

Nos. 26-1294; 26-2302; 26-3344

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FERNANDO GOMEZ RUIZ; et al.,

Plaintiffs-Appellees,

v.

UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; et al.,

v.

Defendants-Appellees,

CORECIVIC, INC.,

Intervenor-Appellant.

On Appeal from the United States District Court
for the Northern District of California,
No. 3:25-cv-09757-MMC
Hon. Maxine M. Chesney

RESPONSE TO MOTION TO CONSOLIDATE APPEALS

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Intervenor-Appellant CoreCivic acknowledges that the Appeals in Nos. 26-1294 (“CoreCivic’s First Appeal”), 26-2302 (“Defendants’ Appeal”), and 26-3344 (“CoreCivic’s Second Appeal”) arise from the same district court orders. However, for the reasons below, the Court should consolidate only CoreCivic’s First and Second Appeals. It should not consolidate CoreCivic’s Appeals with the Defendants’ Appeal, which is merely a protective appeal. The Solicitor General has not yet approved Defendants’ appeal and Defendants will likely be seeking indefinite extensions of time to file its Opening Brief until it secures that approval. Because CoreCivic’s Appeals are taken from a preliminary injunction at CoreCivic’s expense, it seeks expedited resolution. Briefing and resolution should not be delayed while Defendants determine whether they will even proceed with their Appeal.

I. Factual Background.

Plaintiffs-Appellees are seven former and current immigration detainees at the California City Detention Facility (“Facility”) in California City, California. (Dkt. 15, ¶¶ 4–8, 13–24.) Defendants-Appellees are United States officials and agencies, including ICE. (*Id.*, ¶¶ 20–24.) CoreCivic owns the Facility and operates it under an agreement with ICE, but it is not a named Defendant. (Dkt. 45-1, ¶ 3.) Plaintiffs allege that they are subject to unlawful conditions of confinement and provided inadequate health care, legal access, and conditions of confinement at the Facility,

in violation of the First and Fifth Amendments and the Rehabilitation Act. (Dkt. 15, ¶¶ 4-5, 269-294.)

On February 10, 2026, the Honorable Maxine Chesney entered an Order granting in part Plaintiffs’ Motions for Preliminary Injunction and Class Certification (“February 10, 2026 Order”). (Dkt. 72.) Despite failing to include any factual or legal findings to support either a preliminary injunction or class certification, the Order required Defendants to “ensure” that certain health care measures were implemented at the Facility, e.g., adequate health care staffing and timely access to medical specialists, emergency services, and medications. (*Id.*) The Order granted a third-party monitor access to the Facility, including reviewing detainee medical records, interviewing detainees and CoreCivic staff, and an on-site inspection, to “monitor” and “ensure” Defendants’ compliance with these measures. (*Id.*) The Order also required Defendants to “ensure” that detainees are provided additional legal access, clothing, and outdoor recreation. (*Id.*) As the owner and operator of the Facility, the cost of accommodating and implementing these measures falls squarely on CoreCivic. (Dkt. 82-1; Dkt. 143-1.)

On March 3, 2026, CoreCivic filed an Emergency Motion to Intervene for the purpose of appealing the Court’s February 10, 2026 Order and seeking a stay of the Order pending appeal. (Dkt. 82.) Although Defendants had adequately protected CoreCivic’s interests up to that point, they had not yet filed a notice of appeal, and

CoreCivic could not wait any longer to appeal and stay the Order. (Dkt. 108.) CoreCivic also filed an Emergency Motion to Stay Pending Appeal. (Dkt. 86.) In that briefing, CoreCivic argued that the court failed to consider and make any findings on the requisite factors for entering a preliminary injunction (likelihood of success, irreparable harm, balance of equities, and public interest, *see Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008)), the Order violated Rule 65 (no specificity or detail), and the Order did not analyze or make the requisite findings to certify a class under Rule 23(a) (commonality, typicality, numerosity, adequacy) and Rule 23(b)(2). (*Id.*) CoreCivic asked Judge Chesney to shorten the briefing schedule and expedite a hearing on the Emergency Motions. (Dkt. 88.) Judge Chesney denied CoreCivic's request for expedited resolution. (Dkt. 89.)

On March 4, 2026, CoreCivic filed a notice of appeal from the February 10, 2026 Order (Dkt. 90), which created CoreCivic's First Appeal.

On March 5, 2026, at a hearing to select the appointed monitor, Judge Chesney acknowledged the February 10, 2026 Order's shortcomings and Plaintiffs offered to submit a memorandum supporting the Order. (Dkt. 99.) Judge Chesney accepted that offer and Plaintiffs submitted Proposed Factual Findings and Conclusions of Law on March 13, 2026. (Dkt. 103.)

Meanwhile, Judge Chesney still had not ruled on CoreCivic's Emergency Motions to Intervene and Stay Pending Appeal. Instead, on March 27, 2026, she

entered a Memorandum of Decision (“March 27, 2026 Memorandum of Decision”), “set[ting] forth in greater detail [the] reasons for” the February 10, 2026 Order (Dkt. 111), and on March 30, 2026, she entered an Order appointing a monitor and setting forth the scope of his appointment (“March 30, 2026 Order”) (Dkt. 112). She then transferred the case to the Eastern District of California. (Dkt. 113.)

On April 13, 2026, Defendants filed a notice of appeal from the February 10, 2026 Order, the March 27, 2026 Memorandum of Decision, and the March 30, 2026 Order, which created Defendants’ Appeal. (Dkt. 127.)

On April 14, 2026, the Honorable Jennifer Thurston denied CoreCivic’s Emergency Motion to Intervene without prejudice. (Dkt. 131.) She did so because she believed that Defendants’ appeal effectively mooted the basis for CoreCivic’s requested intervention. (*Id.*) But on April 17, 2026, Defendants informed Judge Thurston that their notice of appeal was merely protective and that they had not yet received authorization from the Solicitor General to move forward with Defendants’ appeal. (Dkt. 132 at 1-2.)

In light of that revelation, CoreCivic sought reconsideration of Judge Thurston’s order denying its request for intervention. (*Id.* at 2-3.) CoreCivic further noted that it “would like to amend its notice of appeal to include the March 27 Memorandum (Dkt. 111) and March 30 Order (Dkt. 112).” (*Id.* at 3 n.3.) Judge

Thurston ordered the parties “to re-brief the motion to intervene to address the full scope of any proposed intervention based on the current record.” (Dkt. 133.)

On April 23, 2026, CoreCivic filed a Supplemental Brief Regarding Motion to Intervene. (Dkt. 135.) CoreCivic requested to intervene for the purpose of “appealing the February 10, 2026, and March 30, 2026 Orders *and* March 27, 2026 Memorandum of Decision.” (*Id.*, emphasis added.)

On May 13, 2026, Judge Thurston granted CoreCivic’s request to intervene for purposes of appealing the February 10, 2026 Order. (Dkt. 144.) On May 14, 2026, Judge Thurston denied CoreCivic’s Emergency Motion to Stay Pending Appeal. (Dkt. 145.) On May 22, 2026, Judge Thurston clarified, at CoreCivic’s request (Dkt. 147), that “CoreCivic may intervene as a defendant for the limited purposes of appealing the February 10, 2026 [Order], the March 27, 2026 Memorandum of Decision, *and* the March 30, 2026 Order.” (Dkt. 148, emphasis added.) That same day, CoreCivic filed a notice of appeal from the March 27, 2026 Memorandum of Decision and March 30, 2026 Order. (Dkt. 149.)

Meanwhile, this Court opened and entered briefing schedules for the three Preliminary Injunction Appeals. In CoreCivic’s First Appeal (No. 26-1294), the Opening Brief was originally due by March 10, 2026. (Doc. 2.1.) On March 24, 2026, this Court ordered the parties to address in their briefs whether it had jurisdiction over CoreCivic’s appeal. (Doc. 5.1.) At the time, CoreCivic had not yet

been granted intervenor status. Concerned about that jurisdictional issue, CoreCivic filed several extensions of time to file its Opening Brief to allow the district court to rule on their intervention request. (Doc. 6.1, 7.1, 8.1, 9.1, 12.1, 13.1.) The Opening Brief in CoreCivic's First Appeal is currently due by June 1, 2026. (Doc. 13.1.)

In Defendants' Appeal (No. 26-2302), Defendants' Opening Brief was originally due by May 12, 2026. (Doc. 2.1) On May 5, 2026, Defendants filed a request to extend the Opening Brief deadline by 60 days, until July 13, 2026. (Doc. 4.1.) Defendants reiterated that their appeal was merely "protective," and that they are still waiting on the Solicitor General to decide whether to pursue the appeal, a process that "remains ongoing." (*Id.*) This Court granted that request. (Doc. 5.1.)

In CoreCivic's Second Appeal (No. 26-3344), CoreCivic's Opening Brief is due by June 24, 2026. (Doc. 3.1) Plaintiffs' and Defendants' Answering Briefs are due by July 22, 2026.

II. Argument.

Plaintiffs are correct that CoreCivic's First and Second Appeals and Defendants' Appeal arise from the same district court proceeding and challenge the same three Orders. And CoreCivic acknowledges that consolidation is generally appropriate where multiple appeals are taken from the same order(s). CoreCivic agrees to consolidate its two Appeals. But given the unique circumstances here, the Court should not consolidate Defendants' Appeal at this time.

Because this is a preliminary injunction appeal, time is of the essence. *See* 9th Cir. R. 3–3. CoreCivic has diligently pursued their appeals, but because it was not a party to the case, it had to request and secure intervention to do so. That process dragged on—at no fault of CoreCivic’s—for nearly three months. That delay required CoreCivic to extend the Opening Brief deadline in its First Appeal to allow any jurisdictional impediment to be cured. Now that it has been cured and CoreCivic has been granted intervention status to appeal all three rulings, its Appeals should not be delayed any longer. The preliminary injunction has imposed—and will continue to impose—upon CoreCivic and its Facility significant expense and resources. (Dkt. 82-1; Dkt. 143-1.)

Consolidating CoreCivic’s two Appeals with Defendants’ Appeal will prolong resolution of CoreCivic’s challenge. Defendants have not yet decided whether they will even pursue their appeal. A “unified briefing schedule” for all three Appeals, as Plaintiffs’ propose, will necessarily protract resolution of CoreCivic’s challenge because Defendants will continue to request extensions of time until they finally have approval to proceed with their Appeal. Regardless of whether CoreCivic timely files its Opening Brief, it will be at the mercy of the “unified briefing schedule” and Defendants’ requested extensions of time as to when briefing is completed. And if Defendants ultimately decide not to pursue their

Appeal, then the extensions will have been a waste of time and unnecessarily delayed CoreCivic's Appeals.¹

CoreCivic understands Plaintiffs' desire to avoid filing two Answering Briefs. CoreCivic also does not wish to have CoreCivic's Appeals and Defendants' Appeal resolved by separate panels. But the solution is not to consolidate all three Appeals (at least not now) and order a "unified briefing schedule." CoreCivic proposes the following solution instead:

- The Court consolidates only CoreCivic's First and Second Appeals.
- The Court orders that the briefing schedule in CoreCivic's First Appeal aligns with the briefing schedule in CoreCivic's Second Appeal:
 - CoreCivic's Consolidated Opening Brief in Nos. 26-1294 and 26-3344 is due by June 24, 2026; Plaintiffs' and Defendants' Consolidated Answering Briefs are due by July 22, 2026; any optional Consolidated Reply Brief is due within 21 days of service of the Consolidated Answering Briefs.
- The Court denies Plaintiffs' request to consolidate Defendants' Appeal without prejudice.

¹ None of the cases that Plaintiffs cite involved a preliminary injunction appeal, addressed consolidation of briefing schedules, or resolved consolidation to one party's benefit (Plaintiffs) and the detriment of another (CoreCivic).

- Defendants shall give prompt notice of the Solicitor General’s decision on whether to pursue Defendants’ appeal and if (and when) Defendants have elected to withdraw their appeal.
- If Defendants give notice that the Solicitor General has approved their appeal, Plaintiffs, Defendants, or CoreCivic may file a renewed motion to consolidate.

III. Conclusion.

For these reasons, the Court should deny Plaintiffs’ request to consolidate all three Appeals and instead consolidate only CoreCivic’s two Appeals. The Court should also order that the briefing schedule in No. 26-1294 aligns with the briefing schedule in No. 26-3344, and order that the Consolidated Opening Brief in those appeals is due by June 24, 2026.

RESPECTFULLY SUBMITTED this 29th day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Description of Documents: Response to Plaintiffs' Motion to Consolidate Appeals

RESPECTFULLY SUBMITTED this 29th day of May, 2026.

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