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15 **UNITED STATES DISTRICT COURT**

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

17 CARMEN ARACELY PABLO SEQUEN,
18 YULISA ALVARADO AMBROCIO, and
LIGIA GARCIA,

19 Plaintiffs,

20 v.

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

27 Defendants.
28

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

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND OPPOSITION TO
DEFENDANTS' COUNTER-MOTION
FOR PARTIAL SUMMARY JUDGMENT
(12H WAIVER)**

Judge: Hon. P. Casey Pitts

Date: N/A

Time: N/A

Crtrm.:8

Trial Date: None Set

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I. INTRODUCTION

Defendants removed a long-standing 12-hour limit on holding facility detention without considering (i) existing alternatives, (ii), the conflict that this policy change created with existing detention standards, or (iii) the constitutional or humanitarian implications of the policy change, resulting in a new policy—the 12-Hour Waiver Memo—that necessarily engenders constitutional violations. Defendants’ attempt to defend their faulty decision-making fails to engage with the relevant legal standards and instead rests on a series of irrelevant and unfounded assertions. Because the 12-Hour Waiver Memo is arbitrary and capricious, it should be vacated in full, the default and presumptive remedy under the APA.

II. THE COURT SHOULD NOT STAY PROCEEDINGS PENDING DEFENDANTS’ APPEAL

Defendants’ stay request repeats arguments made in their opposition to class certification. *Compare* ECF No. 185 (“Opp.”) at 3–4 *with* ECF No. 179 at 2–4. Plaintiffs incorporate by reference their opposition to a stay as set forth in Plaintiffs’ reply to the motion for class certification (ECF No. 181 at 1–2) and reserve all rights with respect to Plaintiffs’ opposition to Defendants’ stay request, including but not limited to the right to raise arguments on appeal.¹

III. DEFENDANTS’ STANDING ARGUMENTS ARE MERITLESS

Defendants’ novel challenge to Plaintiffs’ standing to seek relief beyond 630 Sansome impermissibly conflates standing with the nature of relief under section 706 of the APA, and lacks any supporting authority. *See* 5 U.S.C. § 706.

First, except for citing the well-established requirements for standing, Defendants’ so-called standing arguments are devoid of supporting case law. Defendants do not cite a single case that supports the proposition that Plaintiffs or class members lack standing to bring an APA challenge to the 12-Hour Waiver Memo Policy—a policy that indisputably applies to 630

¹ As factual background, Defendants also reference their analysis in prior briefing and reserve all rights related to “President Trump’s national emergency declaration and applicable Executive Orders.” Opp. at 4. Plaintiffs incorporate by reference the corresponding arguments made in Plaintiffs’ prior briefing (*see* ECF No. 116 at 5), and reserve all rights related to the national emergency declaration and applicable Executive Orders.

1 Sansome—simply because they were detained in only one holding facility or because the class is
 2 defined in relation to a particular holding facility. Defendants’ standing arguments appear based
 3 on the premise that individuals outside the class were *also* injured by the challenged policy and
 4 that vacatur would redress not only Plaintiffs’ and class members’ injuries but others’ as well.
 5 This is immaterial to standing. Defendants offer no case law for the proposition that Article III
 6 standing requires that *only* the plaintiffs and class members have redressable injuries fairly
 7 traceable to the challenged policy; for standing purposes, it is sufficient that Plaintiffs satisfy the
 8 predicate requirements which, as this Court has recognized, they do. *See* ECF No. 138 at 25. The
 9 Supreme Court has acknowledged that the resulting relief from a successful APA challenge may—
 10 and typically does—extend beyond an individual plaintiff. *See Lujan v. Nat’l Wildlife Federation*,
 11 497 U.S. 871, 890 n.2 (1990) (noting that final agency action could “of course be challenged
 12 under the APA by a person adversely affected” and that the entire final agency action would
 13 “thereby be affected” by the challenge); *see also id.* at 913 (Blackmun, J., dissenting) (agreeing, in
 14 dissenting opinion, with the majority’s view that, under the APA, “a single plaintiff, so long as he
 15 is injured by the rule, may obtain ‘programmatic’ relief that affects the rights of parties not before
 16 the court.”). Thus, Defendants’ redressability argument is wrong; the relevant question for
 17 standing is whether vacatur would redress Plaintiffs’ injury—which it would—*not* whether
 18 vacatur would affect the rights of non-plaintiffs or non-class members. *See Lujan v. Defs. of*
 19 *Wildlife*, 504 U.S. 555, 561–62 (1992) (“When the suit is one challenging the legality of
 20 government action . . . standing depends considerably upon whether the plaintiff is himself an
 21 object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the
 22 action or inaction has caused him injury, and that a judgment preventing or requiring the action
 23 will redress it.”).

24 Second, Defendants’ contention that the 12-Hour Waiver Memo does not require any
 25 specific action, and therefore detention times (and conditions) may vary at different field offices,
 26 is predicated on a misapprehension of Plaintiffs’ claim and injury. The injury at issue arises
 27 from—and is fairly traceable to—Defendants’ decision to remove the 12-hour maximum on
 28 detention time in holding facilities without determining whether those facilities were equipped for

1 prolonged detention, not on the conditions of confinement at any one facility. Defendants’
2 repeated emphasis on the variability in the *conditions* at different ERO field offices is irrelevant to
3 the agency’s unreasoned policymaking when issuing the 12-Hour Waiver Memo.

4 Defendants’ arguments “conflate[] standing with the merits” by shoehorning scope of
5 relief principles into the standing inquiry. *See Lazar v. Kroncke*, 862 F.3d 1186, 1198–99 (9th Cir.
6 2017). As set forth below, vacatur of the 12-Hour Waiver Memo is the presumptive remedy. *See*
7 *infra*, section VII.

8 **IV. PLAINTIFFS’ CLAIMS ARE JUSTICIABLE**

9 As Defendants concede (Opp. at 11), the Court has rejected Defendants’ remaining
10 justiciability arguments regarding standing, ripeness, and mootness. Defendants do not advance
11 additional arguments or offer reasons why the Court should reconsider its prior rulings, and thus
12 Defendants’ justiciability arguments should fail for the reasons set forth in the Court’s prior
13 decisions. *See* ECF No. 138 at 25–30; ECF No. 158 at 12–15.

14 **V. THE 12-HOUR WAIVER MEMO IS SUBJECT TO APA REVIEW**

15 Defendants’ contention that the 12-Hour Waiver Memo is not subject to APA review
16 plainly misconstrues Plaintiffs’ APA claim and can be readily rejected.

17 **A. Plaintiffs’ Lack Another Adequate Remedy**

18 Defendants conflate Plaintiffs’ APA challenge to the 12-Hour Waiver Memo with
19 Plaintiffs’ claims under the First and Fifth Amendments to the U.S. Constitution to argue that
20 Plaintiffs have another adequate remedy at law, an argument belied by both the case law and the
21 distinct remedies Plaintiffs seek for their different claims.

22 First, as the Supreme Court has explained, the availability of other traditional remedies
23 does not preclude judicial review under the APA. *Bowen v. Massachusetts*, 487 U.S. 879, 904–05
24 (1988). Instead, where *Congress* created *specific* procedures for review of *specific* agency actions
25 pursuant to a statute other than the APA, APA review is barred because it duplicates that process.
26 *See id.*; *see also Darby v. Cisneros*, 509 U.S. 137, 146 (1993) (“Congress intended by that
27 provision simply to avoid duplicating previously established special statutory procedures for
28 review of agency actions.”). The case law Defendants cite confirms this point. In *City of Oakland*

1 v. *Lynch*, the Ninth Circuit concluded that “the forfeiture proceeding. [18 U.S.C. §§ 981-983]”
 2 precluded APA review because the statute itself provided a forum for adjudication, a limitations
 3 period, a standard of review, and authorization for judicial relief. *City of Oakland v. Lynch*, 798
 4 F.3d 1159, 1165–66 (9th Cir. 2015); *see also id.* at 1166 (“Permitting parties to file under the APA
 5 and circumvent the short deadlines Congress established in the forfeiture law would make mush of
 6 the law.”).

7 Here, Defendants fail to identify any “special statutory procedures” enacted by Congress
 8 for review of the 12-Hour Waiver Memo. *See Darby*, 509 U.S. at 146. And Defendants’ argument
 9 that the availability of relief from particular unconstitutional conditions of confinement, such as
 10 inadequate medical care, constitutes adequate relief under the APA is plainly incorrect. A lawsuit
 11 sounding in equity and seeking to enforce the constitutional minimum for detention conditions is
 12 not a Congressionally-authorized specific procedure for review of ICE’s policy on the maximum
 13 length of confinement in its holding facilities. *See Bowen*, 487 U.S. at 904–05.

14 Moreover, the mere fact that Defendants apparently have elected not to hold noncitizens at
 15 630 Sansome for longer than 12 hours because otherwise they cannot comply with the Court’s
 16 preliminary injunction is immaterial, as is Defendants’ suggestion that Plaintiffs pursue
 17 constitutional claims at other field offices beyond 630 Sansome. Because Defendants have not
 18 identified any “precisely drawn, detailed statute” that preempts vacatur of the 12-Hour Waiver
 19 Memo, Plaintiffs have no other adequate remedy at law. *See City of Oakland*, 798 F.3d at 1165.

20 **B. The 12-Hour Waiver Memo is Not Committed to Agency Discretion by Law**

21 As Defendants acknowledge, section 701(a)(2)’s prohibition on review of agency action
 22 applies to “those rare instances” where courts have “no meaningful standard against which to
 23 judge the agency’s exercise of discretion.” *Opp.* at 13 (citing *Pinnacle Armor, Inc. v. United*
 24 *States*, 648 F.3d 708, 719 (9th Cir. 2011) and 5 U.S.C. § 701(a)(2)). This is not one of “those rare
 25 instances.” *Pinnacle Armor, Inc.*, 648 F.3d at 719.

26 For example, Defendants’ own longstanding detention policies set standards against which
 27 the Court may assess the 12-Hour Waiver Memo. *See California v. Ross*, 362 F. Supp. 3d 727, 745
 28 (N.D. Cal. 2018) (noting that courts may consider established agency policies when identifying a

1 meaningful standard of review) (citing *Mendez-Gutierrez v. Ashcroft*, 340 F.3d 865, 868 (9th Cir.
2 2003)); *Pinnacle Armor Inc.*, 648 F.3d at 719. Contrary to Defendants’ assertion (Opp. at 13), the
3 2011 PBNDS, section 2.6 (“Hold Rooms in Detention Facilities”) repeatedly and categorically
4 states that detention must be limited to 12 hours. *See, e.g.*, ECF No. 65-1 at 16, § 2.6(I) (“An
5 individual may not be confined in a facility’s hold room for more than 12 hours.”), *id.* § 2.6(II)(2)
6 (“No detainee shall be confined in a hold room for more than 12 hours.”), *id.* at 18, § 2.6(V)(B)
7 (“An individual may not be held in a hold room for more than 12 hours.”).

8 Further, the “exceptional circumstances” exception in ICE’s prior holding facility
9 detention policies does not mean “there is no meaningful standard” by which to judge the 12-Hour
10 Waiver Memo; if anything, the opposite is true. Courts are well-positioned to interpret the term
11 “exceptional circumstances” in the 12-Hour Waiver Memo, including whether, as Defendants
12 argue, it reasonably extends to every single detention in every single holding facility nationwide
13 for a 12-month period. *See, e.g., Int’l Olympic Comm. v. San Francisco Arts & Athletics*, 781 F.2d
14 733, 738 (9th Cir. 1986), *amended*, 789 F.2d 1319 (9th Cir. 1986), *aff’d sub nom. San Francisco*
15 *Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522 (1987) (interpreting meaning of
16 undefined term “exceptional circumstances” in attorneys’ fees statute).

17 Finally, it is similarly immaterial that ERO field offices retain discretion to hold a
18 noncitizen up to 72 hours under the challenged 12-Hour Waiver Memo; Plaintiffs do not challenge
19 individualized decisions about how long to detain a particular person, but rather ICE’s policy
20 decision to forego the 12-hour maximum limit wholesale. Because there are meaningful standards
21 for judicial review of that agency decision, section 701(a)(2) does not bar APA review.

22 C. The 12-Hour Waiver Memo is Final Agency Action

23 Defendants’ attempts to cast the 12-Hour Waiver Memo as wholly discretionary and a
24 series of individualized operational decisions is unavailing. The 12-Hour Waiver Memo meets
25 both of the requirements for final agency action: (1) it was effective immediately and therefore
26 “mark[s] the consummation of the agency’s decisionmaking process,” and (2) it had a direct and
27 immediate effect, with practical and legal consequences for individuals detained for more than 12
28 hours in ICE holding facilities. *Cf. Prutehi Litekyan: Save Ritidian v. United States Dep’t of Air*

1 *Force*, 128 F.4th 1089, 1108 (9th Cir. 2025) (“*Prutehi Litekyan*”).

2 Defendants’ arguments fail to engage with the relevant legal standard. It is irrelevant to
3 finality that the 12-Hour Waiver Memo is implemented by individual field offices, or that the
4 length of holding facility detention may vary. Nor are Defendants correct that APA review of the
5 12-Hour Waiver Memo would bring every aspect of ICE’s day-to-day operations within the scope
6 of APA review. Plaintiffs do not challenge individual detention decisions or lengths; Plaintiffs
7 challenge the policy change that lifted the 12-hour maximum on all holding facility detentions
8 nationwide. Defendants’ attempt to cast a formal, written, nationwide policy issued by ICE’s
9 Assistant Director of Custody Management as a series of individual detention decisions is
10 meritless.

11 **VI. THE 12-HOUR WAIVER MEMO IS ARBITRARY AND CAPRICIOUS AND NOT**
12 **IN ACCORDANCE WITH THE LAW**

13 The 12-Hour Waiver Memo constitutes an arbitrary and capricious policy change because
14 it fails to consider existing alternatives, is inconsistent with other ICE detention policies, and fails
15 to consider ICE’s constitutional obligations or the humanitarian costs of its actions. Defendants’
16 arguments, which rest on conclusory statements in the administrative record and raise irrelevant
17 factual issues, cannot compensate for ICE’s unreasoned decision-making.

18 **A. Defendants Cannot Show that ICE Considered Existing Alternatives**

19 ICE failed to consider “alternatives that are within the ambit of the existing policy,” when
20 it rescinded its prior 12-hour detention limit. *Dep’t of Homeland Sec. v. Regents of the Univ. of*
21 *California*, 591 U.S. 1, 30 (2020) (cleaned up). Defendants’ contention that ICE considered—and
22 rejected—the available alternatives of discretionarily releasing noncitizens or declining to take
23 individuals into custody because those alternatives were barred by Executive Orders is
24 unpersuasive for multiple reasons.

25 First, Defendants identify a single sentence in the 12-Hour Waiver Memo that they
26 contend reflects ICE’s consideration of discretionary release or declining to take noncitizens into
27 custody. Opp. at 17–18. This conclusory statement is insufficient to evince consideration of
28 existing alternatives. *See Nat’l TPS All. v. Noem*, 166 F.4th 739, 773 (9th Cir. 2026) (Mendoza &

1 Wardlaw, J.J., concurring) (“[C]onclusory statement[s] do[] not satisfy the agency’s duty of
 2 providing a ‘*reasoned*’ explanation for the change.”) (emphasis in original) (citing *Encino*
 3 *Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016)); *Thakur v. Trump*, 787 F. Supp. 3d 955,
 4 983 (N.D. Cal. 2025) (“‘[C]onclusory statements will not do; an agency’s statement must be one
 5 of *reasoning*.’”) (emphasis in original) (citing *Amerijet Int’l, Inc. v. Pistole*, 753 F.3d 1343, 1350
 6 (D.C. Cir. 2014)).

7 Second, the Executive Orders Defendants cite do not prevent ICE from discretionarily
 8 releasing noncitizens. Defendants identify two parts of Executive Order 14165, *Securing Our*
 9 *Borders*, 90 Fed. Reg. 8467 (Jan. 20, 2025), that they contend categorically prohibit discretionary
 10 release. Opp. at 18–19 (citing AR-9² and AR-10). Neither does. The first clause is a critique of the
 11 prior administration’s so-called “catch-and-release policies,” and does not itself place prohibitions
 12 on any actions or curtail any use of discretion. AR-9. The second clause instructs the Department
 13 of Homeland Security (DHS) Secretary to, “consistent with applicable law, issue new policy
 14 guidance or propose regulations regarding the appropriate and consistent use of lawful detention
 15 authority under the INA, including the termination of the practice commonly known as ‘catch-and-
 16 release.’” AR-10. This language does not prohibit ICE from discretionarily releasing noncitizens,
 17 and indeed the Executive Order explicitly instructs DHS that it must operate “consistent with
 18 applicable law.” AR-10. Thus, at a minimum, ICE was required to assess whether its assumption
 19 that it lacked the discretion to release *any* noncitizens under *any* circumstances was “consistent
 20 with applicable law.” *See Dep’t of Homeland Sec.*, 591 U.S. at 28 (“But [DHS Acting Secretary’s]
 21 memo offers no reason for terminating forbearance. She instead treated the Attorney General’s
 22 conclusion regarding the illegality of benefits as sufficient to rescind both benefits and
 23 forbearance, without explanation.”). The administrative record and the 12-Hour Waiver Memo
 24 itself evinces no such consideration; instead, like in *Dep’t of Homeland Security*, ICE extrapolated
 25 from the Executive Orders to the 12-Hour Waiver Memo without “any consideration whatsoever”
 26 of whether the Executive Order actually required the choice ICE made. *See Dep’t of Homeland*
 27

28 ² All references to “AR” are to the administrative record filed by Defendants. *See* ECF No. 145,

1 *Sec.*, 591 U.S. at 29. ICE’s assumption that it “no longer ha[d] the option to discretionarily release
2 aliens, nor decline to take aliens into custody from [its] counterparts” (AR-2) in *any* circumstances
3 based on the language Defendants identify in Executive Order 14165 is wholly unreasonable.

4 Third, even if Executive Order 14159, *Protecting the American People Against Invasion*,
5 90 Fed. Reg. 8443 (Jan. 20, 2025) and Executive Order 14165 could conceivably be read to
6 prohibit the discretionary release of any noncitizen from detention under any circumstances, it
7 does not require Defendants to arrest more noncitizens than they can detain within the prior policy.
8 ICE’s failure to consider this obvious alternative is fatal to the 12-Hour Waiver Memo.

9 Finally, Defendants’ contention that “there is no record before the Court about any facility
10 other than 630 Sansome,” Opp. at 19, is both incorrect and irrelevant. As Defendants concede, the
11 administrative record contains examples of ERO field offices throughout the country requesting
12 waivers due to detention overcrowding resulting from the Trump Administration’s mass arrest
13 campaign. *See, e.g.*, AR-29 (Baltimore), AR-40-41 (NYC), AR-90 (New Orleans).³ And facts
14 related to the *conditions* of confinement at each ICE field office are immaterial to Plaintiffs’ APA
15 claim, which challenges a written, final, nationwide policy and the decision-making undergirding
16 it; the Court does not need facts about individual holding facility conditions to assess the
17 sufficiency and coherence of ICE’s reasoning.

18 **B. The 12-Hour Waiver Memo is Inconsistent with Existing ICE Policies**

19 As a preliminary matter, Defendants are incorrect that the 2011 PBNDS permit detention
20 of noncitizens in holding facilities for more than 12 hours “in exceptional circumstances.” Opp. at
21 19. Contrary to Defendants’ assertion, Plaintiffs’ motion does not state that, and neither does
22 section 2.6 of the 2011 PBNDS (“Hold Rooms in Detention Facilities”). *See, e.g.*, ECF No. 65-1 at
23 16, § 2.6(I) (“An individual may not be confined in a facility’s hold room for more than 12
24 hours.”), *id.*, § 2.6(II)(2) (“No detainee shall be confined in a hold room for more than 12 hours.”),
25 *id.* at 18, § 2.6(V)(B) (“An individual may not be held in a hold room for more than 12 hours.”).

26 _____
27 ³ The request submitted by the ERO Offices in Harlingen, Miami, and San Antonio in February
28 2025 appears unique in that it was a waiver on the time limit for one week only in connection with
a specific, scheduled removal operation. AR-33-34.

Defendants do not dispute that the 2011 PBNDS remain in effect. Thus, the 12-Hour Waiver Memo directly conflicts with the relevant 2011 PBNDS prohibition on detention over 12 hours, with no guidance to ERO Field Offices about how to reconcile this contradiction. This is arbitrary and capricious. *Encino Motorcars*, 579 U.S. at 222 (“[U]nexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.”) (citation omitted).⁴

C. The 12-Hour Waiver Memo is Not In Accordance With Law

Defendants’ argument about the lawfulness of the 12-Hour Waiver Memo misses the point. Plaintiffs do not need to identify a statute that mandates that noncitizens can only be held in holding facilities for 12 hours. Rather, as the Court previously noted, the APA violation arises from the certainty of a *constitutional* violation resulting from the 12-Hour Waiver Memo. ECF No. 158 at 21 (“Providing for overnight or multi-night detention in hold rooms while preserving a prohibition on ‘sleeping apparatus’ is not just likely but certain to lead to violations of noncitizens’ due-process rights to be free from punitive conditions of confinement.”); *see also Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 984 (C.D. Cal. 2024) (granting summary judgment on APA claim where plaintiffs sufficiently established constitutional violation “resulting from the agencies’ policy and practice”). This is not “speculation,” as is evidenced by this Court’s prior ruling and rulings in similar matters. *See, e.g.*, ECF No. 138 at 46; *Mercado v. Noem*, 800 F. Supp. 3d 526, 574-575 (S.D.N.Y. 2025); *D.N.N v. Liggins*, No. 1:25-CV-01613-JRR, 2026 WL 632371, at *28–33 (D. Md. Mar. 6, 2026) (issuing preliminary injunction on constitutional claims regarding overcrowding, unhygienic conditions, and lack of medical screening and care in ERO Baltimore hold rooms). And, as noted above, it is immaterial that conditions may vary by field office; the 12-Hour Waiver Memo as written engenders constitutional violations because it permits overnight or

⁴ Defendants also ask the Court to interpret “exceptional circumstances” in the prior policies to encompass *all* circumstances since June 24, 2025. Opp. at 19–20. This is absurd, as exceptional circumstances are—by definition—rare departures from a consistent course of operations, but it also is immaterial. Even setting aside the conflict with prior ICE ERO policies, the “unexplained inconsistency” between the 12-Hour Waiver Memo and the extant 2011 PBNDS renders the 12-Hour Waiver Memo arbitrary and capricious.

1 multi-day detention while simultaneously leaving in place ICE’s prohibition on the use of beds or
2 bedding.

3 **D. There is No Evidence that ICE Considered the Constitutional or**
4 **Humanitarian Consequences of Extending Detention Limits Without Making**
5 **Any Other Changes**

6 Defendants do not dispute that their “constitutional . . . obligations” for overnight or multi-
7 day detention are “important aspects of the problem” that must be considered as part of reasoned
8 agency decision-making. *See Nat’l Urb. League v. Ross*, 489 F. Supp. 3d 939, 982 (N.D. Cal.
9 2020), *order clarified*, *Nat’l Urb. League v. Ross*, 491 F. Supp. 3d 572, 575 (N.D. Cal. 2020)
10 (citing *Oregon Nat. Resources Council v. Thomas*, 92 F.3d 792, 798 (9th Cir. 1996)). Yet
11 Defendants do not identify anywhere in the 12-Hour Waiver Memo or its administrative record
12 where ICE (1) acknowledged, let alone considered, the constitutional implications of extending
13 holding facility detention six-fold while leaving all other detention policies in place; (2)
14 considered what changes would need to be made in order to safely and humanely detain people in
15 existing holding facilities overnight or for multiple days, let alone implemented a plan for making
16 those changes; or (3) mentioned the inherent contradiction between the 12-Hour Waiver Memo
17 and the 2011 PBNDS, or how ERO field offices should reconcile it.

18 Instead, Defendants cite cursory references to safety, security, and humane treatment in the
19 12-Hour Waiver Memo, none of which explain *how* ICE will safely detain people for extended
20 periods in facilities not equipped for that purpose. *Opp.* at 20–21. These “conclusory statement[s]
21 do[] not satisfy the agency’s duty of providing a ‘*reasoned* explanation for the change.’” *Nat’l*
22 *TPS All.*, 166 F.4th at 773 (Mendoza & Wardlaw, J.J., concurring) (emphasis in original) (citation
omitted); *see also Thakur*, 787 F. Supp. 3d at 983.

23 Defendants also contend that Plaintiffs were required to establish that the constitutional
24 requirements would be the same nationwide. Not so. The onus is on the agency to *consider* its
25 constitutional obligations; it is irrelevant whether those constitutional obligations are uniform
26 (indeed, had ICE considered its constitutional obligations, its analysis could have included an
27 assessment of whether those obligations varied by circuit). Instead, the 12-Hour Waiver Memo
28 and its administrative record are silent on this important aspect.

Finally, Defendants rehash their irrelevant arguments about variability in the *conditions* at field offices throughout the country; as explained above, specific facts about the conditions of confinement at individual field offices have no bearing on whether the 12-Hour Waiver Memo is arbitrary and capricious.

VII. NATIONWIDE VACATUR IS APPROPRIATE AND NECESSARY

Section 706 of the APA establishes a strong presumption in favor of vacatur. *Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 532 (9th Cir. 2015); *Montana Wildlife Fed'n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025) (“Where a court holds an agency action unlawful, vacatur and remand is the default remedy under the APA”). It is Defendants’ burden to justify departing from this strong presumption. They come nowhere close. To the contrary, Defendants’ arguments for partial vacatur or vacatur without remand misunderstand the statute; badly misread the Supreme Court’s and Ninth Circuit’s recent decisions in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), and *Nat’l TPS All.*, 166 F.4th 739; and rely almost entirely on non-controlling and out-of-circuit case law. *See* Opp. at 21–25. This Court should therefore vacate the 12-Hour Waiver Memo in its entirety.

A. Complete Vacatur of the 12-Hour Waiver Memo is the Default Remedy Under the APA, and There is No Basis for a Partial Vacatur

The APA’s text is clear: A reviewing court “*shall* . . . hold unlawful and set aside agency action” that is “arbitrary, capricious . . . or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A) (emphasis added). Accordingly, “[w]here a court holds an agency action unlawful, vacatur and remand is the default remedy under the APA.” *Montana Wildlife Fed’n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025).⁵ Here, Plaintiffs challenge a single agency policy that, by its express terms (i.e., the “Nationwide Hold Room Waiver”), applies on a nationwide basis. If that policy is arbitrary and capricious, or otherwise unlawful, then the APA mandates that it be vacated

⁵ Defendants passingly suggest (Opp. at 24) that vacatur is not permissible *at all* under the APA, citing dicta in Justice Gorsuch’s concurrence in *United States v. Texas*, 599 U.S. 670, 693–703 (2023). Not only does that dicta conflict with binding Ninth Circuit precedent holding that vacatur is the default remedy, but no court has adopted the concurrence’s approach, which would fatally undermine the APA’s judicial-review provisions.

1 in full.

2 Despite the APA’s mandatory terms, Defendants contend that this Court should limit any
3 vacatur of the 12-Hour Waiver Memo to 630 Sansome. They identify no legal basis under the
4 APA for this attempted geographic excision of a facially universal agency policy, and they cite no
5 cases in which a court has entered a partial vacatur along geographic lines. Opp. at 21–22. For
6 good reason: “APA suits are not suits in equity,” but suits under “a direct statutory grant of federal
7 court jurisdiction over cases arising from final agency actions,” in which “Congress explicitly
8 provided one mandatory remedy.” *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F. Supp. 3d 66,
9 119–20 (D. Md. 2025). Thus vacatur under section 706 is simply not susceptible to the type of
10 equitable limitation that Defendants request.

11 Furthermore, Defendants conspicuously fail to mention that *National TPS Alliance*—the
12 only case that they *do* cite in support of a partial vacatur—actually *affirmed full nationwide*
13 *vacatur* of a DHS policy. *See Nat’l TPS All.*, 166 F.4th at 767–68 (explaining that “the proper
14 remedy under APA § 706(2) is to set aside [Secretary Noem’s] actions and restore the status
15 quo”). In doing so, the Ninth Circuit expressly rejected the government’s arguments that APA
16 relief should be limited to the named plaintiffs, even though the policy was nationwide in scope.
17 *See id.* That is precisely what this Court should do here.

18 Nor is the fact that the Detention Class includes only people who are, or will be, detained
19 at 630 Sansome, relevant to the question of remedy. *See* Opp. at 22. The class definition defines
20 who the plaintiffs are; it does not define what the court must do when faced with an unlawful
21 agency action. That latter question is controlled by the APA’s text, which mandates that the
22 agency action be “set aside.” 5 U.S.C. § 706(2)(A); *see Corner Post, Inc. v. Bd. of Governors of*
23 *Fed. Rsrv. Sys.*, 603 U.S. 799, 831 (2024) (Kavanaugh, J., concurring) (“When a reviewing court
24 determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—
25 not that their application to individual petitioners is proscribed.”) (citation omitted).

26 Finally, Defendants’ request for a partial vacatur is incoherent even on its own terms. Not
27 only is partial field-office-specific vacatur of a single policy document not a form of relief
28 recognized under the APA, but it would effectively require the Court to write a new version of the

12-Hour Waiver Memo that applies differently in different field offices, usurping the agency’s responsibility on remand. It also would have troubling operational implications: detained class members transferred from 630 Sansome to other field office locations (such as Stockton) or to other field offices (such as the Los Angeles or Seattle field offices) could then become subject again to the very policy the Court had found arbitrary and capricious.

B. *Trump v. CASA* Does Not Apply to APA Vacatur

Defendants’ separate argument that the Supreme Court’s recent decision in *CASA*, 606 U.S. 831, bars complete vacatur under the APA is meritless. *See* Opp. at 23. *CASA* addressed only equitable injunctions under the Judiciary Act of 1789. *See* 606 U.S. at 860 (holding that universal injunctions “likely exceed the authority conferred by the Judiciary Act”). As this Court observed elsewhere, “[t]he reasoning and holding in *CASA* were grounded in and limited to the statute at issue there,” and “[t]he opinion says nothing that calls into question the longstanding practice of vacating . . . agency action under the APA.” *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *33 (N.D. Cal. Dec. 19, 2025); *see also Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *34 (D.C. Cir. Nov. 22, 2025) (“*CASA* is a statutory-interpretation case, and the statute interpreted was the Judiciary Act of 1789. Necessarily then, *CASA* is not a case about the scope of relief for agency review authorized by the APA.”) In fact, *CASA* expressly declined to address the “distinct question” of vacatur under section 706 of the APA. *See CASA*, 606 U.S. at 847 n.10. And Justice Kavanaugh’s concurrence in *CASA* specifically noted that the APA’s set aside remedy remained viable. *See id.* at 869 (Kavanaugh, J., concurring).

Plaintiffs here seek vacatur under APA section 706(2), not an injunction. *CASA*’s universal-injunction bar is therefore simply inapplicable. Indeed, five months after *CASA*, the Ninth Circuit in *National TPS Alliance* affirmed nationwide vacatur. *See* 166 F.4th at 767–68. Numerous other post-*CASA* decisions across the country are in accord. *See, e.g., Ass’n of Am. Universities v. Dep’t of Def.*, 806 F. Supp. 3d 79, 120–23 (D. Mass. 2025); *Doctors for Am. v. Office of Personnel Mgmt.*, 793 F. Supp. 3d 112, 148 n.17 (D.D.C. 2025) (“[A]s this is a case involving APA vacatur, not a universal or national injunction, . . . [*CASA*] does not apply.”); *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255, 270 (E.D.N.Y. 2025) (*CASA*

1 “explicitly distinguished between injunctions and orders pursuant to 5 U.S.C. § 706(2)” and
 2 granting APA relief); *Refugee & Immigrant Ctr. for Educ. & L. Servs. v. Noem*, 793 F. Supp. 3d
 3 19, 104–05 (D.D.C. 2025) (noting that binding precedent and the text of the APA plainly authorize
 4 vacatur); *Cornerstone Credit Union League v. CFPB*, 791 F. Supp. 3d 720, 741 n.10 (E.D. Tex.
 5 2025). This Court should accordingly reject Defendants’ invitation to extend *CASA* beyond its
 6 express holding, contrary to the Ninth Circuit’s own post-*CASA* precedent, in a direction no court
 7 has taken.

8 C. Defendants Cannot Satisfy the Standard for Remand Without Vacatur

9 As noted above, the Ninth Circuit has made clear that vacatur is the “default” and
 10 “presumptive” remedy under the APA for unlawful agency actions. *See Montana Wildlife*, 127
 11 F.4th at 50; *Pollinator Stewardship*, 806 F.3d at 532. Defendants nevertheless contend that the
 12 Court should instead remand the 12-Hour Waiver Memo to the agency without vacating it. In
 13 doing so, Defendants rely almost entirely on out-of-circuit cases (see Opp. at 24–25) that employ a
 14 more flexible and agency-deferential remand framework than the Ninth Circuit, which allows
 15 “remand without vacatur only ‘in limited circumstances.’” *Ctr. for Biological Diversity v. United*
 16 *States Bureau of Land Mgmt.*, 141 F.4th 976, 1014 (9th Cir. 2025) (quoting *Cal. Cmty. Against*
 17 *Toxics v. EPA*, 688 F.3d 989, 994 (9th Cir. 2012)). Specifically, “[w]hether agency action should
 18 be vacated depends on how serious the agency’s errors are and the disruptive consequences of an
 19 interim change that may itself be changed.” *Cal. Cmty. Against Toxics*, 688 F.3d at 992 (internal
 20 quotation marks omitted).

21 Defendants do not meaningfully engage with the first factor, asserting only that, “[o]n
 22 remand, ICE and ERO can fix its [sic] process in line with the Court’s decision.” Opp. at 25. Such
 23 a conclusory assertion is not enough to justify remand without vacatur. As explained above and in
 24 Plaintiffs’ motion, the APA violations here are serious and numerous: The agency issued the 12-
 25 Hour Waiver Memo without considering any alternatives, without grappling with facial
 26 inconsistencies between the Memo and other detention policies, and without acknowledging let
 27 alone planning for the constitutional and humanitarian consequences of long-term detention in
 28 rooms not established for that purpose. *See supra*, section VI. Moreover, the 12-Hour Waiver

1 Memo is contrary to law because it necessarily creates unconstitutional conditions of confinement.
 2 *See supra*, section VI. These are not mere procedural errors that Defendants can easily “fix” on
 3 remand but “fundamental flaws” that weigh in favor of vacatur. *See Pollinator Stewardship*, 806
 4 F.3d at 532. Moreover, it is telling that Defendants offer no explanation of what the agency would
 5 do differently, which suggests that remand would simply allow the agency to re-adopt the same
 6 unlawful policy. *See Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1053 n.7 (9th Cir. 2010)
 7 (noting that remand without vacatur is justified only “[w]hen an agency may be able readily to
 8 cure a defect in its explanation of a decision”) (quoting *Heartland Reg’l Med. Ctr. v. Sebelius*, 566
 9 F.3d 193, 198 (D.C. Cir. 2009)). Thus, remand without vacatur would mean that noncitizens could
 10 continue to be subjected to extended detention in short-term holding facilities wholly ill-equipped
 11 for that purpose.

12 Defendants’ “disruptive consequences” argument, is self-defeating. Indeed, Defendants’
 13 claim that vacatur would “disrupt[] law enforcement functions and the application of the United
 14 States’ immigration laws” cannot be reconciled with their repeated contentions that the 12-Hour
 15 Waiver Memo is purely permissive and that field offices retain discretion as to how long to detain
 16 someone. Opp. at 7, 24–25. If vacatur “would still allow field offices to hold [people] longer than
 17 12 hours,” Opp. at 25, then it necessarily follows that vacatur would *not* cause any disruption.
 18 Defendants cannot simultaneously argue that the policy is minimally operative (to avoid APA
 19 liability) and catastrophically important (to avoid vacatur). This Court should reject this attempted
 20 sleight of hand and order the APA’s presumptive remedy of vacatur.

21 **VIII. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’
 23 Motion for Partial Summary Judgment on the 12-Hour Waiver Memo and deny Defendants’
 24 Counter-Motion for Partial Summary Judgment.⁶

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 26
 27 ⁶ Pursuant to the parties’ stipulated schedule (ECF No. 168 at 5), with the filing of Plaintiffs’ reply
 28 and opposition to Defendants’ counter-motion for partial summary judgment, briefing is now
 complete.

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DATED: March 11, 2026

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