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13 **UNITED STATES DISTRICT COURT**
 14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 Jose Antonio PEREZ-FUNEZ; <i>et al.</i> , 16 Plaintiffs, 17 v. 18 U.S. Department of Homeland 19 Security, <i>et al.</i> , 20 Defendants. 21 22 23) Case No. CV 81-1457-ER) DEFENDANTS’ OPPOSITION TO) PLAINTIFFS’ CROSS-MOTION TO) MODIFY PERMANENT INJUNCTION) AND LEAVE TO CONDUCT) DISCOVERY, ECF No. 269)) Hearing Date: February 9, 2026) Time: 10:00AM) Place: Courtroom 5A, First Street) Courthouse) Honorable Michael W. Fitzgerald) United States District Judge)
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1 **I. INTRODUCTION**

2 Plaintiffs’ Cross-Motion to Modify the Permanent Injunction and for Leave to
3 Conduct Discovery, ECF No. 269 (“Cross-Motion”), represents an attempt to divert
4 the Court’s attention from the dispositive legal reality: the permanent injunction is
5 obsolete. Rather than addressing the fundamental changes in the statutory and
6 regulatory landscape that mandate the injunction’s termination, Plaintiffs fixate on a
7 supplemental informational sheet—the “UAC Processing Pathway Advisal”—that
8 neither replaces the required rights advisals nor violates the injunction’s terms.
9 Plaintiffs’ request to modify the injunction to preclude this informational document’s
10 use is meritless, as is their request for sweeping post-judgment discovery. Because
11 the Government’s motion to terminate rests on purely legal grounds—namely, that
12 the intervening enactment of the TVPRA and subsequent regulations has displaced
13 the injunction—factual discovery would burden the parties without aiding the Court.
14 Accordingly, the Court should deny Plaintiffs’ cross-motion and proceed to
15 terminate the injunction.

16 **II. STANDARD OF REVIEW**

17 Rule 60(b)(5) provides that a court “may relieve a party ... from a final
18 judgment, order, or proceeding” when “the judgment has been satisfied, released, or
19 discharged” or when “applying it prospectively is no longer equitable.” Fed. R. Civ.
20 P. 60(b)(5).

21 In order to grant a Rule 60(b)(5) motion to modify a court order, a district court
22 must find “a significant change either in factual conditions or in law.” *S.E.C. v.*
23 *Coldicutt*, 258 F.3d 939, 942 (9th Cir. 2001) (citing *Rufo v. Inmates of Suffolk Cnty.*

1 *Jail*, 502 U.S. 367, 384 (1992). When determining whether to vacate an injunction,
2 courts must consider “whether ongoing enforcement of the original order [is]
3 supported by an ongoing violation of federal law. *Horne v. Flores*, 557 U.S. 433,
4 454 (2009).

5 Rule 60(b)(5) also permits a court to modify a decree if the modification is
6 “suitably tailored” to resolve problems created by changed circumstances. *Rufo*, 502
7 U.S. at 383. The party seeking relief bears the burden of establishing that changed
8 circumstances warrant relief. *Horne*, 557 U.S. at 447. Once a party carries its burden
9 to show that changed circumstances warrant relief from an injunction, “a court
10 abuses its discretion when it refuses to modify an injunction or consent decree in
11 light of such changes.” *Id.* (internal quotations and citation omitted).

12 **III. ARGUMENT**

13 **A. Plaintiffs’ Motion to Modify Should Be Denied Because the “UAC** 14 **Processing Pathway Advisal” Serves an Informational Purpose and** 15 **Does Not Replace Form I-770.**

16 In approximately September 2025, CBP introduced a new informational
17 document titled the “UAC Processing Pathway Advisal.” *See* Ex. A., Decl. of
18 Michael Julien (“Julien Decl.”) ¶¶ 4, 5. This advisal is provided, generally orally, in
19 addition to the Form I-770, to give unaccompanied alien children (“UAC”)
20 additional information regarding potential processing pathways. *Id.* The UAC
21 Processing Pathway Advisal does not instruct a child to waive any right identified in
22 Form I-770. *Id.* Critically, the Advisal does not replace Form I-770, does not solicit
23 a waiver of rights, and does not alter the protections that the injunction was designed

1 to safeguard. CBP continues to provide Form I-770, *id.* at ¶ 5, and Plaintiffs do not
2 dispute that fact.

3 Plaintiffs nevertheless suggest that “unaccompanied children in CBP custody
4 may only receive CBP’s new written advisal,” which they contend does not
5 adequately detail unaccompanied minors’ rights. Cross Motion at 18. As discussed
6 above, CBP provides both the new advisal (typically in oral form) and Form I-770,
7 *see* Julien Decl., ¶¶ 4-5, so Plaintiffs’ contention is incorrect. And Plaintiffs’
8 purported evidence that minors “may” receive only the new advisal says nothing of
9 the sort. *See* Cross Motion, Exh. 1 ¶ 6¹; *id.*, Exh. 2 ¶ 10. There is thus no dispute of
10 fact on this point, making discovery on whether CBP is using one or both forms
11 unwarranted.

12 Plaintiffs also assert that the Government seeks to expeditiously process UAC
13 for return rather than provide the safeguards required by Congress and the
14 Constitution, contending that the UAC Processing Pathway Advisal violates both the
15 Court’s injunction and the TVPRA. *See* Cross Motion at 20–21. This contention
16 lacks merit. As Plaintiffs acknowledge, Defendants have relied on Form I-770 as the
17 rights advisal document since approximately 1997. ECF No. 268 at 10 n.2. The
18 introduction of a supplemental advisal—decades after the injunction was entered
19 and in a vastly changed statutory landscape—does not undermine compliance with
20 the injunction, particularly where the required Form I-770 remains the operative
21 rights advisal.

22
23 ¹ Plaintiffs appear to be citing paragraph 6, not page 6 of the exhibit, which
contains no such page.

1 Plaintiffs further argue that Defendants failed to submit evidentiary materials
2 reflecting a proposed alternative advisal and speculate that the Government will use
3 “some form of an advisal” if the injunction is terminated. Cross Motion at 21. This
4 argument misses the point. As the Government has already explained, immigration
5 law—and especially the statutory framework governing UAC—has changed
6 profoundly since the order in this case was entered. ECF No. 250 at 20. In light of
7 those developments, the Government intends to continue providing UAC with an
8 advisal that accurately reflects current law and factual realities. *Id.* Nothing in the
9 injunction freezes DHS’s informational practices in time or prohibits the provision
10 of accurate, supplemental information that neither solicits waivers nor diminishes
11 protected rights.

12 Plaintiffs also advance four specific critiques of the UAC Processing Pathway
13 Advisal, each of which rests on a mischaracterization of the document’s content and
14 function. *First*, Plaintiffs claim that the Advisal informs a child about the possibility
15 of voluntary return during the brief 72-hour period without mentioning the right to
16 seek relief from removal in Immigration Court. Cross Motion at 21. This argument
17 ignores the undisputed fact that the Advisal is supplemental to Form I-770, which
18 expressly explains the right to a hearing before an Immigration Judge. Indeed, Form
19 I-770 itself states: “If you do not want to have a hearing before a judge, you can
20 choose to return to your country.” Cross Motion, Exh. 3 at 4. The Advisal therefore
21 does not omit or contradict the right to a hearing; it presupposes that those rights
22 have already been explained.

1 *Second*, Plaintiffs erroneously construe the Advisal’s discussion of potential
2 future visa options as misleading or coercive. To the contrary, ensuring that UAC are
3 informed—accurately and in plain terms—about potential future processes is
4 consistent with the principles underlying this Court’s holding, which recognized the
5 importance of meaningful notice in a stressful setting. *See Perez-Funez v. Dist. Dir.,*
6 *I.N.S.*, 619 F. Supp. 656, 662 (C.D. Cal. 1985). Providing general information about
7 possible pathways does not compel any decision, nor does it undermine the rights
8 explained in Form I-770.

9 *Third*, Plaintiffs claim that the Advisal threatens prolonged detention if a UAC
10 seeks a hearing or expresses a fear of return. Cross Motion at 21. This interpretation
11 misreads the plain language of the document. On its face, the Advisal educates UAC
12 about potential procedural consequences that may follow the rights advisal provided
13 through Form I-770. Informing individuals of possible future outcomes constitutes
14 neither a threat nor a penalty for exercising protected rights. Nothing in the Advisal
15 conditions access to a hearing or asylum protections on acquiescence or waiver.

16 Finally, Plaintiffs assert that the Advisal baselessly threatens criminal
17 prosecution of sponsors who assist UAC with illegal entry. *Id.* This claim disregards
18 the Advisal’s explicit and limited language, which explains that sponsors who lack
19 legal immigration status *may* be subject to criminal prosecution. Plaintiffs do not
20 contend that this statement is inaccurate. An accurate explanation of potential legal
21 consequences—particularly when carefully framed and limited—does not violate
22 the injunction, the TVPRA, or due process.

1 In sum, the UAC Processing Pathway Advisal is a supplemental, accurate
2 informational advisal that operates alongside Form I-770 and does not interfere with
3 the rights protected by the injunction. Plaintiffs’ objections seek to transform a
4 narrow compliance order into a vehicle for ongoing judicial supervision of
5 Defendants’ informational practices, notwithstanding profound changes in
6 immigration law and the absence of any waiver-related concern. Because Plaintiffs
7 have not demonstrated a significant change in law or fact warranting modification,
8 and because the Advisal neither violates nor implicates the injunction’s operative
9 terms, the motion to modify should be denied.

10 **B. Plaintiffs’ Request for Post-Judgment Discovery Should Be Denied.**

11 Plaintiffs argue that limited post-judgment discovery is necessary either to
12 assure that Defendants are in compliance with the injunction—a contention never
13 previously in dispute—or, alternatively, to modify and update the injunction in light
14 of changed factual circumstances. *See* Cross Motion at 14–19. Plaintiffs’
15 justifications for why they are entitled to discovery are unavailing.

16 While a court “may” order discovery in reviewing a Rule 60(b) motion,
17 discovery is unnecessary when the motion rests on “purely legal” issues. *Cf. United*
18 *States v. Twitter, Inc.*, 2023 WL 8007994, at *7 (N.D. Cal. 2023) (determining that
19 discovery was not “necessary or appropriate” because the “flaw in [that Rule 60(b)
20 motion] is purely legal,” and thus “discovery would not serve any purpose” with
21 respect to deciding the motion). Discovery is unnecessary in this case because
22 Defendants seek termination of the injunction primarily for legal reasons. ECF No.
23 268. Specifically, maintaining the injunction is no longer equitable in light of several

1 statutory changes enacted in the decades since the injunction was entered. These
2 substantial legal changes undermine the efficacy of Form I-770 (including changes
3 to the structure and operations of the agencies tasked with administering the form),
4 and consequently, the injunction impedes executive powers. *Id.*

5 Nor are there changed factual circumstances here requiring additional post-
6 judgment discovery. As detailed above, the supplemental Advisal does not replace
7 or modify Form I-770, *see* Julien Decl. ¶ 5 and is consistent with DHS’s obligations
8 under the Court’s injunction. As such, Plaintiffs’ assertion that discovery, even
9 limited in scope, would benefit the Court fails because the Court need not look
10 beyond the legal arguments to decide the claims raised by Defendants.

11 Indeed, even regular pre-judgment discovery is unnecessary where there are
12 potentially dispositive legal issues. Discovery must be practical and conserve
13 judicial resources, and it should not be premature. *See, e.g.,* Fed. R. Civ. P.
14 26(b)(2)(C). Discovery may also be stayed to avoid “unnecessary burden and
15 expense before . . . dispositive issues . . . [are] resolved.” *Clady v. Gilmore*, 773 F.
16 App’x 958, 959 (9th Cir. 2019) (holding that district courts have discretionary
17 authority to stay discovery, particularly where a party seeks judgment on a
18 dispositive legal ground). When deciding to stay discovery, a court considers two
19 factors: (1) whether a pending motion is dispositive of the issue at which discovery
20 is aimed; and (2) whether the pending motion can be decided absent additional
21 discovery. *T.S. v. Body Contour Centers, LLC*, 2025 WL 1194023, at *2 (W.D. Wash.
22 2025); *Hewlett Packard Enterprise Co. v. Inspur Group Co., Ltd.*, 2024 WL
23 4631665, at *1 (N.D. Cal. 2024).

1 As discussed above, Defendants assert various legal arguments that would
2 terminate the injunction, and discovery would be of no benefit to the Court in
3 deciding the Government's legal reasons for pursuing termination. Moreover,
4 delaying discovery until after the Court decides the legal issues set forth in the
5 motion to terminate would not unnecessarily delay litigation given the long history
6 of this case. *See Body Contour Centers, LLC*, 2025 WL 1194023, at *2 (pointing to
7 reasons why staying pre-judgment discovery would unduly delay litigation,
8 especially where discovery appeared necessary for the court to issue a prompt
9 judgment).

10 Finally, precluding discovery would conserve judicial resources and, given
11 the sweeping nature of Plaintiffs' proposed discovery request, would avoid imposing
12 a significant burden on Defendants prior to this Court deciding the potentially
13 dispositive motion to terminate. *See Cross Motion, Exhibit 5* (Plaintiffs' discovery
14 request). Notably, the Advisal can be reviewed and evaluated on its face, and
15 Plaintiffs have provided no reason why additional discovery would be needed for
16 the Court to evaluate its plain language. Accordingly, this Court should reject
17 Plaintiffs' request for post-judgment discovery.

18 **IV. CONCLUSION**

19 For the foregoing reasons, this Court should deny Plaintiffs' motion to
20 modify the injunction and to conduct post-judgment discovery.
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Respectfully submitted,

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