



## II. BACKGROUND

The Court incorporates the background from its recent order granting CoreCivic’s limited motion for intervention as of right. (Doc. 144.) Of particular import here, the PI Order requires Defendants to: “(1) ensure constitutionally adequate medical care ([Doc. 72,] ¶ 1)<sup>1</sup>; (2) provide access to an independent, third-party ‘External Monitor’ for a period of 120 days (*id.* ¶ 2); (3) ensure that detained individuals have timely and confidential access to attorneys through in-person, contact legal visits and calls (*id.* ¶ 3)<sup>2</sup>; and (4) provide free temperature-appropriate clothing and at least one hour of outdoor recreation time per day (*id.* ¶ 4).” (Doc. 111 at 4.) In addition, on March 30, 2026, Judge Chesney entered an order appointing Muthusamy Anandkumar as an external monitor regarding compliance with the Court’s preliminary injunction. (Doc. 112.)

## III. STANDARD OF DECISION

When evaluating whether to stay a preliminary injunction pending appeal, courts in this Circuit apply the *Nken* test, which considers: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 422, 434 (2009) (internal quotation and citation omitted); *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020) (applying *Nken* factors to evaluate whether to stay a preliminary injunction).

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<sup>1</sup> More specifically regarding medical care, the Court directed Federal Defendants to ensure: adequate health care staffing; comprehensive, documented medical intake screening, performed by a “qualified medical provider” within 12 hours of a person’s arrival; thorough Initial Appraisals performed timely by a primary care provider; timely approval and access to medical specialists; timely and responsive emergency services; continuity of medical care upon intake and thereafter, including timely completion of active medical orders, access to scheduled provider appointments, and consistent provision of medication; timely access to prescribed medications; and a responsive “sick call” request system. (Doc. 72 at 3.)

<sup>2</sup> Regarding access to counsel, the Court ordered Federal Defendants to ensure: in-person legal visitation seven days per week from 8:00 a.m. to 8:00 p.m., in private and confidential settings, with each legal visit lasting up to three hours in length; contact attorney visits that do not take place through a pane of glass, absent documented security grounds to deny such contact; scheduling of confidential legal calls with legal representatives of up to 90 minutes each, to take place within two business days of a request; and provision of written information regarding protocols for attorney-client communication to all individuals detained at California City. (Doc. 72 at 4.)

1 The first two factors of the test “are the most critical.” *Id.*

2 Courts often use a sliding scale approach and evaluate the first two factors, weighing the  
3 likelihood of success and the possibility of irreparable injury to the movant in the absence of a  
4 stay. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011); *Leiva-*  
5 *Perez v. Holder*, 640 F.3d 962, 965-68 (9th Cir. 2011) (per curiam) (applying same sliding scale  
6 approach to *Nken* factors). On the first prong, likelihood of success, the party requesting the stay  
7 does not have to demonstrate that it is more likely than not that they will win on the merits. *Id.* at  
8 966. However, “[i]t is not enough that the chance of success on the merits be better than  
9 negligible,” and “more than a mere possibility of relief is required.” *Nken*, 556 U.S. at 434  
10 (internal quotations omitted). Courts routinely use a variety of formulations to evaluate whether  
11 the movant has shown a sufficient possibility of success, such as “reasonable probability,” “fair  
12 prospect,” “substantial case on the merits,” or that “serious legal questions are raised.” *Leiva-*  
13 *Perez*, 640 F.3d at 967–68 (internal quotations and citations omitted).

14 For the second prong, the movant must show that irreparable harm is probable absent a  
15 stay. *Leiva-Perez*, 640 F.3d at 968 (“In other words, [a movant’s] burden with regard to  
16 irreparable harm is higher than it is on the likelihood of success prong, as she must show that an  
17 irreparable injury is the more probable or likely outcome.”). “[S]imply showing some possibility  
18 of irreparable injury” does not suffice. *Nken*, 556 U.S. at 434 (internal quotations omitted). The  
19 Court reaches the last two factors only after the first two are satisfied. *Doe # 1*, 957 F.3d at 1058.  
20 If the stay request “has not made a certain threshold showing regarding irreparable harm . . . then  
21 a stay may not issue, regardless of the [movant’s] proof regarding the other stay factors.” *Leiva-*  
22 *Perez*, 640 F.3d at 965 (citing *Nken*, 556 U.S. at 433–34). Courts therefore often start by  
23 considering irreparable harm. *See Doe #1*, 957 F.3d at 1058.

#### 24 **IV. DISCUSSION**

25 On this record, the analysis begins and ends with the irreparable harm prong, because  
26 CoreCivic, which has dedicated only a few paragraphs in each of its briefs to the subject, has not  
27 demonstrated any irreparable harm is likely. CoreCivic’s arguments related to irreparable harm  
28 focus on asserted operational disruptions and costs associated with implementing the PI Order.

1           **A. Past Harms**

2           Some of the harms articulated by CoreCivic have already come to pass. For example:

- 3           • CoreCivic complains of having to reconfigure the legal visitation schedule to comply with  
4           the PI Order, a task that “took” one of its staff members approximately eight man-hours to  
5           accomplish. (*See* Doc. 82-1, Mar. 2, 2026 Declaration of Christopher Chestnut, ¶ 69.)  
6           There is no suggestion that this task involves an ongoing expenditure of time or resources.  
7           • CoreCivic subdivided its four existing legal visitation rooms to facilitate additional  
8           contact visits at a total project cost of \$28,775 (Doc. 143-1, May 11, 2026 Declaration of  
9           Christopher Chestnut), ¶ 9.) That total cost did not include electrical work, which was  
10          incorporated in a separate project budget. (*Id.*, ¶ 10.) Yet it is undisputed that the entire  
11          project was completed at the end of March 2026. (*Id.*, ¶ 9.)  
12          • To accommodate the PI Order’s requirement for 90-minute legal calls, CoreCivic  
13          separated its existing 10 virtual attorney visits (VAV) booths, which were originally in  
14          one area, into two areas and added two additional booths. (*Id.*, ¶¶ 12–16.) The project,  
15          which was also completed at the end of April 2026, cost \$64,468.33. (*Id.*, ¶ 15.)

16          The requested stay would not avoid or reverse these past harms. *See Doe #1*, 957 F.3d 1059  
17          (relevant irreparable injury is that which is “likely to occur during the period before the appeal is  
18          decided”). Thus, they are not relevant here.

19           **B. Anticipated Monetary Harm**

20          CoreCivic also anticipates incurring additional costs to comply with the PI Order, which  
21          the Court takes at face value for purposes of this analysis. These anticipated costs include:

- 22          • PI Order ¶ 1(b) requires that each arriving detainee receive “a comprehensive,  
23          documented medical intake screening, performed by a qualified medical provider within  
24          12 hours.” CoreCivic appears to be assuming that the use of the term “qualified medical  
25          provider” means a Nurse Practitioner (NP). (Doc. 82-1, ¶ 34.) Based on this assumption,  
26          CoreCivic estimates that it will need to expend approximately \$900,000 per year to hire an  
27          additional five Nurse Practitioners to adequately staff that role (*Id.*, ¶ 47.) If CoreCivic is  
28          unable to quickly recruit these additional NPs, it may have to fill the positions with

1 overtime assignments at even greater cost. (*Id.*, ¶ 48.)<sup>3</sup>

- 2 • In addition, PI Order ¶ 1(a) more generally requires “adequate health care staff[ing],”  
3 which CoreCivic asserts is likely to lead to additional staffing costs because  
4 implementation will be based on the subjective opinion of a monitor. (*Id.*, ¶ 49.)
- 5 • To comply with the Court’s Order requiring 90-minute legal calls, CoreCivic estimates it  
6 will need to staff an additional 2.5 officers at an approximate cost of \$260,208 per year.  
7 (Doc. 143-1, ¶ 17.) Thus far, it has increased staffing related to legal calls by one  
8 additional officer, at an approximate cost of \$104,083.20 per year, but CoreCivic indicates  
9 staffing “may need to be further increased when the Facility reaches full capacity.” (*Id.*, ¶  
10 17.)
- 11 • In addition, CoreCivic indicates it is “required to staff the contact visitation area with an  
12 additional officer, at an approximate cost of \$104,083.20 per year due to the need to  
13 visually monitor the additional four contact visitation rooms.” (*Id.*, ¶ 11.)

14 Even assuming these figures are accurate and further assuming there may be additional  
15 costs imposed as the PI Order is implemented, CoreCivic fails to address a fundamental question:  
16 whether CoreCivic ultimately will be required to bear these costs. As the Court discussed when  
17 addressing CoreCivic’s motion to intervene, CoreCivic has now revealed portions of its contract  
18 it deemed pertinent to the Court’s inquiry into “which contractual party bears the costs of  
19 implementing operational changes imposed by the Court’s preliminary injunction order.” (*See*  
20 Doc. 141 (Minute Order calling for supplemental filings).)

21 The present record now indicates the agreement to be an “indefinite  
22 delivery indefinite quantity (IDIQ) contract” pursuant to which  
23 CoreCivic is compensated a fixed amount for the “Facility Operating  
24 Charge,” and a per diem rate based on the number of detainees. (Doc.  
25 143-2 at 6–7.) The contract further provides that CoreCivic “shall  
26 furnish all personnel, management, equipment, supplies, training,  
27 certification, accreditation, and services necessary for performance  
28 of all aspects of the contract,” and “[u]nless explicitly stated  
otherwise, [CoreCivic] is responsible for all costs associated with

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<sup>3</sup> Though CoreCivic’s declarant, Warden Chestnut, expresses concern that CoreCivic may not be able to hire a sufficient number of NPs and/or their training may take time (Doc. 82-1, ¶¶ 47, 48), this concern remains hypothetical. Regardless, even if these roles will have to be filled temporarily at higher, overtime rates, the legal analysis herein remains unchanged.

1 and incurred as part of providing the services outlined in this  
2 contract.” (Doc. 143-2 at 9.) The agreement also provides:

3 Should a change in the applicable standards and laws  
4 identified in this contract result in a documentable financial  
5 impact on the contractor, the contractor must notify the CO  
6 within 30 calendar days of receipt of the change and **both  
contractor and Government will negotiate best course of  
action**, either 1) a waiver to the Standards or, 2) negotiate a  
7 prospective change in the bed day or other rates. Please note,  
8 any change in compensation rate will be prospective,  
9 beginning on the date the change is effective.

10 (*Id.* (emphasis in original))

11 (Doc. 144 at 13–14 (footnote omitted).)

12 For purposes of intervention, the Court found that “by providing for a re-negotiation  
13 process, rather than indemnification, the provisions present some degree of risk that CoreCivic  
14 will not be fully reimbursed for compliance costs incurred.” (*Id.* at 14 (emphasis added).) But the  
15 threshold is higher for this motion to stay, which requires a showing that “irreparable injury is the  
16 more probable or likely outcome.” *Leiva-Perez*, 640 F.3d at 968. CoreCivic indicates that it has  
17 not yet sought reimbursement under the above-quoted contract provision, suggesting it has not  
18 done so “because the February 10, 2026 and March 30, 2026 Orders do not change the applicable  
19 standards (i.e., the 2025 National Detention Standards) or the law.” (Doc. 143 at 11.) But  
20 CoreCivic fails to explain this debatable interpretation of the contract language and does not  
21 suggest it will altogether forego any effort to renegotiate its contract rates to recoup expenditures  
22 incurred to ensure compliance with a PI Order directed at Federal Defendants. The Court takes no  
23 position on how any such efforts might resolve, and only finds here that CoreCivic has failed to  
24 demonstrate that it is likely to ultimately bear these costs.

25 1. Anticipated Operational Interruptions

26 CoreCivic also anticipates that ongoing compliance with the PI order will cause some  
27 additional operational disruption. For example, during the upcoming visit to the Facility by the  
28 Court-appointed monitor, CoreCivic indicates that it will have to allocate security staff to  
accompany the monitor (Doc. 143-1, ¶ 18); CoreCivic may need to allocate additional security  
staff to transport detainees to and from interview rooms if the monitor elects to speak with  
detainees (*id.*, ¶ 19); the use of space to facilitate those meetings may interrupt other uses of those

1 rooms (*id.*, ¶ 20); and if the monitor elects to meet with health care staff and related  
2 administrative staff, those individuals will be unable to complete their duties for the duration of  
3 the interviews. (*Id.*, ¶ 21.)<sup>4</sup>

4 Even assuming these asserted harms rise beyond *de minimis* impacts, any associated  
5 disruptions could be avoided by bringing additional staff on duty for the brief duration of the  
6 monitor’s visit.<sup>5</sup> Given the Court’s reasoning in the section above, CoreCivic has failed to  
7 demonstrate why it is unlikely to be able to recoup the costs of such staffing needs.

### 8 C. Asserted Due Process Violation

9 Finally, CoreCivic argues that it suffers ongoing, irreparable constitutional harm because  
10 the PI Order imposed upon it obligations to implement policy and procedural changes when it  
11 was not a party to the case without due process of law. (Doc. 86 at 26; *see also* Doc. 135 at 28.)  
12 In support of this argument, CoreCivic cites *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702,  
13 715 (9th Cir. 1997). Though *Monterey Mechanical* reiterates the well-established proposition that  
14 a “an alleged constitutional infringement will often alone constitute irreparable harm,” *id.*, it is  
15 otherwise unhelpful to CoreCivic’s cause. *Monterey Mechanical* concerned a party that alleged it  
16 lost out on a state contract because of unconstitutional discrimination in the bidding process, a  
17 form of harm the Ninth Circuit found sufficient to support the imposition of preliminary  
18 injunctive relief. *Id.* at 704–705, 715. Nothing in that case supports CoreCivic’s assertion that its  
19 due process rights were or are being violated by the PI Order.

20 Moreover, the Court notes that the PI Order does not expressly name CoreCivic and  
21 instead enjoins only the actions of Federal Defendants. (*See* Doc. 72.) CoreCivic fails to  
22 acknowledge this or discuss caselaw addressing the circumstances in which a nonparty may be

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24 <sup>4</sup> CoreCivic also mentions that prior to the PI Order, it “offered female detainees the choice whether to  
25 participate in recreation in the indoor gym or the outdoor recreation yard, and they generally preferred to  
26 use the indoor gym,” but to comply with the PI Order’s requirements regarding outdoor recreation it is “no  
27 longer offering detainees the option of recreation in the indoor gym.” (Doc. 82-1, ¶ 54.) To the extent  
28 CoreCivic is suggesting this constitutes irreparable harm, the harm is not to CoreCivic, so will not be  
considered for purposes of establishing irreparable harm to movant.

<sup>5</sup> Though the availability of visitation rooms cannot be remedied simply by adding staff, again the Court  
fails to appreciate how the unavailability of those rooms impacts CoreCivic in any material way.

1 bound by an injunction. *See Consumer Fin. Prot. Bureau v. Howard L., P.C.*, 671 F. App’x 954,  
2 955 (9th Cir. 2016) (summarizing relevant Ninth Circuit authority by explaining: “An injunction  
3 binds a non-party only if it has actual notice, and either abets the enjoined party in violating the  
4 injunction or is ‘legally identified’ with the enjoined party. A finding of legal identity may be  
5 based on either the non-party’s close affiliation with the enjoined party prior to the injunction, or  
6 its status as a successor to the enjoined party after the injunction issued.”) (internal citations and  
7 quotations omitted). The Court will not manufacture arguments for CoreCivic to support this  
8 theory of harm.

9 Relatedly, CoreCivic argues that the harm it asserts is “compounded by the fact that the  
10 preliminary injunction subjects CoreCivic to supervision by an external monitor with unfettered  
11 discretion to determine compliance with its overbroad and vague terms.” (Doc. 86 at 26.) In a  
12 general sense, this appears to be an attempt to import into the irreparable harm analysis a concept  
13 that relates to likelihood of success. CoreCivic argues elsewhere that the PI Order violates Federal  
14 Rule of Civil Procedure 65 because the Order’s “use of undefined and vague terms, such as  
15 ‘adequate,’ ‘thorough,’ ‘timely,’ and ‘responsive,’ grants unfettered discretion to the monitor to  
16 subjectively define and enforce” the Order. (Doc. 86 at 23.) Even assuming CoreCivic’s Rule 65  
17 argument is correct, the mere presence of uncertainty does not amount to irreparable harm given  
18 that procedural mechanisms remain available to obtain clarification.

19 **V. CONCLUSION AND ORDER**

20 Because CoreCivic has failed to demonstrate probable or likely irreparable harm, its  
21 motion to stay operation of the PI Order pending appeal is **DENIED**.

22  
23 IT IS SO ORDERED.

24 Dated: May 14, 2026

  
UNITED STATES DISTRICT JUDGE