

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*

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 Jose Antonio PEREZ-FUNEZ,
16 *et al.*,
17 Plaintiffs,
18 vs.
19 U.S. Department of Homeland
20 Security, *et al.*,
21 Defendants.

Case No.: CV 81-01457-MWF(Ex)

**PLAINTIFFS’ OPPOSITION TO
DEFENDANTS’ MOTION TO
TERMINATE PERMANENT
INJUNCTION AND ADVISAL
ORDER**

Date: February 9, 2026
Time: 10:00 a.m.
Place: Courtroom 5A, First Street
Courthouse
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
5 carrasco@willamette.edu

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

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

24 Richard A. Koffman**
25 Alex Bodaken**
26 Nina L. Haug**
27 COHEN MILSTEIN SELLERS & TOLL PLLC
28 1100 New York Ave., NW, Suite 800
Washington, D.C. 20005
Telephone: (202) 408-4600
rkoffman@cohenmilstein.com
abodaken@cohenmilstein.com
nhaug@cohenmilstein.com

Diane Kee***
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
5 *Admitted *pro hac vice*

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

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

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1 While recent factual developments may justify modification as set out in Plaintiffs’
2 accompanying cross-motion, terminating the injunction is unwarranted.

3 **BACKGROUND**

4 Brought on behalf of a class represented by Jose Antonio Perez-Funez, Jose
5 Cruz, Supaya Cruz, Yanira Pena, and Claudia Pena—children fleeing the brutal and
6 protracted civil war in El Salvador—this action challenged the then-Immigration and
7 Nationality Services’ (“INS”) so-called “voluntary” departure procedure, whereby
8 immigration officials would present recently apprehended unaccompanied children
9 with the option to “voluntarily” depart the United States instead of pursuing relief
10 from removal at a formal deportation hearing. *See Perez-Funez v. Dist. Dir., I.N.S.*
11 (*Perez-Funez II*), 619 F. Supp. 656, 658-59 (C.D. Cal. 1985).¹ Following a trial that
12 included testimony from the five class representatives, 14 additional class member
13 children, and multiple expert witnesses, the Court found that the INS’s policies and
14 practices deprived unaccompanied children of procedural due process by coercing
15 them into waiving their rights unknowingly and involuntarily. *Id.* at 669. The Court
16 therefore ordered the agency to:

- 17 (1) read and provide to class members a simplified rights advisal document
18 along with a list of free legal service providers;²

19
20 _____
21 ¹ As described below, *see infra* Section II.A, since 2008, the return of certain
22 unaccompanied children to their country of last habitual residence without initiation
23 of formal removal proceedings has been controlled by the TVPRA’s return provision,
24 which has limited application to children from Mexico or Canada who are
25 apprehended “at a land border or Port of Entry of the United States.” 8 U.S.C.
26 § 1232(a)(2)(B). All other unaccompanied children sought to be removed by the
27 Government must be provided the opportunity to pursue relief in formal removal
28 proceedings. 8 U.S.C. § 1232(a)(5)(D).

² Since approximately 1997, the Government has used Form I-770 as this rights
advisal document and continues to use this form today. Exh. 1 (Form I-770); Dkt.
250 at 6 (acknowledging the current use of Form I-770).

- 1 (2) if the child permanently resides in Mexico or Canada and was
2 apprehended “in the immediate vicinity of the border,” inform the child
3 that they may call a parent, close relative, friend, or organization from the
4 free legal services provider list;
- 5 (3) for all other class members, provide access to telephones and ensure that
6 the child has in fact communicated with a parent, close adult relative,
7 friend, or organization from the free legal services provider list; and
- 8 (4) obtain a signed acknowledgment by the child, on a separate copy of the
9 advisal document, that they have received this information, including
10 confirmation of communication with a parent, close adult relative, friend,
11 or legal organization where applicable.

12 *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez I)*, 611 F. Supp. 990, 1005–06 (C.D.
13 Cal. 1984); *Perez-Funez II*, 619 F. Supp. at 669–70.³

14 While recognizing that these protections would “entail some expense,” the
15 Court found any cost to be a “minimal burden upon the Government” compared to
16 the great risk of depriving class members of their “significant constitutional and
17 statutory rights.” *Perez-Funez II*, 619 F. Supp. at 668. It was “common sense” that
18 the ordered safeguards were needed to protect “unaccompanied children of tender
19 years encounter[ing] a stressful situation in which they are forced to make critical
20 decisions” about difficult legal questions in the absence of a trusted adult. *Id.* at 662.
21 As the Court explained: “Their interrogators are foreign and authoritarian. The
22 environment is new and the culture completely different. The law is complex. The
23 children generally are questioned separately.” *Id.* (citation omitted). Under such

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25 ³ The Court’s 1985 order “ma[de] the preliminary injunction of January 24, 1984
26 permanent” with certain modifications, including striking specific language
27 prohibiting “employ[ment] of threats, misrepresentations, subterfuge, or other forms
28 of coercion.” *Perez-Funez II*, 619 F. Supp. at 670. The permanent injunction
incorporates the preliminary injunction’s prohibition on “advis[ing], encourag[ing],
or persuad[ing]” class members to change their decision about whether to seek relief
from removal in Immigration Court. *Perez-Funez I*, 611 F. Supp. at 1005.

1 circumstances, it was “obvious to the Court” that the situation faced by
2 unaccompanied children “is inherently coercive,” such that many children—
3 especially those “accustomed to autocratic governments”—naturally responded by
4 “defer[ring] to the authority before them.” *Id.* at 661–62 (citation omitted).

5 Notwithstanding the Government’s present claim that the injunction from its
6 inception “improperly deprived future officials of their designated legislative and
7 executive powers to adapt immigration policy to changing political and economic
8 circumstances,” the Government provided the advisals required by the injunction *for*
9 *40 years* with no objection. Dkt. 250 at 3 (citation modified). Since 1988, significant
10 portions of the Court’s injunction have been incorporated into the Government’s
11 regulations. *See, e.g.*, 8 C.F.R. § 1236.3(g)–(h);⁴ Detention and Release of Juveniles,
12 53 Fed. Reg. 17450 (May 17, 1988) (“[L]anguage of the [*Perez-Funez*] order has
13 been incorporated in the final rule.”). Even after 2008, when the TVPRA codified
14 further safeguards for unaccompanied children, the Government failed *for 17 years*

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16 ⁴ The injunction’s requirements are currently partially described in two different
17 places in the Government’s regulations. *See* 8 C.F.R. §§ 236.3(g)(1), 1236.3(g)–(h).
18 But the current language at 8 C.F.R. § 236.3(g)–(h) has not taken effect.

19 INS first adopted requirements from the *Perez-Funez* injunction in 1988 in a
20 regulation codified at 8 C.F.R. § 242.24. *See* Detention & Release of Juveniles, 53
21 Fed. Reg. 17450-51 (May 17, 1988). In 1997, INS adopted interim regulations
22 incorporating aspects of the permanent injunction. *See* Inspection and Expedited
23 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
24 Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10362 (Mar. 6, 1997). In
25 2003, following the passage of the Homeland Security Act, the U.S. Department of
26 Homeland Security (“DHS”) duplicated the language of 8 C.F.R. § 236.3(g)–(h)
27 word-for-word at 8 C.F.R. § 1236.3(g)–(h). *See* Aliens and Nationality; Homeland
28 Security; Regulations, 68 Fed. Reg. 9824, 9838 (Feb. 28, 2003).

29 In 2019, DHS adopted a final rule modifying 8 C.F.R. § 236.3(g). 84 Fed. Reg.
30 44392, 44525–26 (Aug. 23, 2019). But DHS’s rules were found invalid, except for
31 severed portions not including 8 C.F.R. § 236.3(g)(1), which contained parts of the
32 *Perez-Funez* injunctions requirements and did not take effect. *Flores v. Rosen*, 984
33 F.3d 720, 744 (9th Cir. 2020).

1 to argue that any change in law or fact made compliance with the injunction
2 inequitable. *See* Dkt. 250 at 3 (claiming that the TVPRA “close[d] the gaps
3 motivating this court’s injunction in the first place”). Which begs the question: Why
4 now?

5 The answer, as the accompanying evidence and further tailored discovery
6 sought by Plaintiffs will demonstrate, is disturbingly clear: the Government seeks to
7 subvert the protections of the TVPRA, accompanying regulations, and the Court’s
8 injunction by coercing unaccompanied children into self-deporting. *Cf. L.G.M.L.*,
9 2025 WL 2671690, at *12 (removing unaccompanied children from the United
10 States under the guise of “reunification” likely “circumvent[s] the process that
11 Congress established for doing so”). This plan is particularly harmful for
12 unaccompanied children from non-contiguous countries—*i.e.*, countries other than
13 Canada or Mexico—who, when encountered by U.S. Customs and Border Patrol
14 (“CBP”), are required under the TVPRA to be transferred to the custody of the Office
15 of Refugee Resettlement (“ORR”), placed in the “least restrictive setting that is in
16 the best interest of the child,” and given the opportunity to pursue relief from
17 removal in Immigration Court. 8 U.S.C. § 1232(a)(5)(D), (b), (c)(2)(A). The
18 Government seeks to take advantage of the brief 72-hour period before these
19 children are transferred to ORR to subject them—unlawfully—to expedited return
20 procedures. Exh. 2 at ¶5 (Decl. of Fisher Flores); Dkt. 250 at 9 (claiming that recent
21 appropriations authorize return of unaccompanied children from “any country, not
22 just contiguous countries”); Exh. 3 (Letter from CBP Commissioner Scott).

23 A legal services provider in the Rio Grande Valley area of Texas reports that
24 children from non-contiguous countries in CBP custody have already been presented
25 with and signed expedited return forms consistent within what appears to be an
26 attempt to comply with the TVPRA’s protections. Exh. 2 at ¶¶6-15. Many children
27 did so under circumstances that are coercive or otherwise short of knowing and
28 voluntary. *Id.* Moreover, CBP has created a new “UAC Processing Pathway Advisal”

1 form that encourages return before transfer to ORR by, among other things,
2 threatening “prolonged” detention for children who seek removal hearings or
3 express fear of returning to their home country. Exh. 4 at 6 (Decl. of Silver);⁵ Exh.
4 5 (Decl. of Winger and Email).⁶ Because the *Perez-Funez* injunction affirms the
5 “significant constitutional and statutory rights” of children to make informed and
6 voluntary decisions—and provides procedural protections to guard against the
7 Government’s violation of those rights—the Government now seeks termination.
8 *Perez-Funez II*, 619 F. Supp. at 668.

9 ARGUMENT

10 I. Defendants Are Not Entitled to Relief Under Rules 60(b)(4) or 60(b)(6).

11 A. Rule 60(b)(4) Does Not Apply.

12 The Government’s attempt under Rule 60(b)(4) to “attack [the injunction] as
13 void due to lack of subject matter jurisdiction,” Dkt. 250 at 9, fails for two reasons.
14 First, Rule 60(b)(4) does not apply because the Court had jurisdiction to impose this
15 injunction when it was issued. Second, any later-imposed restrictions limit only the
16 Court’s available remedies, not its subject matter jurisdiction. *Biden v. Texas*, 597
17 U.S. 785, 801 (2022).

18 Federal courts considering Rule 60(b)(4) motions “generally have reserved
19 relief only for the exceptional case in which the court that rendered judgment lacked
20 even an ‘arguable basis’ for jurisdiction.” *United Student Aid Funds, Inc. v.*

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22
23 ⁵ This document is also found at *Garcia Ramirez v. U.S. Immig. & Customs Enf’t*,
18-cv-00508 (D.D.C. Nov. 13, 2025), Dkt. Nos. 426, 426-1.

24
25 ⁶ In recent reporting, CBP also appears to acknowledge this document as its own.
26 See Jose Olivarés, *Unaccompanied Children Being Pressured to Return to Their*
27 *Countries by US Border Officials*, The Guardian (Dec. 19, 2025),
28 [https://www.theguardian.com/us-news/2025/dec/19/unaccompanied-children-](https://www.theguardian.com/us-news/2025/dec/19/unaccompanied-children-trump-self-deport)
trump-self-deport (quoting CBP spokesperson as saying “[t]he advisal document
provided to unaccompanied children explains options available under the
Immigration and Nationality Act on their path forward”).

1 *Espinosa*, 559 U.S. 260, 271 (2010) (quoting *Nemaizer v. Baker*, 793 F.2d 58, 65
2 (2d Cir. 1986) and citing *United States v. Boch Oldsmobile*, 909 F.2d 657, 661–62
3 (1st Cir. 1990)); see also *Hoffmann v. Pulido*, 928 F.3d 1147, 1151 (9th Cir. 2019).

4 “A void judgment is from its inception a legal nullity.” *Inland Concrete*
5 *Enters., Inc. v. Kraft*, 318 F.R.D. 383, 410 (C.D. Cal. 2016) (citation modified). A
6 Rule 60(b)(4) motion relying on post-judgment events, therefore, “is focused on the
7 wrong point in time.” *Gillispie v. Warden, London Corr. Inst.*, 771 F.3d 323, 327
8 (6th Cir. 2014). Although the Government points to intervening changes in “[t]he
9 legal and factual landscape” over the last four decades during which the permanent
10 injunction protected class members’ rights, Dkt. 250 at 3, none of these alleged
11 changes affect the Court’s jurisdiction when the injunction was imposed in 1985.
12 The Government cannot now plausibly claim that the Court lacked subject matter
13 jurisdiction in 1985, let alone that it lacked an “arguable basis” for jurisdiction. See
14 *United Student Aid Funds*, 559 U.S. at 271.

15 Second, there is “no basis for the conclusion that Section 1252(f)(1) concerns
16 subject matter jurisdiction” at all. *Biden v. Texas*, 597 U.S. at 801. As the Supreme
17 Court has explained, “[j]urisdiction . . . is a word of many, too many meanings.” *Id.*
18 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 90 (1998)). Despite
19 the use of the phrase “jurisdiction or authority” in Section 1252(f)(1), “the question
20 whether a court has jurisdiction to grant a particular remedy is different from the
21 question whether it has subject matter jurisdiction over a particular class of claims.”
22 *Id.* Even if, *arguendo*, the Government’s interpretation of Section 1252(f)(1) had
23 merit, the statute constrains only the relief this Court can grant. This precludes the
24 Government’s Rule 60(b)(4) attack.

25 **B. Rule 60(b)(6) Does Not Apply.**

26 The Government also argues that “[t]his case presents the ‘extraordinary
27 circumstances’ that justify relief under Rule 60(b)(6).” Dkt. 250 at 20 (quoting
28 *Ackermann v. United States*, 340 U.S. 193, 198 (1959)); see *Buck v. Davis*, 580 U.S.

1 100, 123 (2017). But the Government invokes Rule 60(b)(4) and primarily argues,
2 under Rule 60(b)(5), that “applying [the judgment] prospectively is no longer
3 equitable.” *Agostini v. Felton*, 521 U.S. 203, 215 (1997). Dispositive here, “clause
4 (6)” of Rule 60(b) “and clauses (1) through (5) are mutually exclusive.” *Liljeberg v.*
5 *Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11 (1988). A party may not
6 avail itself of relief under Rule 60(b)(6) if the motion raises grounds covered by Rule
7 60(b)(1) through (5)—as the Government does here.

8 Even if Rule 60(b)(6) could apply, there are no “extraordinary circumstances”
9 present. To claim otherwise, the Government points to supposed separation-of-
10 powers concerns surrounding immigration policy, Dkt. 250 at 21, and misleadingly
11 quotes *Arlington Heights v. Metro Housing Development Corporation* to argue that
12 the injunction “is a ‘substantial intrusion’ into the workings of the political
13 branches.” Dkt. 250 at 19 (quoting *Arlington Heights v. Metro Hous. Dev. Corp.*,
14 429 U.S. 252, 268 n.18 (1977)). In *Arlington Heights*, the Supreme Court merely
15 noted in dicta that “judicial inquiries into legislative or executive *motivation*
16 represent a substantial intrusion into the workings of other branches of
17 Government.” *Arlington Heights*, 429 U.S. at 268 n.18 (emphasis added). Moreover,
18 the Supreme Court has never viewed separation-of-powers concerns as overriding
19 the judiciary’s role in ensuring that non-citizens receive constitutional protections,
20 even if such protections implicate immigration policy. *See, e.g., Zadvydas v. Davis*,
21 533 U.S. 678, 693–94 (2001) (Due Process Clause “applies to all ‘persons’ within
22 the United States, including aliens, whether their presence here is lawful, unlawful,
23 temporary, or permanent”) (collecting cases); *Mathews v. Diaz*, 426 U.S. 67, 77
24 (1976) (Due Process applies even to people “whose presence in this country is
25 unlawful, involuntary, or transitory”). Even if the Government could raise Rule
26 60(b)(6) as a basis for relief, therefore, its arguments are unavailing.

1 **II. Termination Is Not Justified Under Rule 60(b)(5).**

2 Rule 60(b)(5) permits relief from an injunction where “applying it
3 prospectively is no longer equitable.” Accordingly, “the Rule provides a means by
4 which a party can ask a court to modify or vacate a judgment or order if ‘a significant
5 change either in factual conditions or in law’ renders continued enforcement
6 ‘detrimental to the public interest.’” *Horne v. Flores*, 557 U.S. 433, 447 (2009)
7 (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)).

8 The Government’s first argument regarding changed legal conditions is that 8
9 U.S.C. § 1252(f)(1) and the Supreme Court’s interpretation of that statute in *Garland*
10 *v. Aleman Gonzalez*, 596 U.S. 543 (2022), preclude this Court from maintaining its
11 order for classwide relief. The Government is wrong because the injunction is
12 neither founded on nor implicates a provision of the Immigration and Nationality
13 Act (“INA”) subject to Section 1252(f)(1).

14 The Government’s other arguments for termination based on intervening legal
15 developments also fail. No legal authority permits what the injunction prohibits. And
16 while the Government has incorporated significant portions of the injunction into its
17 regulations, the Executive’s unilateral creation of law through agency rulemaking
18 does not excuse compliance with the injunction nor warrant its termination.
19 Moreover, the Government’s Rule 60(b)(5) motion based on intervening legal
20 developments should be rejected as untimely, and no factual changes justify the
21 injunction’s termination.

22 **A. Neither Section 1252(f)(1) Nor *Aleman Gonzalez* Require the**
23 **Injunction’s Termination.**

24 *Aleman Gonzalez* does not require termination of the injunction because the
25 injunction does not “enjoin or restrain the operation of” a covered provision of the
26 INA. *See* 8 U.S.C. § 1252(f)(1). “By its terms, § 1252(f)(1) does not . . .
27 categorically insulate immigration enforcement from judicial classwide
28 injunctions.” *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 812 (9th Cir.

1 2020) (internal quotation marks omitted). Instead, Section 1252(f)(1) prohibits
2 courts from issuing non-individual injunctive relief restraining the operation of
3 “specified statutory provisions” of the INA, *Aleman Gonzalez*, 596 U.S. at 550—
4 namely, 8 U.S.C. §§ 1221–1231, *see Galvez v. Jaddou*, 52 F.4th 821, 829–31 (9th
5 Cir. 2022). Because the injunction here is neither based on nor enjoins a covered
6 provision, it is not subject to Section 1252(f)(1).

7 The permanent injunction itself does not “order federal officials to take or to
8 refrain from taking actions to enforce, implement, or otherwise carry out the
9 specified statutory provisions.” *Aleman Gonzalez*, 596 U.S. at 550. It is premised not
10 on statutory law of any kind, but rather on the Fifth Amendment and the process due
11 to unaccompanied children to ensure that their waiver of the opportunity to pursue
12 relief in Immigration Court is knowing and voluntary. *See Perez-Funez II*, 619 F.
13 Supp. at 659–60. The injunction here is thus categorically distinct from the classwide
14 relief issued by lower courts in *Aleman Gonzalez*, which directly enjoined the
15 Government’s ability to detain noncitizens under 8 U.S.C. § 1231, a statute expressly
16 subject to Section 1252(f)(1)’s remedial strictures. *Aleman Gonzalez*, 596 U.S. at
17 547. Because the injunction does not “order federal officials to take or to refrain
18 from taking” an action under *any* statutory provision, let alone one subject to Section
19 1252(f)(1), it is not precluded by Section 1252(f)(1) or *Aleman Gonzalez*’s
20 interpretation of the statute. *See Aleman Gonzalez*, 596 U.S. at 550.⁷

21 Moreover, the injunction does not directly operate on statutes subject to—
22 and thus is not precluded by—Section 1252(f)(1). The Government’s argument to
23 the contrary relies on a passing reference to two provisions concerning voluntary

24 ⁷ Any doubts regarding Section 1252(f)(1)’s application to this constitutionally
25 required injunction must be resolved in Plaintiffs’ favor. That is so both because
26 ambiguities in statutes limiting judicial review are construed narrowly, *see Ibarra-*
27 *Perez v. United States*, 154 F.4th 989, 995–96 (9th Cir. 2025), and because of the
28 presumption that the judiciary may address constitutional claims, *see Allen v. Milas*,
896 F.3d 1094, 1108 (9th Cir. 2018); *Webster v. Doe*, 486 U.S. 592, 601–05 (1988).

1 departure and withdrawal of application for admission that are within Section
2 1252(f)(1)'s scope. *See* Dkt. 250 at 11–12 (citing 8 U.S.C. §§ 1225(a)(4) and 1229c).
3 But the Government concedes that the 2008-enacted TVPRA now represents the
4 “detailed, comprehensive and binding statutory scheme governing” for the
5 processing and return of unaccompanied children. Dkt. 250 at 14;⁸ *L.G.M.L.*, 2025
6 WL 2671690, at *2. It is thus the TVPRA, 8 U.S.C. § 1232, not Sections 1225(a)(4)
7 and 1229c, that the injunction “directly implicates” today. *Gonzales v. Dep’t of*
8 *Homeland Sec.*, 508 F.3d 1227, 1233 (9th Cir. 2007); *see also United States v.*
9 *Hernandez-Garcia*, 44 F.4th 1157, 1164 (9th Cir. 2022) (recognizing that a “later
10 and more specific statute usually controls,” for interpretive purposes, over earlier
11 and more general ones).

12 That conclusion disposes of the Government’s remedial-bar argument
13 because—as the Government likewise concedes, *see* Dkt. 250 at 12—the TVPRA is
14 not covered by Section 1252(f)(1). *See Galvez*, 52 F.4th at 829–31 (9th Cir. 2022).⁹

16 ⁸ The Government also asserts that the recently enacted One Big Beautiful Bill Act
17 (“OB BB”) further modifies such procedures. Dkt. 250 at 14–15. Setting aside the
18 Government’s misinterpretation of the OB BB’s import, *but see infra* Section II.B,
19 the OB BB also is not covered by Section 1252(f)(1). *See L.G.M.L.*, 2025 WL
20 2671690, at *11 n.6; *Galvez*, 52 F.4th at 830 (statutes enacted after 1996 “could not
21 have enacted a law that was amended by the IIRIRA of 1996”).

22 ⁹ Some cases have suggested that 8 U.S.C. § 1232 is within the range of INA
23 subsections covered by Section 1252(f)(1) because “the reference in § 1252(f)(1) to
24 ‘the provisions of part IV of this subchapter’ appears to refer to 8 U.S.C. §§ 1221–
25 1232.” *Galvez*, 52 F.4th at 830 (citing 8 U.S.C. § 1252(f)(1)); *cf. Aleman Gonzalez*,
26 596 U.S. at 549 (citing 8 U.S.C. §§ 1221–1232 as the range of provisions referenced
27 in Section 1252(f)(1)). But as the Ninth Circuit explained in *Galvez*, both the text of
28 the Statutes at Large (which controls over the United States Code) and the reference
in Section 1252(f)(1) to covering only provisions “as amended by the Illegal
Immigration Reform and Immigrant Responsibility Act of 1996,” 8 U.S.C.
§ 1252(f)(1), make clear that the 2008-enacted TVPRA is not covered by Section
1252(f)(1). *Galvez*, 52 F.4th at 829–31; *accord L.G.M.L.*, 2025 WL 2671690, at *11
n.6.

1 “Congress legislated which sections are covered by § 1252(f)(1)” and “[t]he
2 Executive Branch does not get to propose additions.” *Texas v. Dep’t of Homeland*
3 *Sec.*, 123 F.4th 186, 210 (5th Cir. 2024). By establishing robust procedures for the
4 processing and return of unaccompanied children in the TVPRA, which Section
5 1252(f)(1) does not govern, Congress exempted those procedures—and injunctions
6 implicating them—from Section 1252(f)(1)’s remedial limitations.

7 The Government may attempt to argue in reply that the permanent injunction,
8 although operating directly on the TVPRA, is nonetheless barred by Section
9 1252(f)(1) because of the TVRPA’s references to 8 U.S.C. §§ 1225(a) and 1229c.
10 See 8 U.S.C. § 1232(a)(1)(B)(ii), (a)(5)(D)(ii). That argument, if explained “for the
11 first time in a reply brief,” would be waived. *Autotel v. Nev. Bell Tel. Co.*, 697 F.3d
12 846, 852 n.3 (9th Cir. 2012); see *Concialdi v. Jacobs Eng’g Grp.*, 2019 WL 3084282,
13 at *10 n.9 (C.D. Cal. 2019) (“When a party includes no developed argumentation on
14 a point . . . we treat the argument as waived.”) (citations omitted). It is also wrong
15 on the merits.

16 Judge Rafeedie entered the permanent injunction after finding the INS’s
17 “policies and procedures” for so-called “voluntary” departure “constitutionally
18 infirm,” because they did not sufficiently guard against “[t]he problems of an
19 inherently coercive situation” and class members with “impaired decision-making
20 ability.” *Perez-Funez II*, 619 F. Supp. at 669; *id.* at 659–60. With the TVPRA,
21 Congress imposed new obligations on federal agencies to ensure that
22 unaccompanied children “are safely repatriated.” 8 U.S.C. § 1232(a)(1). Agencies,
23 including CBP, must notify the U.S. Department of Health and Human Services
24 (“HHS”) within 48 hours of discovering any unaccompanied child, 8 U.S.C.
25 § 1232(b)(2)(A), and, absent “exceptional circumstances,” must transfer custody of
26 the child to ORR within 72 hours. *Id.* § 1232(b)(3). Unaccompanied children must
27 be “promptly placed in the least restrictive setting that is in [their] best interest.” *Id.*
28 § 1232(c)(2)(A). Children from non-contiguous countries are not eligible for return

1 outside of removal proceedings at all and must be provided access to counsel “to the
2 greatest extent practicable.” *Id.* § 1232(a)(5)(D), (c)(5). For unaccompanied children
3 from Mexico or Canada, immigration officials must determine whether the child has
4 been or is likely to be a victim of human trafficking, *id.* § 1232(a)(2)(A)(i), whether
5 the child fears returning to their home country “owing to a credible fear of
6 persecution,” *id.* § 1232(a)(2)(A)(ii), and whether the child can make an
7 “independent decision” to return. *Id.* § 1232(a)(2)(A)(iii).

8 The injunction requires immigration officials to give unaccompanied children
9 verbal and written advisals and phone access to ensure that they can make knowing
10 and voluntary decisions about whether to return to their home country. *Perez-Funez*
11 *II*, 619 F. Supp. at 669; *see also* Exh. 3 (describing Form I-770 as part of the TVPRA
12 screening process). Thus, the injunction principally operates on the TVPRA’s
13 distinct requirement to determine whether unaccompanied children are eligible for
14 return outside of removal proceedings, including the determination that a child is
15 able to make an “independent decision” to return, 8 U.S.C. § 1232(a)(2)(A)(iii), not
16 the INA provisions that may be implicated once the TVPRA’s processing
17 requirements are satisfied.

18 Moreover, any spillover effect on INA provisions covered by Section
19 1252(f)(1) is irrelevant given the Ninth Circuit’s repeated holdings “that
20 § 1252(f)(1) does not prohibit an injunction” operating on non-covered provisions
21 “simply because of collateral effects on a covered provision.” *Al Otro Lado v. EOIR*,
22 138 F.4th 1102, 1125 (9th Cir. 2025) (en banc), *cert. granted on other grounds*, 2025
23 WL 3198572 (Nov. 17, 2025). Numerous courts have applied this doctrine where an
24 injunction has potential “downstream effects on removal proceedings” pursuant to 8
25 U.S.C. §§ 1225 and 1229a or other covered provisions. *See, e.g., RAICES v. Noem*,
26 793 F. Supp. 3d 19, 107 (D.D.C. 2025). The Ninth Circuit found that a court may
27 provide classwide relief regarding asylum rules, which are not covered by Section
28 1252(f)(1), even though “asylum eligibility may change the outcome of a removal

1 proceeding under a [Section-1252(f)(1)] covered provision.” *Al Otro Lado*, 138
2 F.4th at 1126. Such an effect on a covered provision “is collateral.” *Id.* Similarly,
3 the Ninth Circuit affirmed an injunction against “the unlawful application of
4 statutory provisions regarding adjustment of status”—which are not covered by
5 Section 1252(f)(1)—“notwithstanding that a [Section-1252(f)(1)-covered]
6 reinstatement proceeding may be a collateral consequence of an unsuccessful
7 adjustment application.” *Gonzales*, 508 F.3d at 1233.

8 Two recent cases have applied the collateral-effects doctrine to uphold
9 injunctions like the one here. In April 2025, a court in the Eastern District of
10 California held that an injunction based on the Fourth Amendment and a non-
11 covered INA subpart was not prohibited “*even if* there may be collateral effects upon
12 a provision covered by Section 1252(f)(1).” *United Farm Workers v. Noem*, 785 F.
13 Supp. 3d 672, 705–06 (E.D. Cal. 2025). Weeks ago, a District of Columbia federal
14 court concluded that an injunction implicating a subsection of the TVPRA was not
15 barred merely because it might have collateral effects on a covered provision of the
16 INA. *Garcia Ramirez v. ICE*, 2025 WL 3563183, at *18 (D.D.C. Dec. 12, 2025).

17 The permanent injunction here, based on the Fifth Amendment, directly
18 operates on the TVPRA, which is not subject to Section 1252(f)(1). Any potential
19 downstream effects on the removal process are collateral, as in the cases cited above.
20 Prospective application of the injunction is therefore permitted.

21 Finally, the Government has not moved to vacate the declaratory relief issued
22 in this case. *See Perez-Funez II*, 619 F. Supp. at 669. Even if it had, Ninth Circuit
23 precedent establishes “that § 1252(f)(1) does not ‘bar classwide declaratory relief.’”
24 *Al Otro Lado*, 138 F.4th at 1123–24 (quoting *Rodriguez v. Hayes*, 591 F.3d 1105,
25 1119 (9th Cir. 2010)). As explained in Plaintiffs’ accompanying cross-motion,
26 additional discovery may justify modifying the declaratory relief issued in this case.
27 *See* Dkt. 269 at 20. Regardless, declaratory relief establishing the illegality of
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1 unconstitutional practices vis-à-vis unaccompanied minors cannot be eliminated
2 through the Government’s motion.

3 **B. The TVPRA and OBBB Do Not Constitute Changes in Law That**
4 **Justify Terminating the Injunction.**

5 The Government argues that “the substantive merits” of the injunction “have
6 been displaced by Congress’s own comprehensive changes to the immigration laws
7 affecting the minors at issue.” Dkt. 250 at 13. Specifically, the Government points
8 to the TVPRA and the OBBB as “obviate[ing] whatever need there was for the
9 Court’s 1985 order while creating a dramatically different legal landscape” for the
10 rights of unaccompanied children. *Id.* at 13–14. But the Government must show that
11 compliance with the injunction has become “impermissible.” *Flores v. Lynch*, 828
12 F.3d 898, 909–10 (9th Cir. 2016); *see also California ex rel. Becerra v. U.S. Env’t*
13 *Prot. Agency*, 978 F.3d 708, 719 (9th Cir. 2020) (change in law must “permit what
14 was previously forbidden”). The TVPRA does not validate conduct that the
15 injunction prohibits. But instead, the TVPRA codifies the requirements for
16 determining whether certain unaccompanied children are eligible for return to
17 Mexico or Canada outside of removal proceedings. *See supra* Section II.A; 8 U.S.C.
18 § 1232(a)(2). All other unaccompanied children must be afforded the opportunity to
19 pursue relief from removal in Immigration Court and provided with access to
20 counsel “to the greatest extent practicable.” 8 U.S.C. § 1232(a)(5)(D), (c)(5). As a
21 result, the TVPRA is not an intervening legal authority that requires termination. *See*
22 *Flores v. Rosen*, 984 F.3d 720, 741 (9th Cir. 2020) (“As the government does not
23 otherwise argue that the statutes ‘make legal what the decree was designed to
24 prevent,’ it has not demonstrated that the Homeland Security Act and the TVPRA
25 effected legal changes warranting termination of the Agreement.” (citation
26 omitted)). The Constitution continues to require properly advising unaccompanied
27 children of their rights and prohibits undue influence when eligible unaccompanied
28 children are subject to modern return procedures under the TVPRA.

1 There also is no support for the Government’s bald contention that the “OBBB
2 expands DHS’s authority to permit [unaccompanied children] from any country, not
3 just contiguous countries, to withdraw their application for admission pursuant to 8
4 U.S.C. § 1225(a)(4) and provides funds to DHS for such withdrawals.” Dkt. 250 at
5 9. Section 100051(8), the relevant provision of the OBBB is merely an
6 appropriation, *not* authorizing legislation. *See L.G.M.L.*, 2025 WL 2671690, at *15
7 n.9 (rejecting argument that OBBB overcomes the “very strong presumption” that
8 “appropriation acts” do not “substantively change existing laws”) (internal citations
9 omitted); *see* OBBB, Pub. L. No. 119-21, § 100051(8)(A), 139 Stat. 72 (2025). The
10 Government’s interpretation necessarily repeals the TVPRA’s provision requiring
11 that children from non-contiguous countries be provided an opportunity to pursue
12 relief from removal before the Immigration Court. 8 U.S.C. § 1232(a)(5)(D). Such
13 repeals by implication are strongly disfavored. *See Tenn. Valley Auth. v. Hill*, 437
14 U.S. 153, 190 (1978) (explaining that the doctrine disfavoring repeals by implication
15 applies with “even greater force” where claimed repeal is appropriations legislation);
16 *see also Firebaugh Canal Co. v. United States*, 203 F.3d 568, 575 (9th Cir. 2000)
17 (repeal by implication is only justified where “earlier and later statutes are
18 irreconcilable”). The OBBB provides “funding [for] removal operations for
19 specified unaccompanied . . . children.” Pub. Law. 119-21, 139 Stat. 72, 386. It also
20 limits the use of those funds to “permitting a specified unaccompanied . . . child to
21 withdraw the application for admission of the child pursuant to section 235(a)(4) of
22 the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)).” *Id.* Put simply, the
23 OBBB funds activities already authorized by the TVPRA’s return provisions for
24 children from contiguous countries who meet the criteria outlined above. 8 U.S.C.
25 § 1232(a)(2).¹⁰

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27 ¹⁰ Assuming, *arguendo*, that OBBB permits the expedited return of unaccompanied
28 children from non-contiguous countries as the Government claims, Dkt. 250 at 16,
the appropriations bill says nothing about the notice or other procedural safeguards

1 Neither do intervening regulations highlighted by the Government require
2 termination of the injunction. These regulations apply only to unaccompanied
3 children who have been transferred to the custody of ORR, not to children who
4 would be subject to the TVPRA’s expedited return provision. *See, e.g.*, 45 C.F.R.
5 § 410.1309(a)(1) (describing “ORR’s responsibilities in relation to legal services for
6 unaccompanied children”), 410.1309(a)(2) (“An unaccompanied child *in ORR’s*
7 *legal custody* shall receive” (emphasis added)). They do not permit what the
8 injunction forbids and, in any event, the Government’s unilateral creation of law
9 through rulemaking does not excuse it from compliance with the injunction or
10 warrant termination. *See Flores v. Rosen*, 984 F.3d at 741 (citing *Nehmer v. U.S.*
11 *Dep’t of Veterans Affs.*, 494 F.3d 846, 860 (9th Cir. 2007)). Moreover, the
12 Government clearly intends to discontinue use of Form I-770, despite valid
13 regulations requiring its use. Dkt. 250 at 13, 17–18 (describing purported flaws of
14 Form I-770); 8 C.F.R. § 1236.3(h). The Government continues to seek termination
15 of the *Flores* Settlement Agreement (“FSA”), which also requires the use of Form
16 I-770. *Flores v. Bondi*, 2025 WL 2633183 (C.D. Cal. Aug. 15, 2025); Exh. 6 at
17 ¶¶12A, 24.D (*Flores* Settlement Agreement). The Government has not implemented
18 a “durable remedy” that would justify termination of the injunction. *Horne*, 557 U.S.
19 at 450.

20 In short, no changes in law have altered the undisputed “equitable purpose”
21 of the injunction, which is “to ensure accurate and comprehensible notice” to
22 vulnerable unaccompanied children facing voluntary departure. Dkt. 250 at 17.

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due to children before their return. Therefore, the OBBB does not make compliance
with the Court’s permanent injunction impermissible and warrant termination.

1 **C. The Government’s Termination Request Is Untimely.**

2 Motions under Rule 60(b)(5)¹¹ must be brought “within a reasonable time.”
3 *United States v. Holtzman*, 762 F.2d 720, 725 (9th Cir. 1985); *see also* Fed. R. Civ.
4 P. 60(c)(1). In evaluating what constitutes a reasonable time, “[c]ourts take into
5 consideration ‘the interest in finality, the reason for delay, the practical ability of the
6 litigant to learn earlier of the grounds relied upon, and prejudice to other parties.’”
7 *Freedom From Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*,
8 2025 WL 3282571, at *2 (C.D. Cal. Oct. 10, 2025) (quoting *Ashford v. Stewart*, 657
9 F.2d 1053, 1055 (9th Cir. 1981)).

10 The Government primarily relies upon the TVPRA as the change in law
11 warranting relief under Rule 60(b)(5). Dkt. 250 at 14–17. But Congress passed the
12 TVPRA nearly two decades ago. The Government was undoubtedly able to learn of
13 the TVPRA’s passage and assess any effect on this Court’s injunction, yet it offers
14 no justification for delaying its motion for 17 years. The Government did not request
15 relief on this basis within a reasonable time. *See Jeff D. v. Little*, 2023 WL 7220754,
16 at *3 (D. Idaho Nov. 1, 2023) (“Courts have found unexcused delays of much shorter
17 than 12 years unreasonable.” (collecting cases)).

18 Meanwhile, Plaintiffs have a significant interest in the finality of an injunction
19 that has critically protected unaccompanied children’s Due Process rights for forty
20 years. The Government’s inexcusable delay prejudices Plaintiffs’ strong reliance
21 interests. The Court should not entertain this untimely request for relief.
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26 ¹¹ Motions under Rule 60(b)(4) and (b)(6) must also be made within a reasonable
27 time. Fed. R. Civ. P. 60(c)(1). Even assuming *arguendo* that the Government raised
28 viable grounds for relief under these subsections (it has not), any request for relief
under Rule 60(b)(4) and (b)(6) should also be considered untimely for largely the
same reasons articulated with respect to Rule 60(b)(5).

1 **D. Relevant Factual Changes Do Not Justify the Permanent**
2 **Injunction’s Termination.**

3 Factual changes and legal developments that fall short of permitting
4 previously forbidden conduct remain relevant to the Court’s consideration of
5 whether to modify an injunction. *See, e.g., Flores v. Lynch*, 828 F.3d at 910 (“At
6 most” the TVPRA “might support modification” of conflicting provisions of consent
7 decree.). Although courts adopt a “flexible approach” when considering Rule
8 60(b)(5) requests, “it does not follow” that termination of an injunction “will be
9 warranted in all circumstances.” *Rufo*, 502 U.S. at 381, 383; *see also Frew v.*
10 *Hawkins*, 401 F. Supp. 2d 619, 683 (E.D. Tex. 2005) (noting the “radical nature” of
11 dissolving an injunction in its entirety). Assertions that “it is no longer convenient
12 to live with the terms” of an injunction do not entitle a party to relief. *Rufo*, 502 U.S.
13 at 383.

14 The Government bears the burden of establishing “a significant and
15 unanticipated change in factual conditions warranting modification.” *United States*
16 *v. Asarco, Inc.*, 430 F.3d 972, 979 (9th Cir. 2005) (movant citing “changed factual
17 conditions” must show that changes make compliance more onerous, unworkable,
18 or detrimental to the public interest). Typically, this requires the submission of
19 evidence to support factual findings by the court. *Horne*, 557 U.S. at 461 (proper
20 Rule 60(b)(5) analysis requires “further factual findings” about whether significantly
21 changed circumstance warrants relief); *see also Coleman v. Brown*, 922 F. Supp. 2d
22 1004, 1035 (N.D. Cal. 2013) (requiring “compelling evidence” for relief under Rule
23 60(b)(5)).

24 The Government submits conclusory descriptions of the increased
25 “technological capacity” of federal agencies, the number of unaccompanied children
26 arriving in the United States, and the “complexities of modern intake operations.”
27 Dkt. 250 at 17–19. The Government also maintains that various legislative
28 developments and agency restructuring have introduced different “naming

1 conventions” and “new procedural mechanisms—centralized recordkeeping,
2 interagency information sharing, and updated adjudication protocols—that are
3 entirely absent from [Form I-770].” *Id.* at 18. But it is unclear why Form I-770, or
4 any advisal, would need to include this information. Nor does the Government
5 explain how these vague and seemingly irrelevant “procedural mechanisms” require
6 termination, and—despite its criticisms of Form I-770—has not provided evidence
7 of an alternative mechanism that would better effectuate unaccompanied minors’
8 rights. *See Orantes-Hernandez v. Gonzales*, 504 F. Supp. 2d 825, 853 (C.D. Cal.
9 2007), *aff’d sub nom. Orantes-Hernandez v. Holder*, 321 F. App’x 625 (9th Cir.
10 2009) (“Without proof that the form [advising non-citizens of their right to apply for
11 asylum] is effective *in practice*, the court cannot conclude that ‘on-the-ground’
12 practices have changed so much that the *Orantes* advisal [imposed by a prior
13 injunction] is no longer necessary to ensure that aliens in § 240 proceedings
14 understand they have the right to apply for asylum.”). Regardless, any pertinent
15 differences in “naming conventions” could be remedied by modestly altering the
16 injunction or the form of the advisal. *See* Dkt. 269 at 18-20. In sum, the Government
17 does not present any valid factual bases for ending the injunction.

18 Additionally, Form I-770 is required by the FSA, Exh. 6 at ¶ 24.D, and the
19 Government’s own regulations. 8 C.F.R. § 1236.3(h). Terminating the injunction
20 would not relieve the Government of its obligation to use Form I-770, at least not
21 immediately. Instead, it may further the Government’s efforts to expeditiously
22 remove unaccompanied children by allowing it to “advise, encourage, or persuade”
23 class members to waive their Due Process rights. *Perez-Funez I*, 611 F. Supp. at
24 1005.

25 Substantial evidence from recent months demonstrates the Government’s
26 pursuit of expeditious removals under circumstances that would violate the
27 injunction. As noted *supra*, CBP has created an overtly coercive and misleading
28 document titled “UAC Processing Pathway Advisal” that threatens unaccompanied

1 children with “prolonged” detention if the child elects a removal hearing, despite the
2 TVPRA’s requirement that children be placed in the “least restrictive setting” that is
3 in their best interest. Exh. 4 at 6; Exh. 5 at ¶ 10; 8 U.S.C. § 1232(c)(2)(A). CBP’s
4 advisal informs unaccompanied children that they can return to their home country
5 in the short 72-hour timespan before transfer to ORR custody where children can
6 access other procedural protections under the TVPRA. Exh. 4 at 6. This is the brief
7 period that the Government seeks to exploit with its novel legal interpretation of the
8 OBBB and its import for expedited returns of class members. Exh. 2 at ¶ 5; Dkt. 250
9 at 9; Exh. 3 at 2–3 (stating that unaccompanied children “may be transferred” to
10 ORR “[d]epending on the timing of the next available flight”). In this context,
11 several children describe being pressured into accepting return or circumstances that
12 otherwise fall short of a knowing and voluntary waiver of rights. Exh. 2 at ¶¶ 6–15.
13 This evidence suggests that the Government has not “acted fairly and without fraud
14 or deceit as to the controversy in issue,” as is required of parties seeking relief in
15 equity. *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324
16 U.S. 806, 814–15 (1945).

17 Finally, even if the Government could meet its burden to demonstrate that
18 changed factual circumstances require the injunction’s reevaluation, the Court would
19 then need to consider whether termination is “suitably tailored to the changed
20 circumstance.” *Rufo*, 502 U.S. at 383. A suitably tailored modification is one that
21 “return[s] both parties as nearly as possible to where they would have been absent
22 the changed circumstances.” *Kelly v. Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016)
23 (quoting *Pigford v. Veneman*, 292 F.3d 918, 927 (D.C. Cir. 2002)). Termination of
24 the injunction is not suitably tailored to any of the changed circumstances cited by
25 the Government. The TVPRA does not address the notice due to class members and
26 still permits the return of a limited subset of class members to Mexico or Canada
27 outside of the protections of removal proceedings. 8 U.S.C. § 1232(a)(2).
28 Termination would deprive class members of basic statutory and Constitutional

1 safeguards while relieving the Government of prohibitions designed to prevent
2 undue influence of law enforcement officials on vulnerable children. *J.D.B. v. North*
3 *Carolina*, 564 U.S. 261, 272 (2011) (recognizing the “commonsense conclusion[.]”
4 that children “lack the experience, perspective, and judgment to recognize and avoid
5 choices that could be detrimental to them”).

6 **CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that the Court deny
8 the Government’s motion to terminate the permanent injunction.

9
10 DATED: January 6, 2026

11 /s/ Mark Rosenbaum

12 Mark Rosenbaum (CA SBN # 59940)
13 Amanda Mangaser Savage (CA SBN # 325996)
14 Rebecca Brown (CA SBN # 345805)

15 PUBLIC COUNSEL

16 610 South Ardmore Avenue

17 Los Angeles, CA 90005

18 Telephone: (213) 385-2977

19 mrosenbaum@publiccounsel.org

20 asavage@publiccounsel.org

21 rbrown@publiccounsel.org

22 Gilbert Paul Carrasco (CA SBN # 90838)

23 900 Pacific Coast Highway, Suite # 305

24 Huntington Beach, CA 92648-4863

25 Telephone: (503) 990-4879

26 carrasco@willamette.edu

27 Adam B. Wolfson (CA SBN # 262125)

28 Quinn Emanuel Urquhart & Sullivan LLP

865 South Figueroa Street, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

Fax: (213) 443-3100

adamwolfson@quinnemanuel.com

1 Peter McGraw*
2 Kevin Siegel*
3 NATIONAL IMMIGRATION LAW CENTER
4 1121 14th Street, Suite 200
5 Washington, D.C. 20005
6 Telephone: (213) 639-3900
7 Fax: (213) 639-3911
8 mcgraw@nilc.org
9 siegel@nilc.org

10 Richard A. Koffman**
11 Alex Bodaken**
12 Nina L. Haug**
13 COHEN MILSTEIN SELLERS & TOLL PLLC
14 1100 New York Ave., NW, Suite 800
15 Washington, D.C. 20005
16 Telephone: (202) 408-4600
17 rkoffman@cohenmilstein.com
18 abodaken@cohenmilstein.com
19 nhaug@cohenmilstein.com

20 Diane Kee***
21 COHEN MILSTEIN SELLERS & TOLL PLLC
22 100 N. 18th St., Suite 1820
23 Philadelphia, PA 19103
24 Telephone: (267) 479-5700
25 dkee@cohenmilstein.com

26 *Counsel for Plaintiffs*

27 *Admitted *pro hac vice*

28 ** Application for *pro hac vice*

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

CERTIFICATE OF COMPLIANCE

I, Peter McGraw, certify that the Memorandum of Points and Authorities contains 6,943 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' Opposition to Defendants' Motion to Terminate Permanent Injunction and Rights Advisal 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