bearing on the facility’s compliance with hold room standards.

1 E. **News Articles Help Illustrate Why the 12-Hour Waiver Memo Must be Stayed**
 2 **on a Nationwide Basis**

3 The news articles Plaintiffs cite, which show the near-uniform havoc the nationwide waiver
 4 has caused in ICE’s hold rooms, are relevant to scope of the relief sought. A nationwide immigration
 5 policy that is likely arbitrary and capricious should be stayed on a nationwide basis. *See E. Bay*
 6 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 681 (9th Cir. 2021) (“When a reviewing court
 7 determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—
 8 not that their application to the individual petitioners is proscribed.”) (affirming nationwide scope
 9 of preliminary APA relief) (cleaned up); *see also Nat’l TPS All. v. Noem*, 150 F.4th 1000, 1029 (9th
 10 Cir. 2025) (holding district court did not abuse discretion in postponing agency action nationwide).
 11 A more recent article shows average detention times in ICE hold rooms increasing by up to 579
 12 percent across the country as a direct result of the 12-Hour Waiver Memo. *See* Declaration of Mark
 13 L. Hejinian, Exh. A. The Court may rely on these articles at this stage of the litigation. *See* Section
 14 II, *supra*.

15 V. **PLAINTIFFS HAVE MET THEIR BURDEN TO SHOW OF LIKELIHOOD OF**
 16 **SUCCESS ON THE MERITS OF THEIR CLAIMS REGARDING CONDITIONS**
AT 630 SANSOME

17 A. **Defendants Do Not Persuasively Undercut Plaintiffs’ Evidence**

18 In an effort to contradict Plaintiffs’ evidence—including fourteen declarations from
 19 Plaintiffs and former detainees (ECF Nos. 70, 72-82, 92-93) and four declarations from legal
 20 services attorneys (ECF Nos. 66-69)—Defendants rely solely on the Declaration of Andrew
 21 Kaskanlian (“Kaskanlian Declaration”), ECF No. 110, and the attached exhibits. At the preliminary
 22 injunction stage “the Court does not resolve conflicts in the evidence—the question is simply
 23 whether the [prosecuting party] has met its burden of showing a likelihood of success on the merits.”
 24 *Fed. Trade Comm’n v. Microsoft Corp.*, 681 F. Supp. 3d 1069, 1085 (N.D. Cal. 2023), *aff’d*, 136
 25 F.4th 954 (9th Cir. 2025) (quotations omitted) (*citing F.T.C. v. Warner Communications Inc.*, 742
 26 F.2d 1156, 1164 (9th Cir. 1984)). The relevant inquiry is not whether the Kaskanlian Declaration
 27 facially contradicts Plaintiffs’ evidence, but rather whether Plaintiffs’ evidence is sufficient to
 28 demonstrate a likelihood of success on the merits, or at minimum, to raise serious questions going

1 to the merits. Even still, the Kaskanlian Declaration should be given little weight and is unresponsive
2 and unpersuasive on relevant factual issues.

3 **i. The Kaskanlian Declaration Should Be Given Little Weight**

4 The Kaskanlian Declaration is too unspecific to negate Plaintiffs' substantial evidence. Mr.
5 Kaskanlian makes no representations that he has been physically present at 630 Sansome since ICE
6 began to ramp up courthouse arrests in May 2025 or that he has any first-hand knowledge of the
7 operations there since that time. He makes general statements about the operations of the facility for
8 the past ten years, Kaskanlian Decl. ¶ 18, but does not provide any specific account of the operations
9 since June 2025, when the twelve-hour limit was waived. He states that the holding facility was
10 compliant as of March 31, 2025, at a time when the annual self-assessment was explicitly predicated
11 on detention of no more than twelve hours. *Id.* ¶ 8, Exh. P at 5 ("Detention staff is fully aware and
12 cognizant of the 12-hour rule and make sure all detainees are released or transported to long term
13 housing within 12 hours of entering the hold room."). He attributes virtually all actions to "ERO
14 San Francisco" as an entity but does not state who is responsible or could testify to whether those
15 actions were actually carried out. *Id.* ¶¶ 15, 18-22, 24-31. Therefore, the Court should "not consider
16 [his] testimony as effectively rebutting plaintiff's evidence of actual day-to-day conditions in
17 the...Hold Rooms." *Mercado*, 2025 WL 2658779, at *15.

18 The Kaskanlian Declaration fails to offer more specific evidence that, by its own account,
19 should exist. It attaches a blank medical questionnaire and makes a conclusory assurance that it is
20 provided upon intake, but it does not provide completed intake forms for any of the plaintiffs or
21 detainee declarants. Kaskanlian Decl. ¶ 25, Exh. T. Similarly, the declaration does not provide the
22 medication log it avers exists. *Id.* ¶ 26. These omissions are glaring since Defendants *do* provide
23 redacted hold room logs, *Id.*, Exh. U. Defendants alone can provide intake forms and medication
24 logs if they exist, yet they have failed to do so—thus, the Court should not uncritically accept their
25 assertions. *See DEPCOM Power, Inc. v. CSUN Solar, Inc.*, No. 18-cv-729-JST, 2019 WL 2088480,
26 at *5 (N.D. Cal. May 13, 2019) ("[A]lthough Respondents [] appear uniquely positioned to provide
27 [contrary objective] evidence, they have declined to do so . . . In light of [Petitioner's] circumstantial
28 evidence described above, the Court cannot uncritically accept these contrary assertions.") (issuing

1 preliminary injunction).

2 A similar preliminary injunction was recently issued where the defendants relied solely on
3 the testimony of an assistant field office director for ICE-ERO, who did not “purport to identify the
4 precise basis of her assertions and described conditions in the present tense only as of the time of
5 her statements.” *Mercado*, 2025 WL 2658779, at *28. There, the plaintiff “submitted numerous
6 first-hand accounts from former detainees that speak directly to the conditions” of the hold rooms.
7 *Id.* The same is true here and supports the issuance of a preliminary injunction.

8 **ii. Defendants’ Evidence Is Unresponsive and Unpersuasive on**
9 **Relevant Factual Issues**

10 First, regarding sleeping conditions, Defendants admit the lights are kept on twenty-four
11 hours a day in holding cells. Kaskanlian Dec. ¶ 14. They implicitly admit that the only places to
12 sleep are the floor or a metal bench. *Id.* They do not contradict declarants’ testimony that holding
13 cells are kept at frigid temperatures and that Mylar sheets are insufficient to keep provide warmth.

14 The Kaskanlian Declaration’s cursory assertion that blankets of unspecified material and
15 “mattress pads” of unspecified size and material are provided to detainees, *id.* ¶ 18, appears to
16 confirm declarants’ reports of sleeping on thin, dirty mats with only a small piece of plastic or Mylar
17 as a blanket. Moreover, there is no evidence ICE issues a mat to *each* detainee, and Plaintiffs’
18 evidence suggests otherwise. Declaration of Ammy Vargas Baquedano (“Vargas Baquedano
19 Decl.”) ¶ 8.² Plaintiffs have submitted numerous declarations that uniformly state that no beds,
20 mattresses, or bedding are provided at 630 Sansome beyond a thin mat and a sheet of plastic or
21 Mylar. *See* Mot. at 4, 10; *see also* Declaration of Jorge Rivera Larios (“Rivera Larios Decl.”) ¶ 4.

22 Second, Defendants admit that no medical care is provided onsite at 630 Sansome. *See*
23 Kaskanlian Decl. ¶ 27. Defendants’ assertions about conducting a medical intake are unsupported
24 by specific evidence. The Kaskanlian Declaration says nothing about who asks detainees about their
25 medical conditions, how that information is recorded, and whether officers are required to take any

26 _____
27 ² The Court may consider declarations submitted on reply, particularly where they are consistent
28 with the evidence in the original motion. *Smahi v. STMicroelectronics, Inc.*, 789 F. Supp. 3d 690,
695 n.4 (N.D. Cal. 2025).

1 subsequent action. Plaintiffs’ evidence indicates that, at most, ICE officers ask a single question
 2 about medical issues, but the answer does not matter—ICE officers do nothing to follow up on
 3 medical concerns or provide care. ECF No. 78, Hernandez Torres Decl. ¶¶ 4-5, 7-8; *see also* Rivera
 4 Larios Decl. ¶¶ 7-8; Vargas Baquedano Decl. ¶¶ 13-15. Several declarants reported asking for
 5 medical attention and being ignored. ECF No. 75, Alva Alva Decl. ¶¶ 16-17; ECF No. 73, Valera
 6 Chuquillanqui Decl. ¶ 7; Hernandez Torres Decl. ¶¶ 4-5, 7-8.

7 The Kaskanlian Declaration also does not say if the medical questionnaire is *collected* or
 8 used by ICE officers in any way. Kaskanlian Decl. ¶ 25. Plaintiffs’ evidence indicates that such
 9 questionnaires are not provided in the first place. Vargas Baquedano Decl. ¶ 12; *see, e.g.*, ECF No.
 10 72, Mendoza Nunez Decl. ¶ 10. The questionnaire is in English, and while Defendants state
 11 interpretation is available via the “ERO language line,” Kaskanlian Decl. ¶ 25, they do not explain
 12 how a telephonic interpreter could translate a document they cannot see. By contrast, Plaintiffs have
 13 submitted numerous declarations that uniformly state that no constitutionally adequate medical
 14 assessment is provided, that detainees are deprived of prescription medication, and that medical care
 15 is not provided, even when they ask repeatedly. Mot. at 5-6, 13-14.

16 Third, the Kaskanlian Declaration is insufficient to overcome Plaintiffs’ evidence of
 17 unhygienic conditions. The declaration does not state who issues toiletries or when, and it repeatedly
 18 states that hygiene supplies are provided “upon request,” or “as needed,” without saying how
 19 immigrants would know to make requests, who takes those requests, or what is meant by “as
 20 needed.” Kaskanlian Decl. ¶¶ 19-20, 22. Plaintiffs’ evidence indicates that, even when immigrants
 21 are arrested out of their homes in their pajamas and taken to 630 Sansome, they are not given a
 22 change of clothes. Declaration of Dalia Blevins ¶¶ 4-7. Further, Mr. Kaskanlian does not
 23 demonstrate personal knowledge that contractors do in fact clean the cells, Kaskanlian Decl. ¶ 32,
 24 and Defendants provide no declarations from contractors. By contrast, Plaintiffs have submitted
 25 numerous declarations that uniformly state that detainees are not provided clean clothes, that cells
 26 and toilets are not cleaned, and that hygiene supplies are not provided. Mot. at 6, 15-16.

B. Defendants Misstate the Law Applicable to the Conditions Claims**i. In the Context of Conditions of Civil Detention, Immigrants Do Not Have Different Due Process Rights than Others**

Defendants appear to argue that the constitutional floor for conditions of confinement varies based on immigration status, Opp. at 22—an assertion unprecedented in the law. Over a century ago, the Supreme Court explained that due process protections are “not confined to the protection of citizens,” and are “universal in their application to all persons within the territorial jurisdiction.” *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (citation omitted). For both citizens and noncitizens, civil detention may not amount to punishment. *Id.* at 237; *see also Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Indeed, immigrants in civil detention must be afforded *more* considerate treatment than criminal pretrial detainees. *See Unknown Parties v. Nielsen*, 611 F. Supp. 3d 786, 796 (D. Ariz. 2020) (*citing Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)).

Defendants rely on inapposite cases to assert that immigrants have different due process rights than citizens. *Mathews v. Diaz* did not involve detention conditions; it dealt with statutory rights of immigrants under the Social Security Act and expressly recognized that due process protections apply to noncitizens. 426 U.S. 67, 77 (1976). Neither *Demore* nor *Fiallo* involved detention conditions; both challenged the statutory framework of the INA. *See Demore v. Kim*, 538 U.S. 510, 513-14, 517 (2003); *Fiallo v. Bell*, 430 U.S. 787, 789-90 (1977). Similarly, *Reno v. Flores* was a “facial challenge to INS regulation 242.24,” and the Court expressly exempted detention conditions from its analysis. 507 U.S. 292, 300-01 (1993). Finally, *Verdugo-Urquidez* was not a due process case, but rather a Fourth Amendment case regarding a search conducted in Mexico. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 262-64 (1990).

ii. Plaintiffs Have Shown that Defendants’ Practices Are Punitive or Excessive in Relation to Legitimate Government Interests

Defendants also misstate the standard for evaluating an objective violation of due process in immigration detention, relying on cases concerning monetary damages against individual officers that apply a “reckless disregard” standard. Opp. at 22 (citing cases). Instead, when evaluating the due process rights of *civil* detainees, the Ninth Circuit applies a different standard that does not

1 require a showing of deliberate indifference by individual actors:

2 [A] restriction is “punitive” where it is intended to punish, or where it is “excessive
3 in relation to [its non-punitive] purpose,” or is “employed to achieve objectives that
4 could be accomplished in so many alternative and less harsh methods,” With respect
5 of punitive conditions arises where the individual is detained under conditions
6 identical to, similar to, or more restrictive than those under which pretrial criminal
detainees are held. . . . Finally, to prevail on a Fourteenth Amendment claim
regarding conditions of confinement, the confined individual need not prove
“deliberate indifference” on the part of government officials.

7 *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004) (citations omitted).

8 “The *Jones* presumptions can be rebutted by showing legitimate, non-punitive government
9 interests, and by showing that restrictions are not excessive in relation to those interests.” *King v.*
10 *Cnty. of Los Angeles*, 885 F.3d 548, 558 (9th Cir. 2018) (citation omitted). Where there is no
11 legitimate government interest in holding civil detainees for prolonged periods or subjecting them
12 to “conditions more restrictive than they will face upon commitment to either a civil or criminal
13 detention facility,” objective deliberate indifference is shown even without evidence of immigration
14 officers’ intent. *Nielsen*, 611 F. Supp. 3d at 795.

15 Defendants correctly admit that only two justifications exist for civil detention of immigrants
16 in removal proceedings: flight risk and danger. *See* Opp. at 24 (*citing Zadvydas v. Davis*, 533 U.S.
17 678, 690-91 (2001)). However, Defendants make no attempt to explain how these interests are
18 served by forcing immigrants to sleep on the floor in frigid rooms, or by holding immigrants for
19 days without access to hygiene supplies, basic medical intake, medical care, or medications, all of
20 which plainly violates the Constitution. *See, e.g., Unknown Parties v. Johnson*, No. CV-15-00250-
21 TUC-DCB, 2016 WL 8188563, at *13-14 (D. Ariz. Nov. 18, 2016), *aff’d sub nom. Doe v. Kelly*,
22 878 F.3d 710 (9th Cir. 2017). Even where they provide a justification for constant illumination,
23 Defendants do not explain why that restriction is not excessive in relation to government interests,
24 *i.e.*, why the lights cannot be dimmed at night. *See, e.g., Johnson v. Tillamook Cnty.*, No. 3:15-cv-
25 125, 2016 WL 11383939, at *9 (D. Or. Apr. 18, 2016) (denying defendants summary judgment on
26 ADA claim where lights were dimmed in some cells, but not plaintiff’s).

27 That Defendants allege they have policies providing for sleeping materials, hygiene items,
28 and medical intake is insufficient. Defendants do not provide any evidence of the existence of such

1 policies, such as a copy of the policy. Even if they did, the existence of policies alone does not
 2 establish safe conditions where those policies are not followed. *See, e.g., Giluso v. Burberry Ltd.*,
 3 No. 23-CV-03517-PCP, 2024 WL 5191982, at *3 (N.D. Cal. Dec. 19, 2024) (where defendant’s
 4 policy “ineffective or unenforced,” the plaintiff had “standing to seek injunctive relief”). The March
 5 2025 self-assessment of 630 Sansome fares no better—it predates the relevant times: May 2025,
 6 when detention levels ramped up, and June 2025, when ICE issued the 12-Hour Waiver Memo.

8 VI. THE CLASS WILL SUFFER IRREPARABLE HARM ABSENT A STAY AND INJUNCTION

9 The provisional Detention Class will suffer irreparable harm if subjected to elongated
 10 detention and inhumane conditions at 630 Sansome. Courts acknowledge “the recognized right of
 11 [] class representatives to prosecute ‘inherently transitory’ claims (claims which by their nature may
 12 expire for any one individual during the course of the litigation) for those remaining members of the
 13 class who are still being injured by the policy or practice.” *Padilla v. U.S. Immigr. & Customs*
 14 *Enf’t*, 379 F. Supp. 3d 1170, 1174 (W.D. Wash. 2019), *vacated sub nom. on other grounds by*
 15 *Padilla v. U.S. Immigr. & Customs Enf’t*, No. C18-928 MJP, 2022 WL 22248517 (W.D. Wash. July
 16 29, 2022) (*citing Sosna v. Iowa*, 419 U.S. 393, 402 (1975)). Plaintiffs may establish “irreparable
 17 harm by demonstrating that putative class members face imminent risk to their health, safety, and
 18 lives.” *Mercado*, 2025 WL 2658779, at *24 (quotations omitted). Here, as in *Mercado*, “[t]he
 19 declarations submitted by plaintiff[s] describe numerous accounts of enduring physical and
 20 psychological harm due to the alleged inhumane conditions.” *Id.* at *24; *see also* Mot. at 4-6, 14-
 21 16; ECF. No. 79, Mendez Decl. ¶¶ 15-17; Vargas Baquedano Decl. ¶¶ 15, 17.

23 VII. THE PUBLIC INTEREST IS SERVED BY A STAY AND PRELIMINARY INJUNCTION

24 The conditions at 630 Sansome are presumptively punitive and unconstitutional, and “public
 25 interest concerns are implicated when a constitutional right has been violated, because all citizens
 26 have a stake in upholding the Constitution.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir.
 27 2005). Defendants’ focus on the interest served by the *existence* of the detention center is
 28

1 misguided—what matters is whether the *conditions* at the facility further a legitimate government
 2 interest. *See, e.g., Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *11
 3 (N.D. Cal. Sept. 26, 2025) (“Due process requires that the nature and duration of detention bear
 4 some reasonable relation to the purpose for which the individual is detained.”) (citation omitted).

5 Defendants provide no explanation (or evidentiary basis) for their sweeping assertion that
 6 compliance with constitutional minimums “would stop the operation of 630 Sansome.” Opp. at 20.
 7 Even if operational difficulties arose—which Defendants do not identify—they would not excuse
 8 compliance with constitutional standards. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir.
 9 2013) (“[S]everal logistical difficulties in implementing the [injunction] . . . would merely represent
 10 the burdens of complying with the applicable statutes, as construed to avoid . . . running afoul of the
 11 Constitution.”); *Mercado*, 2025 WL 2658779, at *36 (“[T]he government suffers no harm from an
 12 injunction that merely ends unconstitutional practices . . . especially so here, where any claimed
 13 operational burden on defendants would be self-inflicted.”).

14 Finally, the proposed preliminary injunction is concrete, judicially manageable, and
 15 sufficiently tailored. Defendants identify only one alleged ambiguity—maintenance of comfortable
 16 temperatures—but courts have “broad discretion to fashion injunctive relief,” *Melendres v.*
 17 *Maricopa Cnty.*, 897 F.3d 1217, 1221 (9th Cir. 2018), and regularly order similar relief. *See, e.g.,*
 18 *Johnson*, 2016 WL 8188563, at *9 (requiring temperatures to be monitored).

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1 **VIII. CONCLUSION**

2 For these reasons, Plaintiffs respectfully request that the Court stay the 12-Hour Waiver
3 Memo and preliminarily enjoin the unconstitutional conditions at 630 Sansome.
4

5 DATED: October 31, 2025

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