

Daniel P. Struck, Pro Hac Vice
AZ Bar #012377
Dana M. Keene, CA Bar #324993
Anne M. Orcutt, Pro Hac Vice
AZ Bar #029387
Shannon L. Knorr, CA Bar #300399
STRUCK LOVE ACEDO, PLC
3100 West Ray Road, Suite 300
Chandler, Arizona 85226
Tel.: (480) 420-1600
Fax: (480) 420-1695
dstruck@strucklove.com
dkeene@strucklove.com
aorcutt@strucklove.com
sknorr@strucklove.com

Nicholas H. Rasmussen, Bar #285736
McCORMICK BARSTOW, LLP
7647 North Fresno Street
Fresno, CA 93720
Tel: (559) 433-1300
Fax: (559) 433-2300
nrasmussen@mccormickbarstow.com

Attorneys for Intervenor CoreCivic, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FERNANDO GOMEZ RUIZ, et al.,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al.,

Defendants,

CORECIVIC, INC.,

Intervenor.

Case No. 1:26-CV-02546-JLT-CDB

**PROPOSED INTERVENOR CORECIVIC,
INC.'S SUPPLEMENTAL BRIEF
REGARDING MOTION TO INTERVENE
(Dkt. 82) AND MOTION TO STAY PENDING
APPEAL (Dkt. 86)**

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Pursuant to the Court’s Minute Order (Dkt. 133), Proposed Intervenor CoreCivic submits the following supplemental brief addressing the scope of its proposed intervention for the limited purposes of (1) appealing the February 10, 2026, and March 30, 2026 Orders and March 27, 2026 Memorandum of Decision, and (2) seeking a stay of the February 10, 2026 and March 30, 2026 pending appeal.

I. Background¹

A. CoreCivic’s Emergency Motions.

On March 3, 2026, CoreCivic filed its Emergency Motion to Intervene and Emergency Motion to Stay (collectively “Emergency Motions”). (Dkt. 82; Dkt. 86.) On March 4, 2026, CoreCivic filed its Motion for Order Shortening Time (Dkt. 88), asking Judge Chesney to expedite the hearing on its Emergency Motions, which in conformance with Northern District Local Rule 7-2(a) could not be noticed until April 10, 2026, and shorten the briefing schedule. CoreCivic alternatively requested that she continue the hearing set for March 5, 2026 to select and appoint an external monitor until its Emergency Motions were fully briefed and heard. (*Id.* at 2.) Mere hours later, and without waiting for a response from Plaintiffs, Judge Chesney summarily denied CoreCivic’s Motion for Order Shortening Time. (Dkt. 89.)

On March 6, 2026, Plaintiffs filed their own Motion to Shorten Time for Briefing and Hearing on CoreCivic, Inc.’s Motion to Intervene (Dkt. 95), which CoreCivic did not oppose (Dkt. 97), and to which Defendants filed no response. On March 11, 2026, Judge Chesney denied Plaintiffs’ Motion, stating that “the judge presiding over the case in [the Eastern District] is in the best position to decide whether intervention is appropriate.” (Dkt. 98.)

B. CoreCivic’s Appeal.

On March 4, 2026, CoreCivic filed a Notice of Appeal of the February 10, 2026 Order. (Dkt. 90.) On March 24, 2026, the Ninth Circuit entered an order directing the parties to brief whether it has jurisdiction over CoreCivic’s appeal. (Appeal No. 26-1294 (9th Cir.), Dkt.5-1.). CoreCivic has requested two extensions of time for its opening brief to allow time first for the

¹ CoreCivic incorporates by reference the background section from its Emergency Motion to Intervene (Dkt. 82 at 7–12) in lieu of repeating it here.

Northern District and now this Court to rule on its motion to intervene; if the second request is granted, CoreCivic's opening brief will be due on April 30, 2026.

C. March 5, 2026 Hearing.

At the March 5, 2026 hearing to select and appoint the monitor, the Court declined to allow CoreCivic to participate. (Dkt. 99, R/T at 3:21–22.) The Court then selected one of the three monitors proposed by Plaintiffs, and with whom Plaintiffs' counsel already had substantial communications with respect to their proposed scope of monitoring. (*Id.* at 43:1–7, 99:6–8.) The Court acknowledged that Plaintiffs' proposed Order “goes, of course, well beyond the very brief statement I made before.” (*Id.* at 43:8–11.) Judge Chesney then directed the parties to meet and confer on Plaintiffs' new proposal with respect to the scope and duties of the monitor and submit revised proposals. (*Id.* at 99:9–100:14.)

During the hearing, Defendants' counsel objected that the first paragraph of Plaintiff's proposed monitor appointment order² contained a finding of systemwide failures that Judge Chesney did not make at the February 6, 2026 Hearing. (Dkt. 99, R.T. 3/10/26 at 49:20–52:20.) Judge Chesney stopped him, explaining that she did not plan on addressing Plaintiffs' motion for a preliminary injunction at that hearing:

There's no question that the Court should have summed up at the end of the hearing all of the findings in -- in detail, which I did not do, and part of it is because **I essentially launched into this entire inquiry at the request of Plaintiffs' counsel**, having found that I was going to transfer the matter, at which point they said, Oh, but all these people are going to be suffering in the interim while the case gets transferred, and I said, What is most important to you? And then they went into that, and they pared down their, you know, injunctive relief request, and I pared it down farther than what they pared it down to.

No, I did not articulate or maybe I did, but if you say I [did not], fine. I can understand where I did not tick off at the end of the hearing, Accordingly, the Court finds that, and spell it all out neatly and cleanly, which I certainly would have done if I was relying on the hearing and planned to make some type of order before I got out there.

² On February 24, 2026, Plaintiffs filed a proposed Order (Dkt. 17 at 17–22) regarding the appointment of the monitor which included findings that Judge Chesney did not make during the February 6, 2026 hearing and substantially expanded the scope of the monitor's role and responsibilities beyond the Court's February 10, 2026 Order.

(*Id.* at 52:21–14, emphasis added.) She stated, however, that she believed the record supports her “summary finding that the Plaintiff was likely to prevail on the record.” (*Id.* at 52:15–17.) She added that: “If Plaintiffs have any concern about it, I don’t think it can be simply fixed up by a little bit more of a summary. So, if you feel that something more needs to be particularly articulated, I can consider issuing some type of memorandum in that regard.” (*Id.* at 55:7–11.)

At the end of the hearing, Plaintiffs’ counsel followed up on that comment, stating: “We’d be pleased to submit [a memorandum opinion] if your Honor is open to it” (*Id.* at 101:3–13.) Judge Chesney responded that she was not planning on issuing a memorandum decision. (*Id.* at 102:7–8.) Plaintiffs offered, however, to submit within a week, “a proposed form of memorandum opinion” that she “can take and adapt, can throw away, whatever the Court would like, as long as the Court would welcome that submission.” (*Id.* at 102:11–15.) Judge Chesney hesitated for a moment but stated: “I -- I’d be happy to receive it.” (*Id.* at 102:16.)

Defendants’ counsel objected to Plaintiffs’ submission of a proposed memorandum opinion as unnecessary because the February 10, 2026 Order must be read in conjunction with her oral rulings at the February 6, 2026 Hearing, and any proposed findings must be compared with the Hearing transcript to confirm whether Judge Chesney actually made them. (*Id.* at 106:3–21.)

D. March 27, 2026 Memorandum of Decision.

On March 13, 2026, Plaintiffs submitted their Proposed Factual Findings and Conclusions of Law. (Dkt. 103.) Although Judge Chesney made no oral findings of fact or conclusions of law at the February 6, 2026 Hearing, Plaintiffs’ proposed memorandum purported to provide support for her “oral ruling on the preliminary junction motion.” (*Id.* at 3.)

On March 27, 2026, Judge Chesney entered a Memorandum of Decision adopting Plaintiffs’ Proposed Factual Findings and Conclusions of Law, stating that its purpose was to “set forth in greater detail [her] reasons for that ruling.” (Dkt. 111 at 2). Judge Chesney first found that Plaintiffs were likely to succeed on the merits of their Fifth Amendment claims based solely on the alleged inadequacy of medical care and other conditions at the Facility. (*Id.* at 12–13) She did not find, however, that Defendants were deliberately indifferent to a serious risk of harm to Plaintiffs. (*Id.*) Judge Chesney then stated that the February 10, 2026 Order “set out what ... Defendants are

1 required to do in order to provide adequate healthcare under the Fifth Amendment,” and that she
 2 decided to appoint a monitor because she would benefit from the monitor’s assessment of what he
 3 believes is “constitutionally adequate care.” (*Id.* at 12.)

4 Judge Chesney also found that Plaintiffs were likely to succeed on the merits of their First
 5 and Fifth Amendment claims regarding attorney access based on a “blanket policy preventing in-
 6 person, contact visits between detained persons and their lawyers,” finding it was “overly
 7 restrictive.” (*Id.* at 12–13.) She did not determine whether the alleged restrictions were reasonably
 8 related to legitimate government interests. (*Id.*) Nor did Judge Chesney address the merits of
 9 Plaintiffs’ Rehabilitation Act claims. (*Id.*)

10 Next, Judge Chesney found that Plaintiffs demonstrated irreparable harm for the same
 11 reasons she found they were likely to succeed on their constitutional claims. (*Id.* at 13–14.) She
 12 then found that the balance of equities and the public interest favor an injunction to prevent the
 13 violation of Plaintiffs’ constitutional rights and that preventing “human suffering outweighs any
 14 administrative or financial concerns that Defendants might have.” (*Id.* at 14.)

15 To support her grant of provisional class certification, Judge Chesney found that under Rule
 16 23(a), the class was sufficiently numerous based on the number of detained individuals, that
 17 Plaintiffs demonstrated commonality by challenging systemic policies and submitting evidence that
 18 all detainees are subjected to them, that typicality was satisfied because Plaintiffs and class
 19 members have similar injuries, and that Plaintiffs and their counsel adequately represent the class.
 20 (*Id.* at 14–16.) She found that under Rule 23(b)(2), Plaintiffs have demonstrated that all detainees
 21 are subjected to the same alleged injuries, which can be addressed through uniform injunctive and
 22 declaratory relief. (*Id.* at 16.)

23 **E. March 30, 2026 Orders Appointing the Monitor and Transferring Venue.**

24 The parties were able to reach agreement as to some portions of Plaintiffs’ new proposal
 25 but ultimately submitted competing proposed Orders. (Dkt. 101; Dkt. 102.) On March 30, 2026,
 26 Judge Chesney entered an order under her “equitable authority” appointing Plaintiffs’ proposed
 27 monitor, Dr. Anandkumar (“Appointment Order”) “for a period of 120 days from” that date, and
 28 providing him and an unidentified team member remote access to CoreCivic’s electronic health

1 record system. (Dkt 112 at 3–4.) Judge Chesney also ordered Defendants to provide to the monitor
2 an expansive enumerated set of documents in electronic format, as well as “any other documents
3 or information that the External Monitor determines in his expertise he needs to assess compliance,
4 which he shall jointly identify for the parties.” (*Id.* at 5.)

5 Judge Chesney further ordered that the monitor “shall be permitted one in-person inspection
6 lasting up to three full days at the facility” with broad access to (1) “inspect any area of the facility
7 and grounds related to the provision of health care”; (2) “observe pill call and the collection of sick
8 call slips in up to four housing pods”; (3) “interview custody and medical staff, whether full-time
9 or contract employees”; (4) “interview patients of [the monitor]’s choosing, provided they and class
10 counsel consent, in a confidential room with sound privacy from any facility staff”; (5) “review and
11 receive a demonstration of the facility’s health care scheduling system and relevant electronic
12 databases or dashboards”; (6) “review any facility video relevant to health care, including but not
13 limited to emergency responses, unless upon review by the Warden or his designee, disclosure of
14 the video would implicate safety or security concerns”; and (7) “bring necessary materials and
15 equipment into the facility, including one laptop,” but “may not take photographs or make audio or
16 video recordings given safety and security concerns.” (*Id.* at 6.)

17 The Appointment Order does not allow the parties’ counsel to have ex parte
18 communications with the monitor, but allows the monitor discretion to modify the report of his
19 findings in any manner suggested by a party prior to filing it with the Court. (*Id.* at 5–7.)
20 Significantly, it prohibits counsel for CoreCivic from attending the inspection of CoreCivic’s
21 facility, during which the monitor is permitted to interview CoreCivic employees without their
22 counsel present. (*Id.* at 5.) The Appointment Order further requires that Defendants provide the
23 monitor with documents within seven days of a request. (*Id.* at 7.) The Appointment Order directs
24 Defendants to pay the monitor “at a rate of \$425/hour.” (*Id.*)

25 On the same day, 48 days after Judge Chesney issued her February 10, 2026 Order granting
26 a preliminary injunction and provisional class certification, she entered an order transferring the
27 case to this Court.
28

F. Defendants’ Appeal.

On April 13, 2026, Defendants filed a notice of appeal from the February 6, 2026 Order, the March 27, 2026 Memorandum of Decision, and the March 30, 2026 Order Appointing the Monitor. (Dkt. 127.) In the Joint Status Report filed on April 17, 2026, counsel for Defendants acknowledged that the notice of appeal was merely protective, as the Solicitor General has not yet determined whether to appeal, and Defendants will not seek a stay pending the Solicitor General’s appeal determination process. (Dkt. 131 at 1–2.)

II. This Court Should Permit CoreCivic to Intervene for the Limited Purposes of Appealing the February 10, 2026 Order, March 27, 2026 Memorandum of Decision, and March 30, 2026 Order, and Seeking a Stay Pending Appeal.

A. Legal Standard.

Upon a timely motion, the Court “must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). Additionally, the Court “may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B).

B. CoreCivic’s Motion to Intervene Was Timely.

A motion to intervene for the purpose of appeal is “timely if filed within the time limitations for filing an appeal.” *United States ex rel. Killingsworth v. Northrop Corp.*, 24 F.3d 715, 719 (9th Cir. 1994); *W. Watersheds Project v. Haaland*, 22 F.4th 828, 836 (9th Cir. 2022) (explaining the “general rule” is that a request to intervene “is timely if filed within the time allowed for the filing of an appeal”); *State of Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1320 (9th Cir. 1997) (“[S]o long as the motion to intervene is filed within the time within which [a party] could have taken an appeal, the motion is timely as a matter of law.”). Because CoreCivic’s Motion to Intervene was filed well within the deadline for appeal of the February 10, 2026 Order, it was timely as a matter of law.³ And because the deadlines for appealing the March 27, 2026 Memorandum of

³ Because the United States is a party, the appeal deadline is 60 days. Fed. R. App. P. 4(a)(1)(B).

1 Decision and March 30, 2026 Order have not run, intervention for the purpose of appealing both is
2 also timely.

3 Even under the Ninth Circuit’s test for general intervention, CoreCivic’s Motion to
4 Intervene was timely. To determine timeliness of intervention for purposes other than appeal, courts
5 consider three factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2)
6 the reason for and length of the delay; and (3) the prejudice to other parties. *Smith v. Los Angeles*
7 *Unified Sch. Dist.*, No. 830 F.3d 843, 854 (9th Cir. 2016). All three factors support the timeliness
8 of CoreCivic’s motion to intervene.

9 First, this case remains in its infancy. Defendants have not yet answered the Complaint, and
10 their responsive pleading is not due until May 15, 2026; the Scheduling Conference will not be held
11 until June 29, 2026; the parties have not yet participated in a Rule 26(f) Conference; and discovery
12 has not yet commenced. (Dkt. 115, 129.) Although Judge Chesney granted a preliminary injunction
13 prior to transferring the case to this Court, she did so only as a prophylactic measure in case serious
14 medical issues were to arise before the transfer could be effectuated.

15 Second, CoreCivic did not delay seeking intervention. The “crucial date” is the date
16 CoreCivic “should have been aware that its interests would no longer be protected adequately by
17 the parties.” *Kalbers v. United States Dep’t of Just.*, 22 F.4th 816, 825 (9th Cir. 2021). Between the
18 filing of the Complaint and the February 6, 2026 hearing, Defendants appropriately filed briefs
19 opposing Plaintiffs’ request for class certification and injunctive relief and sought a transfer to this
20 Court, adequately protecting CoreCivic’s interests. At the February 6, 2026 hearing, Judge Chesney
21 informed the parties that she intended to transfer the case and had not planned to address Plaintiffs’
22 requests for injunctive relief and class certification but was open to ordering some limited relief as
23 a prophylactic measure to ensure nothing was missed during the transfer. (Dkt. 75 at 49:1–4, 85:3–
24 5, 172:1–3, 178:6–9.) Over the course of the hearing, however, this morphed into the Court
25 acquiescing in the issuance of sweeping injunctive relief and certification of a class despite
26 acknowledging that Defendants and CoreCivic were not deliberately indifferent, observing that
27 Plaintiffs’ proposed order was “too loosey goosey” to grant, Plaintiffs’ counsel’s admission that
28 class certification was unnecessary, and making no findings to support injunctive relief or class

1 certification. (*Id.* at 49:16–50:8, 102:14–25, 163:6–15.) During the hearing, Plaintiffs’ requested
2 relief also morphed from having Defendants develop a plan to address any findings by the Court of
3 constitutional deficiencies (Dkt. 22-38 at 3–4) to abdicating the Court’s responsibility for making
4 such findings to an external monitor with essentially unfettered discretion. When he was permitted
5 to speak, counsel for Defendants attempted to object to this turn of events, but to no avail. (*Id.* a
6 53:18–21, 57:22–58:2, 79:24–80:20.)

7 In the 21 days between the issuance of the February 10, 2026 Order memorializing the relief
8 ordered during the hearing and CoreCivic’s Motion to Intervene on March 3, 2026, CoreCivic
9 continuously urged Defendants to appeal that Order and seek an emergency stay pending appeal. It
10 was reasonable for CoreCivic to wait to see if Defendants would agree to appeal the February 10,
11 2026 Order and seek a stay. Seeking to intervene sooner would have risked wasting resources if
12 Defendants decided to expeditiously appeal and seek a stay. CoreCivic moved to intervene only
13 when it became clear that Defendants were not going to expeditiously appeal the February 10, 2026
14 Order in sufficient time to prevent CoreCivic’s interests from being impaired by the appointment
15 of an external monitor and the imposition of injunctive relief requiring significant changes to
16 CoreCivic’s operations and physical plant. *See Ctr. for Biological Diversity v. United States Fish*
17 *& Wildlife Serv.*, 2018 WL 11352129, at *2 (D. Ariz. Nov. 15, 2018) (“It was not until NABR
18 became aware of the Government’s uncertainty regarding appeal that it deemed intervention
19 necessary. In light of the Government’s decision not to appeal, there are no remaining parties to
20 represent Intervenor Applicant’s members on appeal.”). CoreCivic’s hand was also forced because
21 Plaintiffs had submitted a proposed monitor appointment order that significantly expanded the
22 scope of the February 10, 2026 Order, and Judge Chesney had set a hearing on the proposals for
23 March 5, 2026. Notably, at that hearing, Judge Chesney did not permit CoreCivic’s counsel to
24 participate.

25 In response to the Court’s question as to why CoreCivic was unable to present the
26 information in Warden Chestnut’s March 3, 2026 Declaration to Judge Chesney before the
27 February 6, 2026 hearing, CoreCivic clarifies that the information he provided was directly
28 responsive to the preliminary injunction that Judge Chesney unexpectedly ordered. Because

1 injunctive relief should be based on current information, Warden Chestnut sought to inform Judge
2 Chesney of “the current status of medical care, recreation, or access to counsel” due to operational
3 changes since completion of the briefing on Plaintiffs’ motion for a preliminary injunction. (Dkt.
4 82-1, ¶¶ 7–8; *see, e.g., id.*, ¶¶ 50, 54, 57–60.) He also responded to questions that Judge Chesney
5 raised at the February 6, 2026 hearing, such as the applicable standards with respect to the provision
6 of medical care (*id.*, ¶¶ 17–21, 24–32, 35–45). The remaining information demonstrated the
7 impairment of CoreCivic’s interests caused by the preliminary injunctive relief Judge Chesney
8 ordered. (*Id.*, ¶¶ 47–49, 54, 61–78, 80.)

9 Even now that Defendants have filed a notice of appeal, CoreCivic’s interests are still being
10 impaired because Defendants have confirmed that they will not seek a stay pending the Solicitor
11 General’s decision as to whether to proceed forward with that appeal, which they have
12 acknowledged was merely protective. (Dkt. 132 at 1–2.)

13 Third, there is no prejudice to the parties. *See Ctr. for Biological Diversity*, 2018 WL
14 11352129, at *2 (“NABR’s motion to intervene was filed prior to the expiration of the time for
15 seeking an appeal, and as such cannot be said to prejudice either party to the litigation.”).
16 Defendants did not oppose intervention either initially or for the purpose of appealing the March
17 27, 2026 Memorandum of Decision and March 30, 2026 Order, and they have taken no part in
18 briefing. In opposing CoreCivic’s original motion to intervene, Plaintiffs argued that if CoreCivic
19 intervenes, “the effort the parties (and the Court) have spent” litigating the Motion for Preliminary
20 Injunction and Motion for Class Certification “would be for naught,” and they will be forced to
21 expend additional resources “relitigate[ing]” those issues on appeal. (Dkt. 106 at 16–17.) The Ninth
22 Circuit rejected this same argument in *Haaland*, finding avoidance of additional briefing and the
23 possibility of new arguments not presented to the district court was “a poor reason to deny
24 intervention, particularly given the possibility that [the intervenor’s] additional arguments could
25 prove persuasive. That [it] might raise new, legitimate arguments [on appeal] is a reason to grant
26 intervention, not deny it.” 22 F.4th at 838–39.

27 There is also no substantive prejudice to Plaintiffs. The Northern District’s decision to
28 afford Plaintiffs injunctive relief was based on a generalized and speculative concern that

1 something could be missed during the transfer when Judge Chesney would be unable to enter any
 2 orders. (Dkt. 75 at 101:14–18.) The case has now been transferred, and in the brief period between
 3 the transfer order and re-assignment of the case to this Court, no such calamity came to pass.
 4 Contrary to Judge Chesney’s concern that the Eastern District would be unable to timely address
 5 any emergent issues, this Court has proven highly responsive in this and other cases. And as Judge
 6 Chesney noted during the hearing, this Court might not wish to proceed with a monitor (*Id.* at
 7 160:17–18), which is wholly unprecedented at this early stage of litigation, when Defendants have
 8 not even answered, and discovery has not yet commenced.⁴

9 **C. CoreCivic Has a Right to Intervene to Seek Appellate Review of the Court’s**
 10 **February 6, 2026 and March 30, 2026 Orders and March 27, 2026**
 11 **Memorandum of Decision and to Move for an Emergency Stay Pending**
 12 **Appeal.**

13 **1. CoreCivic Has Significant Protectable Interests that Have Already Been**
 14 **and Will Continue to Be Practically Impaired by the Court’s Orders.**

15 It is undisputed that CoreCivic owns and is responsible for the operation of the Facility,
 16 including the provision of healthcare, legal access, and conditions of confinement. It is also
 17 undisputed that the February 10, 2026 and March 30, 2026 Orders affect CoreCivic’s operation of
 18 the Facility. The February 10, 2026 Order impacts healthcare staffing, intake screening, initial
 19 appraisals, access to medical specialists, emergency services, healthcare appointments, provision
 20 of medication, healthcare requests, in-person and virtual legal visitation, scheduling of legal calls,
 21 provision of clothing and blankets, and outdoor recreation schedules and locations. (Dkt. 72.) The
 22 March 30, 2026 Order substantially expands upon the February 10, 2026 Order and requires
 23 CoreCivic to provide an external monitor access to its electronic health records system; all
 24 documents or information requested by the monitor within seven days of any such request;⁵ a three-

24 ⁴ In *Hernandez v. County of Monterey*, 110 F. Supp. 3d 929 (N.D. Cal. 2015), the case Plaintiffs
 25 cited as the basis for their request for appointment of a monitor, the monitor was not appointed until after
 26 substantial discovery had been undertaken and following ruling on summary judgment. Plaintiffs have cited
 no cases with a similar posture in which a court has ordered such sweeping injunctive relief or appointment
 of a monitor.

27 ⁵ The monitor has already sent an extensive initial document request that included all items proposed
 28 by Plaintiffs in the appointment order plus additional items of his own selection. Compliance with this
 request has required a substantial outlay of resources and the production of nearly 2,000 pages by CoreCivic
 to date. He also sent a lengthy set of nearly 150 written questions for CoreCivic to answer, as well as a

1 day, on-site inspection of its Facility; interviews with detainees and CoreCivic staff; and
2 interpretative services. (Dkt. 112 at 4–6.) The March 30, 2026 Order also prohibits CoreCivic from
3 having its counsel present during the inspection of its Facility and interviews with its staff. (*Id.* at
4 5.)

5 Plaintiffs cannot plausibly dispute that CoreCivic has a protectable interest in its business
6 operations and that the February 10, 2026 and March 30, 2026 Orders “will have direct, immediate,
7 and harmful effects” on that interest. *See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810,
8 818 (9th Cir. 2001). Instead, Plaintiffs attempt to argue that CoreCivic’s interests are invalid and
9 should be disregarded because the February 10, 2026 Order was intended to remedy alleged
10 constitutional violations. (Dkt. 106 at 19–20.) But Rule 24(a) includes no exception for
11 constitutional claims.

12 Plaintiffs further contend that the February 10, 2026 Order does not implicate any due
13 process rights because CoreCivic “undoubtedly was on actual notice of the relief Plaintiffs were
14 seeking,” and the Order “is unambiguous and specific.” (*Id.* at 21.) This argument ignores the reality
15 that Plaintiffs altered the relief sought during the course of the February 6, 2026 hearing. Their
16 proposed Order provided for Defendants to develop and submit “a detailed plan to ensure adequate
17 medical and mental healthcare” at the Facility, which a monitor would evaluate and then monitor
18 its implementation. (Dkt. 22-38 at 3–4, 6.) Mid-hearing, Plaintiffs abandoned this provision, which
19 would have permitted Defendants to define “adequate,” “comprehensive,” “qualified,” “timely,”
20 and “responsive” by reference to applicable national standards (e.g., the National Detention
21 Standards, American Correctional Association standards, and National Commission on
22 Correctional Healthcare standards), and instead convinced Judge Chesney to appoint a monitor
23 with unfettered discretion to come up with his own unilateral interpretation of these ambiguous and
24 highly subjective terms. CoreCivic (and Defendants) had no way of knowing that Plaintiffs would
25 pivot in this way. Plaintiffs’ argument is also a red herring because intervention as of right under
26 Rule 24(a) requires both that the proposed intervenor has “an interest relating to the property or

27
28 follow-up request seeking additional documents and information.

transaction that is the subject of the action” *and* that its interests are not adequately represented by existing parties. CoreCivic had no reason to doubt that Defendants would adequately represent its interests prior to or during the February 6, 2026 hearing.

2. CoreCivic’s Interests Are Not Adequately Represented by the Parties.

The test for intervention by right is “(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). Because Defendants’ notice of appeal was merely protective, there is no guarantee that they will make *any* arguments on appeal, much less that they will “undoubtedly” make all of CoreCivic’s arguments. What is clear, however, is that they will not seek a stay to prevent the imposition of further harm to CoreCivic’s interests while the Solicitor General decides whether to proceed with an appeal. (Dkt. 132 at 2.) As a result, CoreCivic should be permitted to intervene as a matter of right.

D. Alternatively, CoreCivic Should Be Permitted to Intervene.

Permissive intervention should be granted if the intervenor establishes: (1) a timely motion; (2) an independent ground for subject matter jurisdiction; and (3) a common question of law or fact exists between the prospective intervenor’s claim or defense and the main action. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992). CoreCivic satisfies all three requirements.

For the same reasons articulated in Section II.B *supra*, CoreCivic’s request to intervene is timely under Rule 24(b)(1). CoreCivic’s limited intervention would not disturb subject matter jurisdiction over Plaintiffs’ claims. *See Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011) (clarifying “that the independent jurisdictional grounds requirement does not apply to proposed intervenors in federal question cases when the proposed intervenor is not raising new claims”). The third requirement is satisfied where Plaintiffs acknowledge that “ICE and CoreCivic share precisely the same ultimate objective” in this litigation. (Dkt. 106 at 22.)

Under Rule 24(b)(3), CoreCivic’s intervention will not “unduly delay or prejudice the adjudication of the original parties’ rights.” CoreCivic is not seeking a stay of the case in its entirety;

1 while its appeal is pending, Defendants will file their responsive pleading to the Complaint, and the
 2 parties will proceed to discovery. Plaintiffs' speculative contention that the class will suffer
 3 irreparable harm in the interim is unavailing.

4 Additionally, Rule 24(c) is satisfied. CoreCivic's Motion to Intervene (Dkt. 82) and Motion
 5 to Stay Pending Appeal (Dkt. 86) set forth CoreCivic's interests in this litigation, the reasons
 6 supporting its request for intervention, and the arguments it intends to make on appeal; this brief
 7 sets forth the additional arguments CoreCivic intends to make on appeal with respect to the March
 8 27, 2026 Memorandum of Decision and March 30, 2026 Order. *See Westchester Fire Ins. Co. v.*
 9 *Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009) (Rule 24(c) satisfied where intervenor identified its
 10 interests in its motion to intervene); *Beckman*, 966 F.2d at 475 (intervention permitted where "the
 11 movant describes the basis for intervention with sufficient specificity to allow the district court to
 12 rule").

13 **III. This Court Should Stay the February 10, 2026 Order Pending Appeal.**

14 **A. Legal Standard.**

15 Courts consider four factors to determine whether a stay pending appeal should be granted:
 16 "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
 17 (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay
 18 will substantially injure the other parties interested in the proceeding; and (4) where the public
 19 interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation modified); *accord Am. Fed'n of*
 20 *Gov't Emps., AFL-CIO v. Trump*, 148 F.4th 648, 654–56 (9th Cir. 2025) (applying *Nken* factors to
 21 grant stay of preliminary injunction pending appeal). "The first two factors ... are the most critical."
 22 *Cnty. Legal Servs. in E. Palo Alto v. U.S. Dep't of Health & Hum. Servs.*, 137 F.4th 932, 937 (9th
 23 Cir. 2025) (citation modified).

24 The Ninth Circuit uses a "sliding scale" approach that balances these factors, such "that a
 25 stronger showing of one element may offset a weaker showing of another." *Leiva-Perez v. Holder*,
 26 640 F.3d 962, 966 (9th Cir. 2011). "Although a stay pending appeal certainly has some functional
 27 overlap with an injunction, stays are typically less coercive and less disruptive than are injunctions."
 28 *Id.* (citation modified). "Whereas 'the extraordinary remedy of injunction' is the means by which a

1 court ‘directs the conduct of a party ... with the backing of its full coercive powers,’ a stay operates
 2 only ‘upon the judicial proceeding itself ... either by halting or postponing some portion of the
 3 proceeding, or by temporarily divesting an order of enforceability.’” *Id.* (citation omitted). Thus,
 4 “a flexible approach is even *more* appropriate in the stay context.” *Id.*

5 All four factors weigh in favor of staying the February 6, 2026 Order pending the appeal.

6 **B. CoreCivic Is Likely to Prevail on the Merits.**

7 As CoreCivic set forth in detail in the Emergency Motion to Stay Pending Appeal briefing
 8 (Dkts. 86 and 110), CoreCivic is likely to succeed on the merits of the appeal because Judge
 9 Chesney did not follow the correct legal standards in granting a preliminary injunction and
 10 provisional class certification when she issued the February 10, 2026 Order. Although Judge
 11 Chesney has issued the Memorandum of Decision to “set forth in greater detail [her] reasons for
 12 that ruling” (Dkt. 111 at 2), it fails to cure the most significant errors in the February 10, 2026
 13 Order. Indeed, the March 30, 2026 Order only compounds those errors.

14 **1. The Memorandum of Decision Fails to Follow the Correct Legal**
 15 **Standards for Granting a Preliminary Injunction.**

16 **a. Judge Chesney Erred in Finding that Plaintiffs Were Likely to**
 17 **Succeed on the Merits of Their Claims.**

18 To prevail on a Fifth Amendment deliberate indifference claim to detention conditions,
 19 Plaintiffs were required to show that Defendants recklessly disregarded a serious risk of harm. *See*
 20 *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 636–37 (9th Cir. 2021). This “reckless
 21 disregard standard is a formidable one.” It requires Plaintiffs to establish that Defendants made
 22 intentional decisions with respect to the Facility conditions, which put them at a substantial risk of
 23 serious harm, Defendants recklessly disregarded that risk by not taking reasonable measures to
 24 abate it, and by not taking such measures caused their injuries. *Id.* at 636 (citation modified).
 25 “Neither ‘mere lack of due care,’ nor ‘an inadvertent failure to provide adequate medical care,’ nor
 26 even ‘medical malpractice,’ without more, is sufficient to meet this standard.” *Id.* (citations
 27 omitted). “Instead, a plaintiff must show that the defendant “disregard[ed] an excessive risk” to the
 28 plaintiff’s health and safety by failing to take “reasonable and available measures” that could have
 eliminated that risk.” *Id.*

1 In the Memorandum of Decision, Judge Chesney did not apply this legal standard in finding
 2 that Plaintiffs were likely to succeed on the merits of their medical deliberate indifference and
 3 conditions of confinement claims. Although she found evidence of systemic deficiencies based on
 4 the alleged Facility conditions, she did not find that Defendants were deliberately indifferent to the
 5 risk of harm. To the contrary, Judge Chesney found at the February 6, 2026 ruling that Defendants
 6 were not recklessly disregarding any risk of harm to detainees, but rather, doing their best to
 7 mitigate any such risk. (*See, e.g.*, Dkt. 75 at 102:11–25 [“I’m not finding there are any really bad
 8 people here, if I make certain findings. And it looks to me like they’re trying to do their best as
 9 opposed to saying I don’t care about these people, let this guy just rot away with his diabetic ulcers
 10 or whatever, that they are trying to do their best, but it’s just beyond them at the moment and that
 11 they may need some help in how they’re going to deal with it.”]).

12 Moreover, Judge Chesney’s statements that “it sounded like the defendants -- the expert or
 13 the doctor -- was trying to get things done but had some amount of insurmountable barriers or
 14 problems herself recognizing certain things weren’t done right saying, well, those have been
 15 remedied, but of course you can only do those so often” (*id.* at 90:5–11), and that “they weren’t
 16 prepared for this” (*id.* at 90:24), show, at most, negligence—which is legally insufficient. *See*
 17 *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

18 To prevail on their First and Fifth Amendment claims regarding access to counsel, Plaintiffs
 19 were required to show that the alleged restrictions on attorney visitation were not reasonably related
 20 to legitimate government interests under the four-factors test the Supreme Court adopted in *Turner*
 21 *v. Safely*, 482 U.S. 79 (1987). Judge Chesney still has not considered any of the *Turner* factors,
 22 much less find that the alleged restrictions failed that test.

23 Nor did Judge Chesney address the merits of Plaintiffs’ Rehabilitation Act claim or find a
 24 statutory violation. Nonetheless, Judge Chesney’s comments and findings show, at most, that she
 25 believed Plaintiffs or others were subjected to an inadequate medical system, not that Defendants
 26 discriminated against them “solely by reason” of their alleged disability. *See Fraihat*, 16 F.4th at
 27 650 (“Plaintiffs at most demonstrated that they were subjected to inadequate national policies that
 28 they claimed reflected deliberate indifference to COVID-19; they did not show they were treated

1 differently from other detainees ‘solely by reason’ of their disabilities.”); *see also Simmons v.*
 2 *Navajo County*, 609 F.3d 1011, 1022 (9th Cir. 2010) (“The ADA prohibits discrimination because
 3 of disability, not inadequate treatment for disability.”), *overruled in part on other grounds by*
 4 *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016).

5 Indeed, Plaintiffs failed to establish that they were likely to succeed on the merits of any of
 6 the above claims because their allegations of systemic failures were insufficiently based on
 7 anecdotes and/or evidence of isolated and sporadic incidents at one facility, which had only been
 8 open since September 2025 (five months) when Judge Chesney granted the preliminary injunction.
 9 *See Lewis v. Casey*, 518 U.S. 343, 358 (1996); *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 417
 10 (1977) (“[O]nly if there has been a systemwide impact may there be a systemwide remedy.”).

11 **b. Judge Chesney Erred in Finding that Plaintiffs Established**
 12 **Irreparable Harm.**

13 In the Memorandum of Decision, Judge Chesney found that Plaintiffs established
 14 irreparable harm for the same reasons she found evidence of systemic deficiencies in Facility
 15 conditions. This ruling is thus error for the same reasons above that show she failed to apply the
 16 correct legal standards to determine the merits of Plaintiffs’ claims.

17 In finding irreparable harm, Judge Chesney also erroneously relied on the mere possibility
 18 of future harm to others. Such hypothetical harm is insufficient to support a preliminary injunction.
 19 *See Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir.
 20 2011) (“An injunction will not issue if the person ... seeking injunctive relief shows a mere
 21 ‘possibility of some remote future injury’ or a ‘conjectural or hypothetical injury.’”) (internal
 22 citation omitted). Indeed, the record of Defendants’ cooperation with Plaintiffs to address Plaintiff
 23 Viera Reyes’ medical issues disproves that Plaintiffs would be irreparably harmed absent a
 24 preliminary injunction. (*See* Dkt. 75 at 85:23–86:5 “[W]e’ve proven we can work together on
 25 urgent health care. And I’ll continue to be involved in this case in responding to any urgent medical
 26 needs while this case is being transferred to the Eastern District. ... So the concerns about urgent
 27 medical needs are ones that we can work together to address in absence of an additional order
 28 beyond transfer”].)

c. **Judge Chesney Erred in Balancing the Equities and the Public Interest in Granting the Preliminary Injunction.**

In the Memorandum of Decision, Judge Chesney found that the balance of equities and the public interest weighed in Plaintiffs’ favor to prevent the violation of their constitutional rights. This ruling fails because the record shows Judge Chesney erred in determining Plaintiffs were likely to succeed on the merits of their constitutional claims where there was no evidence or finding that Defendants were deliberately indifferent to Plaintiffs’ serious medical needs and the conditions of confinement, she failed to balance the *Turner* factors, much less find that the alleged restrictions on attorney access were not reasonably related to legitimate government interests, and the evidence was insufficient to establish systemic deficiencies.

2. **The Preliminary Injunction Order Still Violates Rule 65.**

Federal Rule of Civil Procedure 65(d)(1) requires that every order granting an injunction “must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.” As set forth in CoreCivic’s Emergency Motion to Stay Pending Appeal (Dkt. 86 at 22–23; Dkt. 110 at 14–16), Judge Chesney erroneously adopted Plaintiffs’ proposed preliminary injunction despite recognizing that it lacked the required specificity and detail under Rule 65(d)(1). The Memorandum of Decision does not satisfy these requirements because its findings of fact and conclusions of law do not alter the preliminary injunctive relief Judge Chesney granted in the February 10, 2026 Order. The most egregious examples of this appear in Paragraphs 1, 2, and 4(a).

The record shows that, after reviewing Paragraph 1 of Plaintiffs’ proposed Order, Judge Chesney was shocked, stating: “[W]ell, I can’t do this. I mean, it’s got all kinds of generic things well beyond what you were doing on the medical to start with. You have things like timely and responsive medical services. There’s no way that I can make an order that’s just general like that.” (Dkt. 75 at 61:9–16.) She went on to question: “How is anybody going to know what they have to comply with?” (*Id.* at 61:17–19.) She continued, “That’s what this boils down to do it, do it right.... It says do it correctly. And ordinarily, that would not be a workable, in and of itself, injunctive order because then people would come back we are doing it fine.” (*Id.* at 63:5–6, 10–14.)

1 Despite recognizing the fundamental deficiencies of Paragraph 1 of Plaintiffs’ proposed
 2 Order, Judge Chesney was eventually persuaded that appointing a monitor could overcome them.
 3 But Rule 65 contains no such exception that allows a court to disregard Rule 65’s express mandates
 4 when ordering injunctive relief. *See Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (“[T]he
 5 specificity provisions of Rule 65(d) are no mere technical requirements”) (citing *Int’l*
 6 *Longshoremen’s Ass’n v. Philadelphia Marine Trade Ass’n*, 389 U.S. 64, 76, (1967) (“The judicial
 7 contempt power is a potent weapon. When it is founded upon a decree too vague to be understood,
 8 it can be a deadly one. Congress responded to that danger by requiring that a federal court frame
 9 its orders so that those who must obey them will know what the court intends to require and what
 10 it means to forbid.”)).

11 In the Memorandum of Decision, Judge Chesney states that the February 10, 2026 Order’s
 12 “provision for appointment of an independent, third-party monitor reflects this Court’s
 13 determination that the Court would benefit from such individual’s assessment with regard to the
 14 provision of constitutionally adequate health care at CCDF.” (Dkt. 111 at 12.) Judge Chesney,
 15 however, relied on cases where Congress authorized the court in any action “with respect to prison
 16 conditions” to appoint a special master pursuant to 18 U.S.C. § 3626. (*Id.*) Those cases are readily
 17 distinguishable because, as Judge Chesney found, “Plaintiffs are civil detainees rather than
 18 convicted prisoners.”⁶ (*Id.* at 10.) Thus, Judge Chesney was not authorized to appoint a special
 19 master under 18 U.S.C. § 3626. Nor did she follow the proper procedures for appointing one under
 20 that statute.

21 Indeed, the February 10, 2026 Order violates several mandatory provisions of that statute,
 22 including requirements limiting the scope of prospective and preliminary injunctive relief, when a
 23

24 ⁶ The cases are also factually distinguishable from this one because the court appointed a special master
 25 finding the “remedial actions necessary were entirely too complex without the help of a special master,” and
 26 it declined to grant relief where the record was insufficient to support it, *Cal. Coal. for Women Prisoners v.*
 27 *United States*, 723 F. Supp. 3d 712, 719 (N.D. Cal. 2024), or the court employed a special master ““to assist
 28 with crafting an injunction that remedies constitutional violations,” *Jensen v. Shinn*, 609 F. Supp. 3d 789,
 912 (D. Ariz. 2022). Here, Judge Chesney did not appoint a special master, did not find that remedial action
 was too complex, and did not appoint a special master to assist her fashion appropriate injunctive relief.
 Rather, she ordered a vague preliminary injunction and appointed an external monitor to subjectively
 interpret its terms and enforce it. (Dkt. 72.)

1 special master may be appointed in the remedial phase, the requirements for nominating and
 2 selecting one, and the amount of compensation to be paid by the Court. *See* 18 U.S.C.A. §
 3 3626(a)(1) (stating that prospective relief “shall extend no further than necessary to correct the
 4 violation of the Federal right of a particular plaintiff or plaintiffs”; prohibiting such relief unless
 5 the court finds it is “is narrowly drawn, extends no further than necessary to correct the violation
 6 ..., and is the least intrusive means”; and requiring the court to “give substantial weight to any
 7 adverse impact on public safety or the operation of a criminal justice system caused by the relief”);
 8 *id.* § 3626(a)(2) (requiring preliminary injunctive relief to comply with the same requirements as
 9 prospective relief and “automatically expire on the date that is 90 days after its entry, unless the
 10 court makes the findings required ... for the entry of prospective relief and makes the order final
 11 before the expiration of the 90-day period.”); *id.* § 3626(f)(1)(B) (limiting appointment of a special
 12 master “during the remedial phase of the action only upon a finding that the remedial phase will be
 13 sufficiently complex to warrant the appointment.”); *id.* § 3626(f)(2)(A)–(C) (setting forth the
 14 procedures for appointing a special master, including to “request that the defendant institution and
 15 the plaintiff each submit a list of not more than 5 persons to serve as a special master,” to give each
 16 party “the opportunity to remove up to 3 persons from the opposing party’s list,” and “to select the
 17 master from the persons remaining on the list.”); *id.* § 3626(f)(4) (requiring compensation to “be
 18 based on an hourly rate not greater than the hourly rate established under section 3006A for
 19 payment of court-appointed counsel Such compensation and costs shall be paid with funds
 20 appropriated to the Judiciary.”); *see* 18 U.S.C. § 3006A(d)(1) (setting “\$40 per hour for time
 21 reasonably expended out of court, unless the Judicial Conference determines that a higher rate of
 22 not in excess of \$75 per hour is justified for a circuit or for particular districts within a circuit”).

23 Judge Chesney did not follow any of these procedural requirements in appointing Dr.
 24 Anandkumar (Plaintiff’s second preference) as an external monitor over Defendants’ objections for
 25 a period of 120 days and ordering Defendants to pay for his out-of-court services at an hourly rate
 26 of \$425 per hour. (Dkt. 112.) She thus erred in relying on cases where the court appointed a special
 27 master under § 3626.

28 Moreover, appointing a monitor in Paragraph 2 to avoid having to adjudicate what Judge

Chesney foresaw as inevitable disputes over whether Defendants are compliant with the Order’s impermissibly vague provisions is an improper abdication of the Court’s judicial responsibilities. *See Armstrong v. Brown*, 768 F.3d 975, 987–88 (9th Cir. 2014) (concluding delegation of authority to Rule 706 expert “to make findings that go to the very heart of this litigation—compliance with the remedial plan” and adjudicate disputes between the parties over whether non-compliance has occurred is impermissible) (citing *Kimberly v. Arms*, 129 U.S. 512, 514 (1989) (“[The court] cannot, of its own motion, or upon the request of one party, abdicate its duty to determine by its own judgment the controversy presented, and devolve that duty upon any of its officers.”)).

Similarly, Paragraph 4(a), which relates to “temperature-appropriate clothing and blankets,” violates Rule 65(d)(1)(A), (B), **and** (C). This subparagraph is not specific in its terms and fails to provide sufficient detail for Defendants (and CoreCivic) to know whether any action is required. A reasonable reading of the Order is that they are not required to do anything additional to comply when the Facility already provides temperature-appropriate clothing (jackets) and two blankets to every detainee free of charge.

A subsequent dispute that has arisen between the parties after the issuance of the February 10, 2026 Order illuminates why Paragraph 4(a) violates Rule 65(d)(1)(B) and (C). While Plaintiffs’ counsel has recently insisted that Defendants must provide a sweatshirt and sweatpants to each detainee, the plain language of Paragraph 4(a) does not require Defendants to do so. Plaintiffs could have requested that Judge Chesney include specific language in this subparagraph dictating that the Facility provide sweatshirts and sweatpants, or even that it provide “additional” temperature-appropriate clothing, but they did not.

Because success is likely on appeal due to the February 10, 2026 Order’s failure to satisfy Rule 65 and the Court’s impermissible delegation of its adjudicatory role to the monitor to “cure” the violations of Rule 65, the Court should stay the Order pending appeal.

3. The Memorandum of Decision Fails to Follow the Correct Legal Standard in Granting Provisional Class Certification.

A plaintiff wishing to depart from “the usual rule that litigation is conducted by and on behalf of the individual names parties only” must establish that class certification is appropriate

1 under all the requirements of Federal Rule of Civil Procedure 23(a) and at least one requirement
 2 under Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). “Actual, not presumed
 3 conformance with Rule 23(a) remains ... indispensable.” *Id.* at 351 (citation omitted). Class
 4 “certification is proper only if the ... court is satisfied, after a rigorous analysis, that the
 5 prerequisites of Rule 23(a) have been satisfied.” *Id.* at 350 (citation modified and citations omitted).

6 As set forth in CoreCivic’s Emergency Motion to Stay Pending Appeal (Dkt. 86 at 23–25;
 7 Dkt. 110 at 14–16), Judge Chesney granted provisional class certification despite Plaintiffs’ counsel
 8 admitting at the February 6, 2026 Hearing that it was unnecessary (Dkt. 75 at 49:16–50:8.)

9 The Memorandum of Decision does not cure the error in the February 10, 2026 Order
 10 because there is at least a serious question as to whether Judge Chesney’s mere adoption of
 11 Plaintiffs’ Findings of Facts and Conclusions of Law satisfies her obligation to conduct a rigorous
 12 analysis of the Rule 23(a) factors before granting class certification.⁷ *Dukes*, 564 U.S. at 348.
 13 Moreover, Judge Chesney erred in finding that class certification was appropriate under Rule
 14 23(b)(2) because she relied on only a handful of detainees’ alleged medical conditions, primarily
 15 from the Wilcox Reply Declaration, to find that all declaratory and injunctive relief was appropriate
 16 for the entire class. Because there is no showing that the other 800 detainees suffered any injury,
 17 class certification was inappropriate under Rule 23(b)(2). *See Gomez v. J. Jacobo Farm Lab.*
 18 *Contractor, Inc.*, 334 F.R.D. 234, 255 (E.D. Cal. 2019) (“Certification under Rule 23(b)(2) is also
 19 inappropriate because the evidence indicates that many members of the class, including the
 20 proposed class representative, Ignacio Osorio, lack standing to pursue prospective injunctive
 21 relief.”), *modified on other grounds*, 2021 WL 431402, *1 n.1 (E.D. Cal. Apr. 20, 2020). Class
 22 certification the conditions of confinement and access to counsel claims was also inappropriate for
 23 the same reasons. *See, e.g., Algarin v. Maybelline, LLC*, 300 F.R.D. 444, 458 (S.D. Cal. 2014)
 24 (denying class certification under Rule 23(b)(2) because class members who were not injured
 25

26 ⁷ For example, in the Memorandum of Decision, Judge Chesney repeatedly cited to “Doc. No. 48-
 27 5” as evidence of systemically deficient medical care. (*See* Dkt. 111 at 3–7.) But Doc. No. 48-5 does not
 28 exist in the record. Judge Chesney apparently cited that document number only because that is what Plaintiffs
 cited as “the Wilcox Reply Decl.,” which they filed in support of their preliminary injunction motion reply
 brief. (*Compare* Dkt. 103 at 10, *with* Dkt. 111 at 3.) The Reply Wilcox Decl. is document number 49-3.

would not benefit from injunctive relief).

C. CoreCivic Will Be Irreparably Harmed Absent a Stay.

As set forth in detail in its Emergency Motion to Stay, CoreCivic will be irreparably harmed absent a stay pending appeal because the February 6, 2026 Order and the March 30, 2026 Order violate its constitutional and contractual rights by forcing it to expend significant time and resources to comply with the preliminary injunction without due process of law. (Dkt. 86 at 25–29.) The Orders do this by impairing CoreCivic’s operation and management of the Facility, subjecting its policies and procedures to inspection by an external monitor, requiring CoreCivic to provide secure physical access to the Facility, staff, and detainees as well as access to its policies, records, and other documents, and requiring CoreCivic divert staff and legal resources to gather information in response to the monitor’s questions and requests. (Dkt. 86 at 25–29; *see also* Dkt. 72, ¶ 2; Dkt. 112.)

The Memorandum of Decision does not avoid these irreparable harms to CoreCivic because it leaves intact the February 10, 2026 Order’s vague requirement in Paragraph 1 that directs Defendants to ensure compliance with undefined terms, such as “adequate” health care staffing, “comprehensive” intake procedures, “thorough” initial appraisals, “timely” approval and access, “timely completion of orders, and “timely and responsive” services. (Dkt. 72, ¶ 1(a)–(h).) These vague requirements to ensure compliance with undefined terms not only fails to give notice to Defendants and CoreCivic of what is required to do or not to do to comply with the Court’s Order (Dkt. 82-1, ¶¶ 22–23), but it improperly delegates the Court’s adjudicative role to an external monitor by granting him authority to subjectively define and enforce these terms. (Dkt. 72, ¶ 2 [The External Monitor will ensure compliance with this Order]; Dkt. 112.)

D. The Balance of Equities and the Public Interests Weigh in Favor of a Stay Pending Appeal.

The balance of equities considers whether issuance of the stay will substantially injure the other parties. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Where, as here, the government is a party, the balance of equities and the public interests factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Thus, the irreparable harm to Defendants’ sovereign and

1 compelling government interests identified in their opposition to the preliminary injunction (Dkt.
2 30 at 29–31) merge with the public interests in this case. Moreover, Defendants do not oppose
3 CoreCivic’s request for a stay pending an appeal of the Orders. Nor will they be harmed by a stay.
4 Indeed, staying the Order pending the appeal will avoid the irreparable harm that Defendants
5 identified will result from granting Plaintiffs’ request for a preliminary injunction. (*See id.* at 30–
6 31.)

7 Plaintiffs also will not be harmed by a stay pending appellate review of the Orders. Their
8 purported injury is based on conclusory allegations of speculative harm to class members,
9 supported by only a “few examples” of isolated and sporadic events that fall far short of establishing
10 irreparable harm due to systemic deficiencies that the Court has ordered preliminary injunctive
11 relief to address. *See Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)
12 (“Speculative injury does not constitute irreparable injury sufficient to warrant granting a
13 preliminary injunction.”).

14 Moreover, those “few examples” were from events in January 2026, not on current
15 conditions. Plaintiffs failed to identify any harm to a class member that has occurred since the
16 February 10, 2026 Order. (Dkt. 105.) If such a harm were to arise pending appeal of the Order, a
17 stay would not prevent Plaintiffs from filing a temporary restraining order, which is the appropriate
18 remedy, to address that issue. Plaintiffs will thus suffer no harm. Further, the parties will suffer no
19 harm because this case is still in its infancy as Defendants have not filed a responsive pleading or
20 answer, and the parties have conducted no discovery. A stay of the Orders pending the appeal will
21 not stay the proceedings or otherwise prevent the Court from transferring the case or addressing
22 any other issues that may arise.

23 **IV. Conclusion.**

24 For the reasons above, this Court should stay the February 10, 2026 Order and the March
25 30, 2026 Order pending appeal.

1 DATED this 23rd day of April, 2026.

2 STRUCK LOVE ACEDO, PLC

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4 By /s/ Daniel P. Struck

5 Daniel P. Struck
6 Dana M. Keene
7 Anne M. Orcutt
8 Shannon L. Knorr

9 Nicholas H. Rasmussen
10 McCORMICK BARSTOW, LLP

11 *Attorneys for Intervenor CoreCivic, Inc.*
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