

1 Mark Rosenbaum (CA SBN # 59940)
2 Amanda Mangaser Savage (CA SBN # 325996)
3 Rebecca Brown (CA SBN # 345805)
4 PUBLIC COUNSEL
5 610 South Ardmere Avenue
6 Los Angeles, CA 90005
7 Telephone: (213) 385-2977
8 mrosenbaum@publiccounsel.org
9 asavage@publiccounsel.org
10 rbrown@publiccounsel.org

11 *Listing of counsel continued on following page*

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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 Case No.: CV 81-1457-MWF(Ex)

17 Jose Antonio PEREZ-FUNEZ,
18 *et al.*,

19 Plaintiffs,

20 vs.

21 U.S. Department of Homeland
22 Security, *et al.*,

23 Defendants.

24 **PLAINTIFFS' CROSS-MOTION**
25 **TO MODIFY INJUNCTION AND**
26 **MOTION FOR LEAVE TO**
27 **CONDUCT DISCOVERY**

28 Date: February 9, 2026

Time: 10:00 a.m.

Place: TBD

Judge: Honorable Michael W.
Fitzgerald

1 Gilbert Paul Carrasco (CA SBN # 90838)
2 900 Pacific Coast Highway, Suite # 305
3 Huntington Beach, CA 92648-4863
4 Telephone: (503) 990-4879
carrasco@willamette.edu

5 Adam B. Wolfson (CA SBN # 262125)
6 Paulina Slagter (CA SBN # 318559)
7 Quinn Emanuel Urquhart & Sullivan LLP
8 865 South Figueroa Street, 10th Floor
9 Los Angeles, CA 90017
10 Telephone: (213) 443-3000
11 Fax: (213) 443-3100
adamwolfson@quinnemanuel.com
paulinaslagter@quinnemanuel.com

12 Peter McGraw*
13 Kevin Siegel*
14 NATIONAL IMMIGRATION LAW CENTER
15 1121 14th Street, Suite 200
16 Washington, D.C. 20005
17 Telephone: (213) 639-3900
18 Fax: (213) 639-3911
mcgraw@nilc.org
siegel@nilc.org

19 Richard A. Koffman**
20 Alex Bodaken**
21 Nina L. Haug**
22 COHEN MILSTEIN SELLERS & TOLL PLLC
23 1100 New York Ave., NW, Suite 800
24 Washington, D.C. 20005
25 Telephone: (202) 408-4600
rkoffman@cohenmilstein.com
abodaken@cohenmilstein.com
nhaug@cohenmilstein.com

26
27 Diane Kee***
28 COHEN MILSTEIN SELLERS & TOLL PLLC
100 N. 18th St., Suite 1820

1 Philadelphia, PA 19103
2 Telephone: (267) 479-5700
3 dkee@cohenmilstein.com

4 *Counsel for Plaintiffs*

5 *Admitted *pro hac vice*

6 ** Application for *pro hac vice* admission submitted

7 *** Application for *pro hac vice* admission forthcoming

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 28

1 Parties are therefore unable to reach a resolution that eliminates the necessity for a
2 hearing.

3 I declare under penalty of perjury that the foregoing information under
4 “Compliance with Local Rule 7-3” is true and correct.

5
6 Dated: January 6, 2026

/s/ Peter McGraw
Peter McGraw
Counsel for Plaintiffs

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1 **CROSS-MOTION TO MODIFY PERMANENT INJUNCTION AND**
2 **MOTION FOR LEAVE TO CONDUCT DISCOVERY**

3 Plaintiffs move to modify the Court’s permanent injunction under Federal
4 Rule of Civil Procedure 60(b)(5) and for leave to conduct reasonable post-judgment
5 discovery regarding the Government’s compliance with the permanent injunction as
6 well as the changed factual circumstances that may warrant further suitably tailored
7 modifications. As set out below, substantial evidence from recent months indicates
8 that U.S. Customs and Border Protection (“CBP”) has developed a new advisal form
9 for unaccompanied children that conflicts in significant ways with the advisal
10 ordered by the Court, current statutes and regulations governing the processing of
11 unaccompanied children, and the Fifth Amendment. Substantial violations of
12 injunctions constitute changed circumstances that permit courts to modify
13 injunctions. *See Kelly v. Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016). Based on
14 this and other recent changed factual circumstances, Plaintiffs seek an immediate
15 modification of the injunction to prohibit the use of CBP’s new advisal form with
16 unaccompanied minors from contiguous and non-contiguous countries.

17 Furthermore, substantial evidence demonstrates that additional discovery
18 “could raise significant questions concerning compliance.” *Cal. Dep’t of Soc. Servs.*
19 *v. Leavitt*, 523 F.3d 1025, 1034 (9th Cir. 2008). Plaintiffs therefore seek leave to
20 conduct reasonable and tailored post-judgment discovery regarding the
21 Government’s compliance with the permanent injunction and changed factual
22 circumstances, including, but not limited to, circumstances highlighted in the
23 Government’s motion seeking termination of the injunction, *see* Dkt. 250 at 17–19,
24 which may warrant a suitably tailored modification of the injunction.

25 This Cross-Motion and Motion are based upon the above Notice, the
26 accompanying Memorandum of Points and Authorities, all papers on file in this
27 action, and such other matters as may be presented to this Court at the time of the
28

1 hearing on the Cross-Motion and Motion. Pursuant to Rule 7-15, Plaintiffs do not
2 waive oral argument.

3
4 DATED: January 6, 2026

5 /s/ Mark Rosenbaum

6 Mark Rosenbaum (CA SBN # 59940)

7 Amanda Mangaser Savage (CA SBN # 325996)

8 Rebecca Brown (CA SBN # 345805)

9 PUBLIC COUNSEL

10 610 South Ardmore Avenue

11 Los Angeles, CA 90005

12 Telephone: (213) 385-2977

13 mrosenbaum@publiccounsel.org

14 asavage@publiccounsel.org

15 rbrown@publiccounsel.org

16 Gilbert Paul Carrasco (CA SBN # 90838)

17 900 Pacific Coast Highway, Suite # 305

18 Huntington Beach, CA 92648-4863

19 Telephone: (503) 990-4879

20 carrasco@willamette.edu

21 Adam B. Wolfson (CA SBN # 262125)

22 Paulina Slagter (CA SBN # 318559)

23 Quinn Emanuel Urquhart & Sullivan LLP

24 865 South Figueroa Street, 10th Floor

25 Los Angeles, CA 90017

26 Telephone: (213) 443-3000

27 Fax: (213) 443-3100

28 adamwolfson@quinnemanuel.com

paulinaslagter@quinnemanuel.com

Peter McGraw*

Kevin Siegel*

NATIONAL IMMIGRATION LAW CENTER

1121 14th Street, Suite 200

Washington, D.C. 20005

Telephone: (213) 639-3900

Fax: (213) 639-3911

1 mcgraw@nilc.org
2 siegel@nilc.org

3 Richard A. Koffman**
4 Alex Bodaken**
5 Nina L. Haug**
6 COHEN MILSTEIN SELLERS & TOLL PLLC
7 1100 New York Ave., NW, Suite 800
8 Washington, D.C. 20005
9 Telephone: (202) 408-4600
10 rkoffman@cohenmilstein.com
11 abodaken@cohenmilstein.com
12 nhaug@cohenmilstein.com

13 Diane Kee***
14 COHEN MILSTEIN SELLERS & TOLL PLLC
15 100 N. 18th St., Suite 1820
16 Philadelphia, PA 19103
17 Telephone: (267) 479-5700
18 dkee@cohenmilstein.com

19 *Counsel for Plaintiffs*

20 *Admitted *pro hac vice*

21 ** Application for *pro hac vice* admission submitted

22 *** Application for *pro hac vice* admission forthcoming

1 **INTRODUCTION**

2 In 1985, the district court found the Government’s voluntary departure
3 procedures for unaccompanied children “constitutionally infirm” and entered a
4 permanent injunction to prevent the unlawful removal of unaccompanied children
5 through unknowing and involuntary waivers of Due Process rights. *Perez-Funez v.*
6 *Dist. Dir., I.N.S. (Perez-Funez II)*, 619 F. Supp. 656, 669 (C.D. Cal. 1985). Without
7 adequate legal justification or evidentiary support, the Government seeks to
8 terminate the Court’s permanent injunction entirely. Dkt. 250. At the same time,
9 substantial evidence indicates that the Government is pursuing policies that seek to
10 expeditiously remove unaccompanied children from the United States including, but
11 not limited to, developing a new patently coercive, threatening, and misleading
12 written rights advisal form for unaccompanied children in the custody of U.S.
13 Customs and Border Protection (“CBP”). Exh. 1 at 6 (Decl. of Marie Silver); Exh. 2
14 at ¶ 10 (Decl. of Emma Winger).

15 With this cross-motion, pursuant to Rule 60(b)(5), Plaintiffs request that the
16 Court immediately modify the permanent injunction in this action to prevent the
17 Government’s use of the new “UAC Processing Pathway Advisal” form as a
18 violation of the injunction, and therefore, a significant change in circumstances
19 warranting modification. *Kelly*, 822 F.3d at 1098 (explaining that, “[u]nder well
20 established law,” a “substantial violation” of an injunction “constitutes a significant
21 change in factual circumstances” that may warrant modification).

22 Plaintiffs also seek authorization to engage in reasonable and tailored post-
23 judgment discovery regarding the Government’s compliance with the permanent
24 injunction, as well as equitable factors that—according to the Government—may
25 make continued compliance with the injunction in its current form unnecessarily
26 onerous, unworkable, or “detrimental to the public interest.” Dkt. 250 at 10 (quoting
27 *Horne v. Flores*, 557 U.S. 433, 447 (2009)). Plaintiffs easily satisfy the permissive
28 standard applicable to requests for post-judgment discovery concerning compliance

1 with a court order because substantial third-party evidence demonstrates that further
2 discovery “could raise significant questions concerning compliance.” *Cal. Dep’t of*
3 *Soc. Servs. v. Leavitt*, 523 F.3d 1025, 1034 (9th Cir. 2008). Moreover, limited post-
4 judgment discovery would aid in the Court’s determination of whether further
5 modifications of the injunction are “suitably tailored” to the changed circumstances.
6 *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992).

7 **BACKGROUND**

8 **I. The *Perez-Funez* Injunction**

9 In 1981, class representative Jose Antonio Perez-Funez filed a petition for a
10 writ of habeas corpus alleging that he was an unaccompanied minor whom the
11 Government sought to remove from the United States. Dkt. 2. Mr. Perez-Funez
12 alleged that he had not received a removal hearing and that, as a 16-year-old boy, he
13 was legally incapable of waiving his right to such a hearing absent procedural
14 protections tailored to the needs of children. Dkt. 2 at 6. Weeks later, Mr. Perez-
15 Funez, along with two additional unaccompanied minors, Yanira and Claudia Pena,
16 filed a class action complaint seeking declaratory and injunctive relief against the
17 then-Immigration and Naturalization Services’ (“INS”) practice of arresting and
18 removing children from the United States, based on a purported waiver by the child,
19 without a removal hearing or other adequate procedural safeguards. Dkt. 7.

20 In January of 1984, Judge Edward Rafeedie certified a class,¹ determined
21 Plaintiffs were “likely to succeed on the merits of their claim that the procedures . . .
22 employed by . . . INS when implementing voluntary departure in the case of an

23
24 ¹ The class definition in this case is “[a]ll persons who appear, are known, or claim
25 to be under the age of eighteen years who are now or in the future taken into or held
26 in custody in the United States by agents of the Immigration and Naturalization
27 Service for possible deportation from the United States, and who are not
28 accompanied by at least one of their natural or lawful parents at the time of being
taken or received in custody within the United States.” *Perez-Funez I*, 611 F. Supp.
990, 1005 (C.D. Cal. 1984).

1 unaccompanied minor [were] constitutionally defective,” and issued a preliminary
2 injunction. *Perez-Funez v. Dist. Dir., I.N.S.* (“*Perez-Funez I*”), 611 F. Supp. 990,
3 1003 (C.D. Cal. 1984). The preliminary injunction prohibited the INS, as well as its
4 “agents and successors in office,” from “inform[ing] any member of the class of the
5 availability of voluntary departure . . . until such defendant, agent, or successor in
6 office has”:

7 A. Read verbatim “in English or Spanish, or any other language understood
8 by the class member” a general advisal informing the child of their right to
9 a deportation hearing and to apply for political asylum and other forms of
10 relief from removal, *id.* at 1005–06;

11 B. Provided to the class member a written notice containing more detailed
12 information about the rights to be represented by a lawyer, to a deportation
13 hearing, to apply for relief from removal, and to request voluntary
14 departure, *id.*, and;

15 C. Obtained a signed acknowledgment from the child of receipt of this written
16 notice. *Id.* at 1005.

17 If the child indicated their intention to apply for relief from removal, the
18 preliminary injunction prohibited Government officials from “advis[ing],
19 encourag[ing], or persuad[ing]” the child to accept a voluntary departure. *Id.* at 1005.
20 The preliminary injunction also broadly prohibited the use of “threats,
21 misrepresentations, subterfuge, or other forms of coercion” of unaccompanied
22 children when informing them of the availability of voluntary departure procedures,
23 and further prohibited the Government from “in any way attempt[ing] to persuade
24 or dissuade class members when informing them of the availability of voluntary
25 departure.” *Id.*

26 Following a trial that included testimony from the class representatives, 14
27 additional class member children, and multiple expert witnesses, the Court found
28 that the INS’s policies and practices for effectuating the return of children outside of

1 removal proceedings deprived unaccompanied children of procedural due process
2 by coercing them into waiving their rights unknowingly and involuntarily. *Perez-*
3 *Funez II*, 619 F. Supp. at 658, 661, 669. The Court therefore made the preliminary
4 injunction permanent with certain modifications, including:

5 A. Striking language regarding the Government’s “threats,
6 misrepresentations, subterfuge, or other form of coercion” from the
7 injunction, *id.* at 670;

8 B. Ordering the parties to confer and “prepare a simplified rights advisal”
9 document² to be provided to class members “in the same manner as the
10 previous advisal,” along with a list of free legal service providers and
11 submit the same for Court approval, *id.*;

12 C. Ordering the Government to inform class members from contiguous
13 countries—Mexico or Canada—“apprehended in the immediate vicinity of
14 the border” that they “may make a telephone call to a parent, close relative,
15 friend, or to an organization found on the free legal services list,” *id.*, and;

16 D. For all other class members, ordering the Government to “provide access
17 to telephones and ensure that the class member has in fact communicated
18 . . . with a parent, close adult relative, or friend, or with an organization
19 found on the free legal services list.” *Id.*

20 While recognizing that these protections would “entail some expense,” the
21 Court found any such cost to be a “minimal burden upon the government” when
22 compared to the “great” risk of depriving unaccompanied children of their
23 “significant constitutional and statutory rights.” *Id.* at 668. To the Court, it was

24 ² On May 16, 1986, the Court adopted an advisal form. Dkt. 240. As the Government
25 notes, it now uses Form I-770, Notice of Rights and Request for Disposition. Dkt.
26 250 at 1; Exh. 3 (Form I-770). Since approximately 1997, both regulation and the
27 Stipulated Settlement Agreement in what is now *Flores v. Bondi*, CV 85-4544-
28 DMG-AGRx, have required the Government to use Form I-770 to provide the
written advisals mandated by the permanent injunction. *See* 8 C.F.R. § 1236.3(g)–
(h); *see also* Exh. 4 at ¶¶ 12, 24.D (*Flores* Settlement Agreement).

1 “common sense” that these safeguards were needed to protect unaccompanied
2 children who were “forced to make critical decisions” about difficult legal questions
3 in the absence of a trusted adult. *Id.* at 662. As the Court explained: “The
4 interrogators are foreign and authoritarian. The environment is new and the culture
5 completely different. The law is complex. The children generally are questioned
6 separately.” *Id.* (footnotes omitted). Additionally, the fact that federal immigration
7 agents could explain rights but were prohibited from giving advice on the same
8 “d[id] nothing to alleviate the problem.” *Id.* Under such circumstances, it was
9 “obvious to the Court that the situation faced by unaccompanied [children] is
10 inherently coercive,” such that many children—especially those “accustomed to
11 autocratic governments”—naturally responded by “defer[ring] to the authority
12 before them.” *Id.* at 661–62.

13 **II. Relevant Legal Developments Since Entry of the *Perez-Funez***
14 **Injunction**

15 Intervening legal developments may be relevant to the Court’s consideration
16 of whether modification of the injunction is appropriate even if they fall short of
17 requiring termination of the injunction.³ *See, e.g., Horne v. Flores*, 557 U.S. 433,
18 461–65 (2009) (passage of No Child Left Behind Act was “probative” to petitioners’
19 Rule 60(b)(5) motion seeking relief from judgment); *Flores v. Lynch*, 828 F.3d 898,
20 910 (9th Cir. 2016) (passage of Trafficking Victims Protection Reauthorization Act
21 (“TVPRA”) “might support modification of the conflicting [settlement] provisions
22 so that they no longer apply to the unaccompanied minors covered by the TVPRA”).
23

24
25 ³ As set out in Plaintiffs’ Opposition to Defendants’ Motion to Terminate Injunction
26 and Rights Advisal, legal developments since 1985 do not require termination of the
27 injunction in its entirety because no intervening legal authority affects the Court’s
28 remedial authority or permits what the permanent injunction forbids. Dkt. 268 at 10–
19.

1 First, the TVPRA is crucial to the Court’s determination as to whether and
2 how to modify the permanent injunction. In 2008, as part of a broad effort to combat
3 the trafficking of children, Congress enacted the TVPRA, mandating specific legal
4 procedures and safeguards that apply to unaccompanied children from contiguous
5 and non-contiguous countries. Pub. L. No. 110-457, 122 Stat. 5044 (codified in
6 relevant part at 8 U.S.C. § 1232). The TVPRA, which the Government acknowledges
7 “creat[es] a detailed, comprehensive, and binding statutory scheme,” Dkt. 250 at 14,
8 restricts the expedited return of unaccompanied children outside of removal
9 proceedings to certain children who are “national[s] or habitual resident[s]” of
10 Mexico or Canada who are found “at a land border or port of entry of the United
11 States.” 8 U.S.C. § 1232(a)(2)(A)–(B). Any other unaccompanied child “sought to
12 be removed” by the Government “shall be” placed in full removal proceedings,
13 eligible for voluntary departure at no cost to the child overseen by an Immigration
14 Judge, and, “to the greatest extent practicable,” provided access to counsel. 8 U.S.C.
15 § 1232(a)(5)(D), (c)(5); *see L.G.M.L. v. Noem*, 2025 WL 2671690, at *2, *14
16 (D.D.C. Sep. 18, 2025); *see also* Apprehension, Processing, Care, and Custody of
17 Alien Minors and Unaccompanied Alien Children, 84 Fed. Reg. 44392, 44429 (Aug.
18 23, 2019) (Unaccompanied children “from non-contiguous countries are not
19 permitted to withdraw their application for admission under the TVPRA . . .”).

20 The TVPRA also permits a narrow interval between the time a government
21 official encounters an unaccompanied child and the time the child is placed in the
22 custody of the Office of Refugee Resettlement (“ORR”) and afforded the TVPRA’s
23 procedural protections. Federal agencies must notify the U.S. Department of Health
24 and Human Services (“HHS”) within 48 hours of apprehending or discovering an
25 unaccompanied child. 8 U.S.C. § 1232(b)(2)(A). Absent “exceptional
26 circumstances,” the encountering agency *must* transfer custody of the
27 unaccompanied child to ORR within 72 hours. *Id.* § 1232(b)(3). When
28 unaccompanied children enter ORR custody, they receive additional procedural

1 protections that are unavailable during the 72-hour period before transfer. *See, e.g.*,
2 45 C.F.R. § 410.1309(a)(2)(i) (requiring in-person, telephonic, or video presentation
3 about the right of unaccompanied children), 410.1309(a)(2)(v) (requiring a
4 confidential legal consultation).

5 In 2025, Congress passed the One Big Beautiful Bill Act (“OB BB”), Pub. L.
6 No. 119-21, 139 Stat. 72 (2025), which makes appropriations to DHS to fund
7 removal operations for unaccompanied children. 139 Stat. 72, 386, § 100051(8). The
8 Government claims, despite limitations in the TVPRA, that this appropriations
9 legislation permits the application of expedited voluntary return procedures to
10 unaccompanied children from “any country” including during the brief 72-hour
11 period when the child is in CBP custody. Dkt. 250 at 9; *but see L.G.M.L.*, 2025 WL
12 2671690, at *15 n.9 (rejecting argument that OB BB overcomes the “very strong
13 presumption” that “appropriation acts” do not “substantively change existing laws”)
14 (citations omitted).

15 The Government has also promulgated regulations that incorporate parts of
16 the Court’s permanent injunction relating to phone access and notice to
17 unaccompanied minors. *See* 8 C.F.R. § 1236.3(g)–(h) (requiring the use of Form I-
18 770, Notice of Rights and Disposition).⁴

19 ⁴ In 1996, Congress passed the Illegal Immigration Reform and Immigrant
20 Responsibility Act (“IIRIRA”), amending the Immigration and Nationality Act’s
21 (“INA”) procedures governing individuals seeking refuge in the United States. Pub.
22 L. 104-208, 110 Stat. 3009-546. In March 1997, in part to comply with IIRIRA’s
23 requirement for implementing regulations, INS adopted interim regulations
24 incorporating parts of the permanent injunction’s requirement for providing
25 unaccompanied children with phone access and advisals through use of Form I-770.
26 *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10362 (Mar.
27 6, 1997) (promulgating former 8 C.F.R. § 236.3(g)–(h)). Following the passage of
28 the Homeland Security Act, as part of the transfer of the former INS’s functions, the
U.S. Department of Homeland Security (“DHS”) duplicated the language of 8 C.F.R.
§ 236.3 word-for-word at 8 C.F.R. § 1236.3. *See* Aliens and Nationality; Homeland
Security; Regulations, 68 Fed. Reg. 9824, 9838 (Feb. 28, 2003).

1 In 1997, the Government entered into a Stipulated Settlement Agreement in
2 what is now *Flores v. Bondi*, No. CV 85-4544-RJK(Px). Exh. 4 (*Flores* Settlement
3 Agreement). The *Flores* Settlement Agreement (“FSA”), which also requires the use
4 of Form I-770 to inform unaccompanied children of their rights, contemplated that
5 the Government would publish the terms of the FSA as a regulation. *Id.* at ¶¶ 9, 24D.
6 In 1998, the Government proposed these regulations, including regulations that
7 would “conform more accurately” to the *Perez-Funez* injunction. *See* Processing,
8 Detention, and Release of Juveniles, 63 Fed. Reg. 39760 (July 24, 1998) (proposing
9 to amend 8 C.F.R. § 236.3). Ultimately, that process “did not result in a final rule.”
10 *Flores v. Rosen*, 984 F.3d 720, 728 (9th Cir. 2020).

11 In 2001, the parties to the FSA stipulated to a modification that terminates the
12 FSA “45 days following defendants’ publication of final regulations implementing
13 th[e] [FSA].” *Flores v. Bondi*, 2025 WL 2633183, at *1 (C.D. Cal. Aug. 15, 2025)
14 (citing the FSA). In 2019, Defendant U.S. Department of Homeland Security
15 (“DHS”) published a final rule in which it proposed to amend 8 C.F.R. § 236.3(g) to
16 attempt to comply with both the *Flores* Settlement Agreement and the injunction in
17 this action. Apprehension, Processing, Care, and Custody of Alien Minors and
18 Unaccompanied Alien Children, 84 Fed. Reg. 44392, 44429 (Aug. 23, 2019). The
19 proposed DHS regulations, except for 8 C.F.R. § 236.3(g)(2) and 236.3(f), were
20 enjoined in 2020. *See Flores v. Rosen*, 984 F.3d at 744. While portions of the FSA
21 have been terminated with respect to HHS, *Flores v. Bondi*, 2025 WL 2633183, at
22 *2, more recent efforts by the Government to terminate the FSA have been denied.
23 *Id.* at *3–11.

1 **ARGUMENT**

2 **I. The Court Should Modify the Injunction to Prohibit the Use of the**
3 **“UAC Processing Pathway Advisal”**

4 **A. Standard of Review**

5 Courts have long had the inherent power to modify court orders to account for
6 changed circumstances. *See Brown v. Plata*, 563 U.S. 493, 542 (2011). Rule 60(b)(5)
7 now codifies that power. *Kelly*, 822 F.3d at 1098. Unanticipated factual
8 developments and relevant legal developments following the entry of an injunction
9 may constitute significant changed circumstances that make an injunction
10 “onerous,” “unworkable,” or “detrimental to the public interest.” *United States v.*
11 *Asarco Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (internal citations omitted); *see also*
12 *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000) (“A party seeking
13 modification or dissolution of an injunction bears the burden of establishing that a
14 significant change in facts or law warrants revision or dissolution of the
15 injunction.”); *Horne*, 557 U.S. at 447. “Under well established law, substantial
16 violation of a court order constitutes a significant change in factual circumstances”
17 that may warrant modification. *Kelly*, 822 F.3d at 1098. If the moving party meets
18 this standard, the Court should consider modifications that are “suitably tailored to
19 the changed circumstance.” *Rufo*, 502 U.S. at 383). A suitably tailored modification
20 is one that returns the parties “as nearly as possible to the position they would have
21 occupied” absent the changed circumstances. *Kelly*, 822 F.3d at 1097.

22 **B. The Injunction Should be Modified to Explicitly Prohibit Use of the**
23 **“UAC Processing Pathway Advisal”**

24 In recent months, the Government has openly pursued policies that seek to
25 expeditiously remove unaccompanied children from the United States instead of
26 providing them with the safeguards required by Congress and the Constitution. In
27 particular, the Government appears to be using a new advisal form entitled the “UAC
28 Processing Pathway Advisal.” Exh. 1 at 6; Exh. 2 at ¶ 10, 5–6. Because this advisal

1 wholly fails to comport with the injunction’s and TVPRA’s mandates, this Court
2 should modify the injunction to explicitly bar its use.

3 Without submitting any evidentiary materials of a proposed alternative advisal
4 form, the Government assures the Court that some form of an advisal will be used if
5 the injunction is terminated, Dkt. 250 at 13, and argues that it should more accurately
6 reflect the “*actual* procedural pathway” available to unaccompanied children. *Id.* at
7 16 (emphasis in original). Yet it appears that the Government has, before moving to
8 terminate or modify the injunction, *already* developed a new advisal about the
9 purported pathways available to unaccompanied children in CBP custody. Exh. 1 at
10 6. Before any mention of the right to seek relief from removal in Immigration Court,
11 CBP’s UAC Processing Pathway Advisal informs the child that they can voluntarily
12 return to their home country in the brief 72-hour period before the TVPRA requires
13 transfer to ORR custody where unaccompanied children receive additional
14 procedural protections. *Id.*; 8 U.S.C. § 1232(b)(3). The new advisal also vaguely and
15 misleadingly references the “opportunity to apply for a visa, through legal means, in
16 the future,” as if that option is contingent upon acceptance of expedited voluntary
17 return outside of removal proceedings. Exh. 1 at 6. CBP’s advisal goes on to threaten
18 “prolonged” detention if the unaccompanied minor “seek[s] a hearing with an
19 immigration judge” or even “indicate[s] a fear of returning to [their] country.” *Id.*
20 And the advisal baselessly threatens criminal prosecution of the sponsor of
21 unaccompanied children for “aiding [their] illegal entry.” *Id.*

22 The Government’s UAC Processing Pathway Advisal causes particularly
23 acute harm by misleading unaccompanied children during the 72-hour period when
24 they are exceptionally vulnerable. *Id.* With the TVPRA, Congress enacted robust
25 procedures to ensure the safety of unaccompanied children as they navigate a
26 complex and foreign legal regime. 8 U.S.C. § 1232. As part of those procedures,
27 Congress requires, absent “exceptional circumstances,” that children be transferred
28 to ORR custody within 72 hours of the determination that they are unaccompanied

1 by a parent or legal guardian. *Id.* § 1232(b)(3). During this period, unaccompanied
2 children from Mexico and Canada who meet the criteria set out in 8 U.S.C.
3 § 1232(a)(2)(A) and are found “at a land border or port of entry of the United States”
4 may withdraw their application for admission and return to their country of habitual
5 residence after receiving the procedural safeguards ordered by this Court. *Id.*
6 § 1232(a)(2)(B). Other unaccompanied children must be placed in full removal
7 proceedings and provided access to counsel. *Id.* § 1232(a)(5)(D).

8 Yet the Government ignores this plain language and claims that the OBBB—
9 an appropriations bill—permits the application of the voluntary removal procedure
10 outlined in § 1232(a)(2)(B) to unaccompanied children from any country. Dkt. 250
11 at 9; Exh. 8 (Letter from CBP Commissioner Scott). That reading is wrong. *See* Dkt.
12 268 at 24; *L.G.M.L.*, 2025 WL 2671690, at *15 n.9 (holding that the OBBB does not
13 “overcome the very strong presumption that appropriation acts do not substantively
14 change existing law” (internal citation omitted)); *Tenn. Valley Auth. v. Hill*, 437 U.S.
15 153, 190 (1978) (doctrine disfavoring repeals by implication applies with “even
16 *greater force*” where claimed repeal is appropriations legislation). But the upshot is
17 that the Government now claims an entitlement to use the UAC Processing Pathway
18 Advisal to coerce voluntary departure of *any* unaccompanied minor while in CBP
19 custody. This evidence strongly suggests that, like in 1984 and 1985 when the Court
20 first enjoined INS’s coercive voluntary departure policies, unaccompanied children
21 have been and will be coerced into unknowing and involuntary waivers of rights.

22 In sum, the UAC Processing Pathway Advisal suffers from many of the same
23 flaws that the Government ascribes to the Form I-770, all while being overtly
24 threatening, misleading, and coercive during a window of time in which
25 unaccompanied children are particularly vulnerable. CBP’s advisal violates the
26 injunction’s prohibition on “attempt[ing] to persuade or dissuade class members
27 when informing them of the availability of voluntary departure.” *Perez-Funez I*, 611
28 F. Supp. at 1005. And because it undermines unaccompanied children’s Due Process

1 rights, its use violates the permanent injunction even if the Government technically
2 complied with some aspects of that order by, for example, also providing Form I-
3 770 to the unaccompanied child. *See Epic Games, Inc. v. Apple, Inc.*, 2025 WL
4 3548683, at *7 (9th Cir. Dec. 11, 2025) (emphasizing that courts can “find a breach
5 of the decree in a violation of the spirit of the injunction, even though its strict letter
6 may not have been disregarded” and it is “proper to observe the objects for which
7 the relief was granted” (internal citation omitted)). Modification of the injunction is
8 justified to explicitly bar the advisal’s use and clarify the Government’s obligations
9 to unaccompanied children. *See A&M Recs., Inc. v. Napster*, 284 F.3d 1091, 1098
10 (9th Cir. 2002) (district courts possess “wide discretion to modify an injunction
11 based on changed circumstances” (internal citation omitted)); *see Regal Knitwear*
12 *Co. v. NLRB*, 324 U.S. 9, 15 (1945) (noting that Courts should clarify injunctions as
13 necessary to apply them to concrete situations that arise after the injunctions’
14 issuance).

15 Plaintiffs accordingly request that the Court immediately modify the
16 injunction to prohibit the use of CBP’s “UAC Processing Pathway Advisal”
17 document—or any similarly improper advisals—on its own or in combination with
18 Form I-770 for class members.

19 **II. The Court Should Permit Plaintiffs to Conduct Limited Post-**
20 **Judgment Discovery**

21 Limited post-judgment discovery is warranted for two reasons. First, Plaintiffs
22 have already raised significant questions as to the Government’s compliance with
23 the injunction. But tailored discovery is justified to evaluate the extent of this
24 noncompliance—the outcome of which could bear on both the Government’s
25 request to terminate and the necessity of additional modifications to or enforcement
26 of the injunction. Second, both the Government and Plaintiffs have moved under
27 Rule 60(b)(5) for modifications of the injunction based on changed factual
28 circumstances. Dkt. 250 at 17–19; *supra* Section I. Narrow discovery will enable the

1 Court to better assess the on-the-ground facts that will shape any appropriate
2 modifications.

3 **A. Standard of Review**

4 Courts apply a “permissive” standard when deciding whether to allow post-
5 judgment discovery to determine compliance with a court order. *Fraihat v. U.S.*
6 *Immigr. & Customs Enf’t*, 2020 WL 2758553, at *5 (C.D. Cal. May 15, 2020). The
7 “kind and amount of evidence of noncompliance required to justify discovery is,
8 necessarily, considerably less than that needed to show actual noncompliance.”
9 *Leavitt*, 523 F.3d at 1034. A movant who requests permission to engage in discovery
10 to assess compliance with an injunction need only establish that the request might
11 generate information that “could raise significant questions concerning compliance.”
12 *Id.*

13 Additionally, a proper Rule 60(b)(5) analysis “should include further factual
14 findings” about whether changed circumstances warrant relief. *Horne*, 557 U.S. at
15 461. As such, reasonable and tailored post-judgment discovery may be warranted.
16 *See, e.g., Rutherford v. Baca*, 2009 WL 10653011, at *2 (C.D. Cal. Aug. 4, 2009),
17 *clarified on denial of reconsideration*, 2009 WL 10653010 (C.D. Cal. Sep. 22, 2009)
18 (“Where parties seek to terminate or modify a consent decree or injunction, for
19 example, post-judgment discovery or hearings may be warranted.”). Courts routinely
20 consider evidence to determine what are appropriate modifications to injunctions.
21 *See, e.g., Warren v. City of Chico*, 2025 WL 974068, at *9–13 (E.D. Cal. Mar. 31,
22 2025) (assessing evidentiary materials submitted with the City’s Rule 60(b)(5)
23 motion, including declarations and incident reports); *Coleman v. Brown*, 922 F.
24 Supp. 2d 1004, 1035–43 (E.D. Cal. 2013) (discussing the requirement to submit
25 “compelling evidence” to establish significantly changed circumstances and
26 assessment Defendant’s evidentiary submission); *Ms. L. v. U.S. Immigr. & Customs*
27 *Enf’t*, 2025 WL 2590329, at *2–3 (S.D. Cal. July 24, 2025) (evaluating parties’
28 evidentiary submission when considering Rule 60(b)(5) motion).

1 **B. Tailored Discovery Is Necessary to Assess the Government’s**
2 **Compliance with the Injunction**

3 Limited post-judgment discovery is warranted to assess the Government’s
4 compliance with the injunction. Courts’ inherent authority to monitor prior orders
5 “extends to allowing post judgment discovery to aid the court in determining
6 whether a party has complied with the order.” *Fraihat*, 2020 WL 2758553, at *3
7 (citing *Richmark Corp. v. Timber Falling Consultants, Inc.*, 937 F.2d 1444, 1449
8 (9th Cir. 1991)). Under the “significant questions” standard, courts routinely hold
9 that plaintiffs’ sworn declarations are sufficient to raise significant questions
10 concerning a defendant’s compliance with a court order. *See id.* at *5 (holding that
11 two declarations were sufficient to raise significant questions of noncompliance);
12 *Damus v. Nielsen*, 328 F.R.D. 1, 3–4 (D.D.C. 2018) (practitioner affidavits and other
13 evidence warranted discovery regarding compliance with court order); *Franco-*
14 *Gonzalez v. Wolf*, 2020 WL 12688334, at *2–3 (C.D. Cal. Jan. 10, 2020) (holding
15 that the experiences of four detainees were sufficient to show non-compliance with
16 court order). Plaintiffs’ declarations from legal services providers and
17 unaccompanied children along with other evidence of noncompliance satisfy this
18 standard.

19 Plaintiffs’ declarations demonstrate the Government’s noncompliance or
20 possible noncompliance with the injunction along several fronts. Most obviously,
21 and as described above, the use of the “UAC Processing Pathway Advisal”
22 document raises significant questions about the Government’s compliance with the
23 permanent injunction, particularly given its rejection of Plaintiffs’ proposed limited
24 discovery requests concerning that document.⁵ *See Leavitt*, 523 F.3d at 1036

25 ⁵ On December 4, 2025, as part of conferring regarding the present motion, Plaintiffs
26 delivered to the Government’s counsel a copy of the proposed discovery requests
27 that seek, in part, additional information about the use of the “UAC Processing
28 Pathway Advisal.” Exh. 5. The Government objected to answering these requests
voluntarily. Plaintiffs now seek leave to conduct reasonable discovery similar in

1 (government entity’s refusal to respond to post-judgment requests for production
2 made it clear that opposing party “could not come forward with further evidence of
3 noncompliance without an order authorizing discovery”).

4 There is also evidence suggesting that the Government has pursued other
5 policies aimed at expediting the removal of unaccompanied children. For example,
6 in October 2025, DHS began an unprecedented effort to pay unaccompanied
7 children up to \$2,500 to accept voluntary departure. Exh. 7 at ¶ 12 (Decl. of Emily
8 Norman). The TVPRA requires that voluntary departure be provided to
9 unaccompanied children from non-contiguous countries “at no cost to the child,” so
10 the payment cannot be characterized as a stipend. 8 U.S.C. § 1232(a)(5)(D)(ii). Just
11 weeks earlier, in August of 2025, the Government attempted to expel dozens of
12 unaccompanied children in the middle of the night on a holiday weekend under the
13 guise of “repatriation” to Guatemala and to parents who had supposedly sought their
14 return. *L.G.M.L.*, 2025 WL 2671690 at *1. The Government’s justification
15 “crumbled like a house of cards” within days, and a district court preliminarily
16 enjoined the removal of these unaccompanied children as a violation of 8 U.S.C.
17 § 1232(a)(5)(D), the TVPRA provision codifying fundamental procedural
18 protections for unaccompanied children from non-contiguous countries. *Id.* at *1,
19 *12.

20 Substantial evidence also indicates that, in recent months, the Government
21 implemented a pilot program in the Rio Grande Valley area of Texas whereby
22 unaccompanied children from non-contiguous countries are encouraged by
23 immigration officials to “voluntarily” return within the brief 72-hour period before
24 they are transferred to ORR custody. Exh. 6 at ¶ 5 (Decl. of Fisher Flores). Legal
25 service providers in the Rio Grande Valley are not able to access unaccompanied
26 children in CBP custody, and the Government’s implementation of its novel

27 _____
28 scope to the proposed requests, but accounting for additional factual developments
that may warrant modification.

1 interpretation of the OBBB takes place outside of any oversight from Immigration
2 Judges. *Id.* at ¶ 14; Dkt. 250 at 16 (describing the OBBB as “provid[ing] the ability
3 for [unaccompanied children] to withdraw their application for admission before
4 being placed into removal proceedings”).

5 In this context, children describe being pressured into accepting return under
6 circumstances that fall far short of a knowing and voluntary waiver of rights. Exh. 6
7 at ¶¶ 6–15. One unaccompanied child from Guatemala was threatened with a taser
8 and dogs by immigration officials during apprehension. Exh. 9 at ¶ 3 (Decl. of
9 D.A.T.M.).⁶ Later, while a type of detention facility commonly referred to as the
10 “hielera,” or “icebox,” due to its temperature, the child was informed he would stay
11 detained if he declined to return voluntarily to Guatemala. *Id.* at ¶¶ 4–5. He
12 understood that when the immigration official told him he would be detained, it
13 would be in the detention center. *Id.* He did not understand his rights to seek relief
14 in Immigration Court and was told he needed to make a decision “now,” while in
15 CBP custody. *Id.* at ¶¶ 5–6. He signed voluntary return paperwork because he did
16 not feel he had another option. *Id.* at ¶ 6. Another unaccompanied child from
17 Honduras was apprehended after suffering injuries in a serious car accident and
18 questioned by immigration officials while in pain. Exh. 10 at ¶¶ 7–13 (Decl. of
19 Y.Y.Z.O.). She was informed that her options were to voluntarily return to Honduras
20 or remain in a shelter until age 18, when she would be removed. *Id.* at ¶ 15. She was
21 yelled at and told forcefully told that she had to sign documents approving voluntary
22 return, so she did. *Id.* at ¶¶ 17–19. Other unaccompanied children also report the
23 voluntary return form as being filled out incorrectly and their articulations of fear of
24 return being ignored. Exh. 6 at ¶ 9. In total, legal services providers in the Rio Grande
25 Valley area of Texas are aware of 13 cases in which unaccompanied children from
26 non-contiguous countries were subject to voluntary return procedures in CBP

27
28 ⁶ The declarations of D.A.T.M. and Y.Y.Z.O. are submitted in accordance with Fed.
R. Civ. P. 5.2(a).

1 custody, *id.* at ¶ 10, but they cannot access any unaccompanied minors in CBP
2 custody. *Id.* at ¶ 14. These cases may represent a small fraction of unaccompanied
3 children who are denied protections of the TVPRA and the Court’s injunction.

4 Legal service providers have intervened to withdraw purported acceptance of
5 voluntary return for unaccompanied children from non-contiguous countries whose
6 waivers were unknowing and involuntary. *See* Exh. 6 at ¶¶ 6, 12–13. But the
7 Government’s unlawful and patently cruel practices have persisted. For instance,
8 legal services providers in the Rio Grande Valley are aware of 13 cases in which
9 unaccompanied children from non-contiguous were processed for expedited
10 voluntary return while in CBP custody. *Id.* at ¶ 10. And as the UAC Processing
11 Pathway Advisal makes clear, return may happen within the brief 72-hour period
12 before the child is transferred to ORR custody and before they are afforded the
13 TVPRA’s protections, including access to counsel. Exh. 1 at 6 (“You have the option
14 to voluntarily return to your country of origin, and you can return within 72 hours.”);
15 45 C.F.R. § 410.1309(a), (a)(2)(v) (requiring, *inter alia*, legal consultation within 10
16 business days of transfer to ORR custody).

17 Additional tailored discovery will illuminate the breadth and details of the
18 Government’s pilot program, its use of the UAC Processing Pathway Advisal, and
19 other efforts to encourage voluntary departure. Plaintiffs’ existing evidence indicates
20 that the UAC Processing Pathway Advisal violates the permanent injunction, *see*
21 *supra* Section I, and at least suggests that the Government’s other activities may
22 constitute violations of the TVPRA, the permanent injunction, or both. *See, e.g.,*
23 *Perez-Funez I*, 611 F. Supp. at 1005 (barring the Government from “attempt[ing] to
24 persuade or dissuade class members when informing them of the availability of
25 voluntary departure”). Discovery regarding potential noncompliance is particularly
26 essential here because it could not only justify enforcement or modification of the
27 injunction, *see infra* Section II.C., but also undermine the Government’s motion to
28 terminate the injunction. *See Precision Instrument Mfg. Co. v. Auto. Maint. Mach.*

1 Co., 324 U.S. 806, 814–15 (1945) (explaining that parties seeking relief in equity
2 must “come with clean hands” and “have acted fairly and without fraud or deceit as
3 to the controversy in issue”). These “significant questions” regarding the
4 Government’s noncompliance are sufficient to justify the limited discovery
5 Plaintiffs seek. *Leavitt*, 523 F.3d at 1034.

6 **C. Tailored Discovery Is Necessary to Assess the Government’s Rationales**
7 **for Seeking Termination of the Injunction and Determine Appropriate**
8 **Modifications**

9 Courts routinely consider evidence to determine what modifications to
10 injunctions are appropriate. *See, e.g., Coleman*, 922 F. Supp. 2d at 1035–43; *Ms. L.*,
11 2025 WL 2590329 at *2–3. Discovery is warranted to assist the Court in making its
12 determination of whether a modification is warranted based on the factual changes
13 and legal developments cited by the Government, and, if so, what modification is
14 suitably tailored to the changed circumstances. *See, e.g., Rutherford*, 2009 WL
15 10653011, at *2.

16 For example, the Government claims federal agencies have increased
17 “technological capacity” to provide advisals that might better overcome language
18 and literacy barriers to ensuring that unaccompanied children receive the procedural
19 safeguards to which they are entitled. Dkt. 250 at 17. But it provides no concrete
20 information on how it would use that technology to satisfy Due Process
21 requirements. Indeed, evidence indicates that unaccompanied children in CBP
22 custody may only receive CBP’s new written advisal, which fails to adequately
23 explain the rights of unaccompanied children and encourages them to accept return
24 to their home countries.⁷ Exh. 1 at 6; Exh. 2 at ¶ 10.

25 ⁷ At the time of the entry of the permanent injunction, Plaintiffs advocated for the
26 use of a videotape advisal, and Judge Rafeedie strongly considered it, but ultimately
27 it was deemed “administratively burdensome.” *Perez-Funez II*, 619 F. Supp. at 667.
28 Certainly, technological advancements in the past 40 years may impact the feasibility
of providing similar multi-media advisals. For example, the Government adopted

1 As discussed above, there is also substantial evidence of the Government’s
2 actual and potential noncompliance with the permanent injunction in recent months.
3 *See supra* Sections I.B., II.B. Authorization of post-judgment discovery will aid the
4 Court in its determination of whether suitably tailored modifications of the
5 injunction in response to these changed factual circumstances are appropriate. For
6 instance, it may be that the Government’s recent tactics justify reinstatement of the
7 prohibition on “employ[ing] threats, misrepresentations, subterfuge, or other forms
8 of coercion” that was a part of the preliminary injunction in this case but was
9 eliminated before the permanent injunction’s entry. *See Perez-Funez II*, 619 F. Supp.
10 at 670.

11 Finally, limited discovery is also warranted to determine whether
12 modification of declaratory relief issued in this case is appropriate. The Court’s 1985
13 opinion entered declaratory relief stating that the “original INS procedures” were
14 unconstitutional. *Id.* at 669. Limited discovery will help the Court to fully understand
15 the scope of the Government’s current practices regarding removal of
16 unaccompanied minors, which in turn may justify issuance of updated declaratory
17 relief. Such a modification may be warranted in any event, but would be particularly
18 important if the Court agrees with the Government’s contention that injunctive relief
19 is barred by 8 U.S.C. § 1252(f)(1).⁸ *See* Dkt. 250 at 11–12.

20 CONCLUSION

21 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
22 Plaintiffs’ cross-motion and modify the permanent injunction to prohibit the use of

23 _____
24 regulations that permit the use of “video presentation[s] concerning the rights and
25 responsibilities of undocumented children in the immigration system” once they
26 reach ORR custody. 45 C.F.R. § 410.1309(a)(2)(i).

27 ⁸ To be clear, Plaintiffs vigorously contest this erroneous argument. *See* Dkt. 268 at
28 10–16. But were the Court to deem injunctive relief unavailable, modifying the
declaratory relief would be even more essential to ensuring that the Government
complies with the Due Process protections owed to unaccompanied minors.

1 CBP’s “UAC Processing Pathway Advisal” document with unaccompanied
2 children—or any similarly improper advisals—on its own or in combination with
3 Form I-770. Plaintiffs further respectfully request that the Court grant Plaintiffs’
4 motion for leave to conduct discovery.

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1 DATED: January 6, 2026

2 /s/ Mark Rosebaum

3 Mark Rosenbaum (CA SBN # 59940)

4 Amanda Mangaser Savage (CA SBN # 325996)

5 Rebecca Brown (CA SBN # 345805)

6 PUBLIC COUNSEL

7 610 South Ardmore Avenue

8 Los Angeles, CA 90005

9 Telephone: (213) 385-2977

10 mrosenbaum@publiccounsel.org

11 asavage@publiccounsel.org

12 rbrown@publiccounsel.org

13 Gilbert Paul Carrasco (CA SBN # 90838)

14 900 Pacific Coast Highway, Suite # 305

15 Huntington Beach, CA 92648-4863

16 Telephone: (503) 990-4879

17 carrasco@willamette.edu

18 Adam B. Wolfson (CA SBN # 262125)

19 Paulina Slagter (CA SBN # 318559)

20 Quinn Emanuel Urquhart & Sullivan LLP

21 865 South Figueroa Street, 10th Floor

22 Los Angeles, CA 90017

23 Telephone: (213) 443-3000

24 Fax: (213) 443-3100

25 adamwolfson@quinnemanuel.com

26 paulinaslagter@quinnemanuel.com

27 Peter McGraw*

28 Kevin Siegel*

NATIONAL IMMIGRATION LAW CENTER

1121 14th Street, Suite 200

Washington, D.C. 20005

Telephone: (213) 639-3900

Fax: (213) 639-3911

mcgraw@nilc.org

siegel@nilc.org

Richard A. Koffman**

1 Alex Bodaken**
2 Nina L. Haug**
3 COHEN MILSTEIN SELLERS & TOLL PLLC
4 1100 New York Ave., NW, Suite 800
5 Washington, D.C. 20005
6 Telephone: (202) 408-4600
7 rkoffman@cohenmilstein.com
8 abodaken@cohenmilstein.com
9 nhaug@cohenmilstein.com

10 Diane Kee***
11 COHEN MILSTEIN SELLERS & TOLL PLLC
12 100 N. 18th St., Suite 1820
13 Philadelphia, PA 19103
14 Telephone: (267) 479-5700
15 dkee@cohenmilstein.com

16 *Counsel for Plaintiffs*

17 *Admitted *pro hac vice*

18 ** Application for *pro hac vice* admission submitted

19 *** Application for *pro hac vice* admission forthcoming

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CERTIFICATE OF COMPLIANCE

I, Peter McGraw, certify that the Memorandum of Points and Authorities contains 6,103 words and complies with the word limit of Local Rule 11-6.1.

DATED: January 6, 2026.

/s/ Peter McGraw
Peter McGraw
NATIONAL IMMIGRATION LAW
CENTER
1121 14th Street, Suite 200
Washington, D.C. 20005
Telephone: (213) 639-3900
Fax: (213) 639-3911
mcgraw@nilc.org

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2026, I caused a copy of Plaintiffs' Cross-Motion to Modify Injunction and Motion for Leave to Conduct Discovery to be served by email to the following counsel by filing the same with the Court's electronic filing system:

ZACHARY CARDIN
Trial Attorney
United States Department of Justice
Office of Immigration Litigation
Litigation and Appeals Section
P.O. Box 878, Ben Franklin Station
Washington DC 20044
(202) 802-3410
zachary.a.cardin@usdoj.gov

Dated: January 6, 2026

Peter McGraw
Peter McGraw