No. 26-2787

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSE ANTONIO PEREZ-FUNEZ, ET AL.,

Plaintiffs-Appellees.

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
NO. 81-01457-MWF

DEFENDANTS-APPELLANTS' OPENING BRIEF

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INTRODUCTION

Federal courts issuing injunctive relief in institutional reform cases have a duty to ensure that once those decrees are no longer warranted given changes in the factual underpinnings for the injunction or the law, courts must step aside and return power to make policy to the elected branches. *Horne v. Flores*, 557 U.S. 433, 447-55 (2009). Indeed, prolonged enforcement of injunctions "may improperly deprive future officials of their designated legislative and executive powers," leading the judiciary to enforce policy outside the normal democratic process. *Id.* at 450 (citation omitted). The district court transgressed those bounds when it denied the Government's motion to terminate a forty-year-old permanent injunction that the district court would lack jurisdiction to enter today under binding Supreme Court precedent.

The district court's permanent, class-wide injunction involved a 1985 finding that the then-Immigration and Naturalization Service's (INS's) then-existing procedures for offering voluntary departure to unaccompanied minors (today statutorily referred to as unaccompanied alien children) violated the Fifth Amendment's Due Process Clause. *Perez-Funez v. Dist. Dir., INS*, 619 F. Supp. 656 (C.D. Cal. 1985).

To remedy this, the district court fashioned its own class-wide prophylactic procedural safeguards, culminating in the 1986 "Order Re Advisal" (ER.40-44) that mandated that unaccompanied alien children be presented with a specific, court-approved advisal (now Form I-770) before being given the opportunity to voluntarily depart the United States. The injunction also imposed additional requirements, such as that certain unaccompanied alien children must make contact with a parent, relative, or lawyer before being offered voluntary departure and that the Government maintain an updated list of legal services to provide to the children.

The district court unequivocally would lack jurisdiction to issue such an injunction today. The Supreme Court in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), clarified that 8 U.S.C. § 1252(f)(1) divests lower federal courts of jurisdiction to enter class-wide injunctions restraining certain aspects of the Executive Branch's operation of certain provisions of the Immigration and Nationality Act ("INA"). The *Perez-Funez* injunction is precisely such an order, as it dictates the specific procedures the Government must follow—procedures found nowhere in the INA—before it may "carry out" voluntary departures of unaccompanied alien children under 8 U.S.C. § 1229c, and withdrawals of applications for admission under 8 U.S.C. § 1225(a)(4). Both are provisions for which 8 U.S.C. § 1252(f)(1) expressly prohibits courts from "enjoin[ing] or restrain[ing]" on a class-wide basis.

This significant change in the law reflects a policy choice by Congress not to impede immigration enforcement with class-wide injunctions in this context. Yet the district court below applied a convoluted analysis to conclude that the injunction would not be subject to § 1252(f)(1)'s limits and thus the injunction need not be terminated. The court's analysis proceeds from the faulty premise that because another statute, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA")—which did not even *exist* at the time of the 1985 injunction and would not for another two decades—provides procedures for the processing of unaccompanied alien children, the court's injunction enjoins or restrains the operation of the TVPRA, rather than §§ 1225 and 1229c. The TVPRA is not a provision covered by § 1252(f)(1)'s limits on injunctive relief. Under the court's reasoning, the injunction thus does not restrain the voluntary departure and withdrawal procedures of the INA, or at most has only a "collateral effect" on them. As the district court acknowledged, though, the TVPRA expressly cross-references and incorporates those covered INA provisions for unaccompanied alien children, rather than purporting to repeal or supplant them. *See* 8 U.S.C. § 1232(a)(2)(B), (a)(5)(D). Thus, the district court's injunction has a direct effect on provisions covered by § 1252(f)(1), not merely a collateral one. That alone requires the dissolution of the class-wide injunction under Federal Rule of Civil Procedure 60(b).

The district court further erred by modifying the injunction to prohibit the use of a supplemental Pathway Advisal that a DHS component began using in addition to the advisals mandated by the district court's forty-year-old injunction. This new order transgresses the limits of § 1252(f)(1) for all the same reasons as the court's original injunction. Even if it did not, the district court erred in failing to conduct any new due process analysis incorporating current law and fact; instead, the court expanded the injunction only by contorting the original injunction beyond its bounds. In doing so, the district court piled prophylaxis upon prophylaxis without ever asking—let alone answering—whether the Due Process Clause *itself* required (or could even support) the new injunctive relief.

The district court's orders declining to terminate the injunction and expanding its reach must be reversed.

JURISDICTIONAL STATEMENT

The District Court had jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

ISSUES PRESENTED

1. Whether the district court erred in concluding that 8 U.S.C. § 1252(f)(1) does not prohibit injunctions by the lower federal courts that "enjoin or restrain" how officers carry out voluntary departures of unaccompanied alien children under 8 U.S.C. § 1229c, and withdrawals of applications for admission of unaccompanied alien children under 8 U.S.C. § 1225(a)(4).

2. Whether the district court erred in expanding injunctive relief based on a forty-year-old procedural due process analysis, thereby failing to tailor relief to the alleged constitutional violations at issue today.

STATEMENT OF THE CASE

A. Original Injunction

In 1981, Plaintiffs, predominantly Salvadoran teens, sought nationwide injunctive relief on behalf of a class of unaccompanied alien children alleging that the INS's implementation of the then-governing voluntary departure statute, 8 U.S.C. § 1254, *repealed,* Pub. L. No. 104-208, Div. C, Title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615, violated their right to due process of law. Plaintiffs asserted that unaccompanied alien children apprehended during border encounters and elsewhere were, at best, provided no explanation of their rights and the voluntary departure procedure, or at worst, coerced them into signing voluntary departure forms, thereby waiving their opportunity for a hearing before an immigration judge in deportation or exclusion proceedings. *Perez-Funez v. Dist. Dir., INS,* 619 F. Supp. 656, 658 (C.D. Cal. 1985).

After a trial on the merits, the district court ruled that INS's policy implementing voluntary departure procedures for unaccompanied alien children—procedures that differed depending on the child's age and whether the child's permanent residence was in a contiguous country—was undertaken in "good faith," and indeed, Plaintiffs' allegations of coercion were "unfounded." 619 F. Supp. at 661. The district court observed that INS performs "a thankless task under adverse conditions, and by and large, performs it admirably." *Id.*

Nevertheless, the district court also concluded that the unaccompanied alien children uniformly expressed a "lack of understanding," even in situations "where they had read, or had read to them, the notices and advisals" regarding the selection of voluntary departure and waiver of the opportunity for a hearing in deportation proceedings. *Id.* The court found that the unaccompanied alien children "generally do not understand the concept of legal rights without explanation," especially when presented in a stressful environment, separated from their family and familiar culture; they are unable to make "a knowing and voluntary choice" and instead, "the natural tendency is to defer to the authority before them[.]" *Id.*

The district court concluded that there was a lesser risk of deprivation of rights through an unknowing waiver in sub-groups of the class consisting of children who permanently reside in Mexico or Canada, and in children younger than fourteen who are arrested in the interior of the country and/or are not residents of contiguous countries based on INS's policy of locating a relative or friend to act as a representative. *Perez-Funez*, 619 F. Supp. at 662. Nonetheless, the district court concluded that the risk of erroneous deprivation was "great, especially with respect to class members who are not arrested near the border or are not permanent residents of Mexico or Canada" and concluded that then-current procedures "d[id] not address the problem adequately." *Id.* at 663.

Considering additional or substitute procedures under the *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976) balancing test, *see Perez-Funez*, 619 F. Supp. 664-65, the district court observed that INS "d[id] not object to a simplified advisal which is legally accurate," but determined that written advisals alone were "insufficient to apprise class members of their rights." *Id.* at 664. Indeed, the district court viewed "access to telephones prior to presentation of the voluntary departure form [as] the only way to ensure a knowing waiver." *Id.* Despite the "good faith" of the INS agents, due to their inherently adversarial position in relation to the unaccompanied minors, "contact with a third party is necessary" and in many cases, contact with a parent or relative would remove the child from the status of "unaccompanied." *Id.* at 665. The district court further noted that with respect to class members apprehended at or near the border, who are not residents of Mexico or Canada, "*mandatory* contact with either counsel, a close relative, or friend, *prior* to presentation of the voluntary departure form is central to the success of the telephone [procedure]," because otherwise the evidence demonstrated these children would "commit a unknowing and involuntary waiver." *Id.* (emphasis in original).

With regard to unaccompanied minors who are residents of Mexico and Canada, who have a "better understanding" of immigration laws and "for the most part, desire to return voluntarily," the district court concluded that mandatory notification of the opportunity to make a call to a relative, close friend, or legal organization was sufficient to prevent the risk of unknowing waivers in the great majority of cases. *Perez-Funez*, 619 F. Supp. at 666. Lastly, the court determined that updated, accurate lists of legal services were a "necessary concomitant of a telephone access program." *Id.*

The district court then entered a permanent injunction mandating five different procedural changes.

First, the district court's injunction requires that INS provide class members "a simplified rights advisal consistent with the current law of this circuit" along with "the free legal services list complied pursuant to 8 C.F.R. § 292a.1."

Second, with respect to class members apprehended in the immediate vicinity of the border and who are permanent residents of Mexico or Canada, the injunction requires that INS inform the class member that they may make a telephone call to a parent, relative, friend, or organization on the legal services list. The class member must be so informed prior to presentation of the voluntary departure form.

Third, with respect to all other class members, the injunction requires that INS "shall provide access to telephones" and ensure that the class has in fact communicated with a parent, relative, friend, or organization on the legal services list prior to presentation of the voluntary departure form.

Fourth, the injunction requires that INS shall obtain signed acknowledgement on a separate copy of the simplified rights advisal form showing that INS has provided all notices and required information.

Fifth, the injunction requires INS to update and maintain the free legal services list. *Perez-Funez*, 619 F. Supp. at 670.

On May 16, 1986, the district court issued a further "Order re Advisal" mandating the specific contents of the simplified advisal of rights that INS was required to provide to unaccompanied minors. ER.40-44. The advisal required by the district court's order states:

> You have been arrested because immigration agents believe that you are illegally in the United States. In the United States you have rights when you are arrested. No one can take these rights away from you. This paper tells you your rights.
>
> You have a right to use the telephone. You may call any adult you want. You may call your mother or father or any other adult relative. You may call an adult friend. You may call a lawyer. Attached to this paper is a list of lawyers who will talk to you for free. A lawyer can help explain your rights to you.
>
> If you do not know how to use a telephone, the immigration agent will help you.
>
> You have a right to a hearing before a Judge. A lawyer from the attached list can help you at the hearing for free. The Judge will decide whether you must leave or whether you may stay in the United States. If for any reason you do not want to go back to your country, or if you have any fears of returning, you should ask for a hearing before a Judge.
>
> If you do not want to have a hearing before a Judge, you may go back to your country without a hearing.

ER.178-182 (digital copy of Attach. A, Order re Advisal). This court-mandated advisal became Form I-770, which is still in use today.

B. Intervening Statutory and Regulatory Developments

Since the injunction was issued forty years ago, there have been significant changes in immigration law bearing directly on unaccompanied alien children—the very group to which the injunction applies. These include the Immigration Act of 1990, Pub. L. No. 101-649 § 408, 104 Stat. 4978, Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Homeland Security Act, TVPRA, and One Big Beautiful Bill ("OBBB"), Pub. L. No. 119-21, 139 Stat. 72 (2025).

i. Illegal Immigration Reform and Immigrant Responsibility Act

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which made sweeping changes to the INA. A major objective of IIRIRA was to "protec[t] the Executive's discretion" from undue interference by the courts; indeed, "that can fairly be said to be the theme of the legislation." *Reno v. American Arab Anti-Discrimination Comm.,* 525 U.S. 471, 486 (1999). Of particular relevance here, IIRIRA enacted 8 U.S.C. § 1252(f)(1), which provides:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

Part IV of the INA's subchapter II—the provisions whose operation no court below the Supreme Court may enjoin or restrain—includes, among others, 8 U.S.C. § 1225, which governs the inspection of applicants for admission and the withdrawal of applications for admission, and 8 U.S.C. § 1229c, which governs voluntary departure. These are the operative statutory mechanisms by which unaccompanied alien children may be returned to their home countries.

Among other things, IIRIRA eliminated the distinction between "exclusion" and "deportation" proceedings. IIRIRA also introduced a statutory limit to the amount of time allowed for voluntary departure, authorizing a maximum of 120 days if voluntary departure is granted prior to or at the beginning of removal proceedings, and 60 days if voluntary departure is granted at the conclusion of removal proceedings. 8 U.S.C. § 1229c.

ii. The Homeland Security Act

In 2002, Congress enacted the Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135, which dismantled INS and redistributed its functions across newly created agencies. Functions related to immigration enforcement were transferred to the newly created Department of Homeland Security ("DHS"), including U.S. Customs and Border Protection ("CBP") and U.S. Immigration and Customs

Enforcement ("ICE"). Responsibility for the custody and care of unaccompanied alien children was transferred to the Department of Health and Human Services ("HHS"), and specifically to its Office of Refugee Resettlement ("ORR"). *See* 6 U.S.C. § 279(b)(1)(B).

Prior to the passage of the Homeland Security Act, INS had enforced federal immigration law, including as to minors. *See, e.g., Perez-Funez,* 619 F. Supp. at 658. Because the HSA eliminated INS and transferred some of its functions—specifically those "with respect to the care of unaccompanied alien children"—to HHS, unlike in 1985, ORR is now "responsible for" ensuring that the "interests" of unaccompanied alien children are considered in decisions about the children's "care and custody." 6 U.S.C. § 279(b)(1)(B).

iii. The Trafficking Victims Protection Reauthorization Act

Twenty-three years after entry of the injunction here, Congress in 2008 addressed the processing and care and custody of unaccompanied alien children by passing the TVPRA. *See* Pub. L. No. 110-457, 122 Stat. 5044. In order to "enhanc[e] efforts to combat the trafficking of children," *id.* § 235, Congress instructed the heads of several agencies to "develop policies and procedures" ensuring "that unaccompanied alien children" are "safely repatriated to their country of nationality or of last habitual residence," 8 U.S.C. § 1232(a)(1).

Moreover, the TVPRA includes provisions for the "safe repatriation" of unaccompanied alien children. 8 U.S.C. § 1232(a)(5). The TVPRA provides that certain unaccompanied alien children from contiguous countries may be permitted to withdraw their application for admission pursuant to 8 U.S.C. § 1225(a)(4) and voluntarily return to their country of nationality or residence. 8 U.S.C. § 1232(a)(2)(A)-(B). When DHS seeks to "remove[]" from the United States "[a]ny unaccompanied alien child" from a non-contiguous country (a country other than Canada and Mexico) or from a contiguous country but who is not permitted to withdraw, the child must be "placed in removal proceedings under" 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1232(a)(5)(D)(i).

The TVPRA also makes unaccompanied alien children in section 1229a removal proceedings eligible for voluntary departure under 8 U.S.C. § 1229c "at no cost to the child." *Id.* § 1232(a)(5)(D)(ii). That provision authorizes the Attorney General to "permit an alien voluntarily to depart the United States ... prior to the completion of [§ 1229a removal] proceedings." *Id.* § 1229c(a)(1). In addition, the Attorney General may do the same if the alien meets certain eligibility criteria after removal proceedings conclude if "the immigration judge enters an order granting voluntary departure." *Id.* § 1229c(b)(1). And the TVPRA directs that an unaccompanied alien child whom DHS seeks to remove must receive "access to counsel" to "the greatest extent practicable." *See id.* § 1232(a)(5)(D)(iii), (c)(5). This directive calls for counsel "to represent" the unaccompanied alien children "in legal proceedings" and, more broadly, to "protect them from mistreatment, exploitation, and trafficking." *Id.* § 1232(c)(5).

Several regulations implement these statutory provisions. Unaccompanied alien children must "be treated with dignity, respect, and special concern for their particular vulnerability." 45 C.F.R. § 410.1003(a). ORR also has specific "responsibilities" when it comes to providing "legal services for unaccompanied children." 45 C.F.R. § 410.1309(a)(1). For instance, ORR must offer information about the "child's right to a removal hearing before an immigration judge," his "ability to apply for asylum," and the option of "request[ing] voluntary departure in lieu of removal." *Id.* § 410.1309(a)(2)(iv). Unaccompanied alien children in ORR's custody, moreover, must receive a "confidential legal consultation with a qualified attorney" to "determine possible forms of relief from removal." *Id.* § 410.1309(a)(2)(v).

iv. The One Big Beautiful Bill

Most recently, Congress enacted the OBBB, further changing the law that affects unaccompanied alien children. Specifically, Section 100051 of the OBBB provides funding mechanisms authorizing DHS to permit certain unaccompanied alien children from any country—not merely contiguous countries as provided under the TVPRA—to withdraw their applications for admission under 8 U.S.C. § 1225(a)(4). OBBB § 100051(8)(B), (C). Under this authority, DHS may present any unaccompanied alien children with the option to withdraw their application for admission and depart the United States, regardless of the processing track the TVPRA would otherwise require.

C. Procedural History

On November 12, 2025, the Government moved under Federal Rule of Civil Procedure 60(b) to terminate the injunction and advisal order. ER.147-177. Specifically, the Government sought dissolution of the injunction on the basis that its continued enforcement was no longer equitable due to significant legal changes during the injunction's four-decade existence, as well as changes to conditions on the ground, since the district court issued its injunction forty years ago. The Government argued that Congress' enactment of 8 U.S.C. § 1252(f)(1)'s ban on class-wide injunctions in covered immigration matters in IIRIRA, as well as Congress' enactment of the TVPRA and OBBB that changed the law with respect to unaccompanied alien children, justified dissolution of the injunction. The Government also pointed to the promulgation of regulatory changes protecting the rights of unaccompanied alien children as another reason justifying termination. Further, the Government argued that the injunction's requirements, and specifically those on Form I-770, were outdated, and that the injunction violated the separation of powers given the Executive's authority over immigration matters.

On January 6, 2026, the Plaintiffs filed their opposition. At the same time, Plaintiffs filed a cross-motion to modify the injunction and for leave to conduct discovery on the Government's compliance with the injunction. Specifically, Plaintiffs sought to prohibit DHS's use of a supplemental advisal—the UAC Processing Pathway Advisal—that a DHS component had begun to use in addition to the advisal required by the *Perez-Funez* injunction.

On April 6, 2026, the district court ruled on the parties' respective motions.

The district court denied the Government's motion to terminate the injunction under Rule 60(b).[1] *First*, the district court concluded that Congress' enactment of 8 U.S.C. § 1252(f)(1) did not constitute a significant change in the law justifying termination of the injunction because the injunction had only a "collateral effect" on INA provisions for which § 1252(f)(1)'s bar on class-wide injunctive relief applies. ER.71-76. The court determined that "to the extent the Injunction compels the Government to take certain procedural steps when processing [unaccompanied alien children], it does so with respect to the TVPRA's requirements." ER.75. Under Ninth Circuit precedent, the TVPRA is not a provision covered by § 1252(f)(1)'s bar, so § 1252(f)(1) did not provide a reason to terminate the injunction.

[1] Although the Government moved to terminate the injunction under Rule 60(b)(4), (5), and (6), the district court rejected the availability of relief under Rule 60(b)(4) (judgment is void) and (b)(6) ("any other reason that justifies relief"). ER.58-85. The district court's analysis thus focused on Government's arguments under Rule 60(b)(5), namely that it is "no longer equitable" to "apply[] [the injunction] prospectively" because of significant changes in law and fact. *Id.* at 13-14. On appeal, the Government adopts the district court's framing and seeks reversal only of the district court's Rule 60(b)(5) ruling.

Second, the district court declined to terminate the injunction because of broader legal changes, including enactment of the TVPRA and OBBB, and regulatory changes providing procedural safeguards to unaccompanied alien children. *Id.* at 19-25.

Third, the district court declined to terminate the injunction because of factual changes that rendered many aspects of the advisal form required by the injunction outdated, and declined to terminate the injunction due to separation-of-powers concerns. *Id.* at 25-27.

The district court also granted Plaintiffs' motion to expand the injunction to prohibit use of the supplemental advisal form being used by certain DHS components. ER.86-95. The court concluded that the provision of this supplemental advisal "violated the letter and spirit of the injunction." ER.93. In doing so, the district court relied only on its interpretation of the *Perez-Funez* injunction, and did not conduct a new Due Process Clause analysis accounting for the provision of Form I-770 in addition to the supplemental advisal. The court denied Plaintiffs' motion for post-judgment discovery without prejudice. ER.94.

STANDARD OF REVIEW

This Court reviews a district court's denial of a Federal Rule of Civil Procedure 60(b) motion for "abuse of discretion." *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 216 (2025). A party may obtain relief under Rule 60(b)(5) from judgments or orders like permanent injunctions on the basis that "applying [the judgment or order] prospectively is no longer equitable" because "a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest." *Horne v. Flores*, 557 U.S. 433, 447 (2009) (citations omitted). A district court "abuses its discretion 'when it refuses to modify an injunction … in light of such changes.'" *Id.* (quoting *Agostini v. Felton*, 521 U.S. 203, 215 (1997)). This Court "review[s] de novo, however, any questions of law underlying the district court's decision." *Jeff D. v. Kempthorne*, 365 F.3d 844, 851-52 (9th Cir. 2003).

This Court reviews the district court's decision to grant a permanent injunction for abuse of discretion. *Gonzalez v. ICE*, 975 F.3d 788, 802 (9th Cir. 2020). This Court reviews determinations of underlying injunction under three standards: "factual findings for clear error, legal conclusions de novo, and the scope of the injunction for abuse of discretion." *United States v. Washington*, 853 F.3d 946, 962 (9th Cir. 2017).

SUMMARY OF THE ARGUMENT

The district court's interpretation of 8 U.S.C. § 1252(f)(1) was overly narrow and erroneous. It should be reversed for several reasons.

First, the injunction prohibits DHS from offering voluntary departure to unaccompanied alien children or the withdrawal of their application for admission without violating the injunction's requirements, including requiring the provision of a form to unaccompanied alien children advising them of their rights and providing mandatory telephone contact with legal counsel, a close relative, or adult friend prior to presenting those departure options. The injunction thus has a direct effect on the operation of 8 U.S.C. § 1229c and 8 U.S.C. § 1225(a)(4) with respect to unaccompanied alien children.

Second, the TVPRA *expressly* incorporates 8 U.S.C. § 1229c (voluntary departure) and 8 U.S.C. § 1225(a)(4) (withdrawal) in provisions dealing with the departure options DHS has for unaccompanied alien children. *See* 8 U.S.C. § 1232(a)(2)(B)(i), (5)(D)(ii). As the district court acknowledged, this is one reason "that prior cases do not specifically dictate what the law requires in this instance." ER.73. This Court's previous ruling that one TVPRA provision was not a "covered provision" of § 1252(f)(1) included no such cross-reference to indisputably covered provisions. Ultimately, the district court erred in its expansion of this Court's "collateral effects" case law as to 8 U.S.C. § 1252(f)(1), leading to irreconcilable tension with the Supreme Court's reasoning in *Aleman Gonzalez*.

Moreover, the district court's expansion of the injunction to prohibit supplemental advisals transgresses § 1252(f)(1)'s limits on class-wide injunctive relief for all of the same reasons. It prohibits DHS from offering voluntary departure or withdrawal of an application for admission to unaccompanied alien children if unless it provides such advisals, directly enjoining or restraining operation of provisions covered by § 1252(f)(1). And even if the modification were not subject to § 1252(f)(1), the district court further erred by expanding the injunction without conducting a new due process analysis accounting for current factual and legal circumstances.

The district court's orders must be reversed.

ARGUMENT

I. The District Court Erred in Concluding that 8 U.S.C. § 1252(f)(1), as Clarified by *Aleman Gonzalez*, Does Not Apply to the Injunction.

The district court should have terminated the *Perez-Funez* injunction because such a class-wide injunction is no longer permissible under 8 U.S.C. § 1252(f)(1), as clarified by the Supreme Court's 2022 *Aleman Gonzalez* decision. The district court disagreed because it concluded that the injunction operates on the TVPRA's requirements—not provisions covered by § 1252(f)(1)—and has at most a "collateral effect" on provisions subject to § 1252(f)(1). Those conclusions are legally erroneous.

A. The Injunction Operates Directly on Provisions Covered by 8 U.S.C. § 1252(f)(1).

1. The Supreme Court's decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), has resolved any doubt that 8 U.S.C. § 1252(f)(1) prohibits continued enforcement of *Perez-Funez* injunction. That injunction restrains directly the operation of particular provisions of the INA governing an unaccompanied alien child's voluntary departure and withdrawal of application for admission. The district court thus erred in

denying the Government's motion to terminate under Rule 60(b) on the basis that the injunction was not subject to § 1252(f)(1).

8 U.S.C. § 1252(f)(1) provides that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation" of certain provisions of the INA, "other than with respect to the application of such provisions to an individual alien." These provisions include those relating to voluntary departure (8 U.S.C. § 1229c) and the processing of aliens for withdrawal of their application for admission (8 U.S.C. § 1225(a)(4)). *See Galvez v. Jaddou,* 52 F.4th 821, 830 (9th Cir. 2022) (explaining that the covered provisions include 8 U.S.C. §§ 1221-1231 and 1252-1254a).

In 2022, the Supreme Court held that "§ 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Aleman Gonzalez*, 596 U.S. at 550. The *Aleman Gonzalez* Court went on to explain that "injunctive relief on behalf of an entire class of aliens is not allowed because it is not limited to remedying the unlawful 'application' of the relevant statutes to 'an individual alien.'" *Id.* at 551. Specifically, the Supreme Court held that § 1252(f)(1) prohibited injunctions requiring the government to provide bond hearings to a class because the injunctions "require officials to take actions that (in the Government's view) are not required by §1231(a)(6) and to refrain from actions that (again in the Government's view) are allowed by §1231(a)(6)." *Id.* at 551.

The district court's injunction is precisely the type of class-wide order that § 1252(f)(1) and *Aleman Gonzalez* forbid. The injunction provides class-wide relief that "restrain[s] the operation" of the INA—specifically, the provisions relating to voluntary departure (8 U.S.C. § 1229c) and the processing of aliens for withdrawal of their application for admission (8 U.S.C. § 1225(a)(4))—all parts of the INA to which § 1252(f)(1) indisputably applies. The injunction does so by imposing affirmative, extra-statutory procedural hurdles that the Government must clear before the Government can "carry out" the voluntary departure provisions for any member of the class or offer class members the ability to withdraw their applications for admission.

The injunction mandates that DHS provide unaccompanied alien children with a rights advisal, a list of free legal services, and a free telephone call to a parent, relative, friend, or legal organization (and if the children are not from Mexico or Canada, ensure that they make contact). *Perez-Funez*, 619 F. Supp. at 670. It continues to mandate that DHS take such anachronistic actions as explaining "how to use a telephone," (many of which were likely rotary phones at the time the injunction was entered). ER.145. And DHS must provide all of this prior to presenting a voluntary departure or withdrawal form, rendering DHS unable to provide those options to unaccompanied alien children absent compliance with the injunction's requirements. *See Perez-Funez*, 619 F. Supp. at 670. The Government must also "update and maintain" a list of free legal services to provide to unaccompanied alien children, and obtain a "signed acknowledgment" from the children showing that DHS has advised them of their rights under the injunction, and confirming communication with a parent, relative, friend, or legal organization where required. *Id.* Just as in *Aleman Gonzalez*, the district court's injunction "require[s] officials to take actions that (in the Government's view) are not required by" the INA's voluntary departure provision (8 U.S.C. § 1229c) and provision establishing withdrawal of aliens' applications for admission (8 U.S.C. § 1225(a)(4)), and "to refrain from actions that (again in the Government's view) are allowed by" those provisions. *Id.* at 551.

The 1986 Order Re Advisal suffers from similar infirmities. That order mandates the precise, *Miranda*-like language that must be used when informing the class of their right to removal proceedings and a mandatory telephonic access policy before offering voluntary departure or the ability to withdraw their application for admission. ER.178-182 (Attach. A). It is thus the quintessential example of a court directing federal officials to refrain from taking actions to carry out the INA as written without complying with court-imposed obligations. Put otherwise, the injunction requires the Government to "refrain" from "carry[ing] out" its authority to offer voluntary departure (8 U.S.C. § 1229c), or withdrawal of an application for admission (8 U.S.C. § 1225(a)(4)), until certain conditions set by the court were satisfied. *Aleman Gonzalez*, 596 U.S. at 550; *see N.S. v. Dixon*, 141 F.4th 279, 289-90 (D.C. Cir. 2025) (holding that § 1252(f)(1) barred a court order that "directly and substantially restricts the ability of those federal officials to 'carry out' provisions covered by § 1252(f)(1) and pro tanto frustrates enforcement of the law").

Because the processing of unaccompanied alien children occurs pursuant to provisions governed by § 1252(f)(1), *Aleman Gonzalez* makes plain that continued enforcement of the permanent class-wide injunction is impermissible under federal law, justifying dissolution.

2. The district court concluded otherwise on the basis that the injunction's "procedural requirements" are "enjoining or restraining the way the Government 'enforces, implements, or carries out' the ***TVPRA***, rather than any … provision" covered by § 1252(f)(1). ER.75. That conclusion does not pass muster.

As discussed above, the injunction directly restrains covered provisions, namely those related to voluntary departure (8 U.S.C. § 1229c) and withdrawal of applications for admission (8 U.S.C. § 1225(a)(4)). *Supra* pp.26-29. But even if the injunction can be said to primarily restrain the operation of the TVPRA, the TVPRA specifically incorporates expressly both the voluntary departure and withdrawal of applications for admission provisions of the INA. The TVPRA directs that certain unaccompanied alien children may "withdraw their application for admission pursuant to *section 1225(a)(4)*" and that others are eligible for "voluntary departure under *section 1229c*." 8 U.S.C. § 1232(a)(2)(B), (a)(5)(D) (emphasis added). Because the TVPRA relies directly on these covered INA provisions as the underlying legal mechanisms for returning an unaccompanied alien child, it is logically impossible to enjoin the TVPRA's return procedures without directly enjoining and restraining the covered INA provisions themselves.

Given this, the district court concluded that "no case presented by the parties, or found by the [c]ourt, has answered the precise question posed," and admitted that there is a "colorable argument that imposing additional due process constraints when immigration officers are carrying out these provisions of the TVPRA constitutes an impermissible injunction or restraint on the carrying out of [IIRIRA] provisions covered by § 1252(f)(1)." ER.73. Yet the court still concluded that injunction was not subject to § 1252(f)(1).

In doing so, the district court acknowledged that "both parties are correct to a certain extent that prior cases do not specifically dictate what the law requires in this instance." ER.73. The court pointed to two cases, neither of which the court concluded answered the precise question in this litigation.

First, the court stated that the Supreme Court case *Aleman Gonzalez* "presented a much clearer case" for application of § 1252(f)(1) because the district court there had entered an injunction requiring bond hearings under 8 U.S.C. § 1231(a)(6), a provision nobody disputed is covered by § 1252(f)(1). *Id.* (citing *Aleman Gonzalez*, 596 U.S. at 551). The district court gave at most *ipse dixit* reasoning as to why *Aleman Gonzalez* presented a clearer case even though the *Perez-Funez* injunction operates directly on covered provisions—§ 1225(a)(4) and § 1229c.

Second, the court looked to this Court's decision in *Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022), which held that an injunction involving one TVPRA provision (§ 1232(d)(2)) could not possibly be subject to § 1252(f)(1)'s remedial bar because that provision did not exist at the time of § 1252(f)(1)'s enactment in IIRIRA. But the district court also acknowledged that "the particular provision of the TVPRA discussed in *Galvez* did not contain any cross-reference to covered provisions, as do the TVPRA provisions at issue here." ER.73. This Court's decision in *Galvez* clarified that the key inquiry under § 1252(f)(1) is whether the injunction restrains the operation of provisions codified within §§ 1221-

1231 of the INA. 52 F.4th at 829-31. *Galvez* ultimately permitted relief because the challenge adjustment-of-status provision was outside the statutory provisions covered by § 1252(f)(1). But this Court stressed that § 1252(f)(1) squarely applies where injunctions regulate covered removal provisions. Here, unlike in *Galvez*, the relevant provisions—§ 1225(a)(4) and § 1229c—are themselves part of Part IV of the INA, which means that they are subject to § 1252(f)(1)'s limitations on class-wide injunctive relief.

The district court's conclusion that its injunction "'enforces, implements, or carries out' the *TVPRA*" (ER.75) also fails as a matter of basic logic. The injunction pre-dates the TVPRA by more than two decades. Left unanswered by the district court was what its injunction was implementing/carrying out during that 23-year period. The only possible answer is §§ 1225 and 1229c—*i.e.*, covered provisions.

Nor did the district court hold that the TVPRA repealed or supplanted the relevant provisions of § 1225 and § 1229c. Indeed, it expressly cross-references them, confirming their continued viability. The upshot is that the injunction clearly was operating on § 1225 and § 1229c for the first 23 years of its existence—which the district court never denied. And it continued to do so for the ensuing 18 years between the TVPRA's enactment and the order at issue below.

Given that the injunction has a direct effect on the withdrawal of an application for admission and voluntary departure provisions of the INA, the district court erred in concluding that the injunction is not subject to § 1252(f)(1).

B. The District Court Erred in Concluding that the Injunction Has Only a Collateral Effect on Covered Provisions.

The district court also erred in concluding that this Court's "collateral effect" case law dictates that the *Perez-Funez* injunction would not be subject to 8 U.S.C. § 1252(f)(1)'s bar on class-wide injunctive relief.

The district court's conclusion rested on a misapplication of this Court's decision in *Al Otro Lado v. Executive Off. for Immigration Review*, 138 F.4th 1102 (9th Cir. 2025). There, this Court permitted a *negative* injunction against an asylum rule promulgated under 8 U.S.C. § 1158 (a non-covered provision), reasoning that substantive asylum eligibility is independent of the removal proceedings governed by covered INA provisions. *Id.* at 1126-27. However, the TVPRA does not create a standalone, substantive mechanism for the return of unaccompanied alien children. Instead, the TVPRA expressly incorporates the covered INA provisions to effectuate the return of unaccompanied alien children to their home countries, specifically those pertaining to voluntary departure and withdrawal of an application for admission. *See* 8 U.S.C. § 1232(a)(2)(B), (a)(5)(D) (incorporating § 1225(a)(4) and § 1229c). The district court thus acknowledged that the TVPRA "cross-references the covered provisions of §§ 1225 and 1229c and permits the Government to follow those procedures in certain circumstances." ER.75. However, the district court concluded that "like with § 1158 in *Al Otro Lado*" the Government must "first and foremost … follow the TVPRA when it encounters unaccompanied children," and any impact on covered provisions is at most collateral. *Id.* That conclusion makes little sense in light of the TVPRA's express incorporation of covered provisions.

In fact, *Al Otro Lado* supports the Government, not Plaintiffs. There, this Court stated that "[o]ne clear lesson of *Aleman Gonzalez* is that § 1252(f)(1) prohibits courts from awarding injunctive relief that directly adds a new procedural step to the Government's operation of covered provisions." 138 F.4th at 1125. *Al Otro Lado* thus explicitly invalidated *affirmative* injunctive relief that forced the government to add new procedural steps within the removal process, holding that such mandates unlawfully "interfere[] with the Government's efforts to operate the covered removal provisions." *Id.* at 1128 (citation omitted).

The *Perez-Funez* injunction is entirely affirmative. By forcing immigration officers to administer the highly prescriptive Form I-770 and mandate telephone access before offering voluntary departure or withdrawal, the injunction orders federal officials to take extra-statutory actions—on a class wide basis—to "carry out" covered provisions. *See Aleman Gonzalez*, 596 U.S. at 550. Under the logic of the Supreme Court's decision in *Aleman Gonzalez* and this Court's decision in *Al Otro Lado*, this directly restrains the operation of the Government's use of §§ 1225(a)(4) and 1229c—covered provisions—themselves rather than merely having an incidental effect on those covered provisions.

The district court also applied the principle that "ambiguities" in jurisdiction-stripping statutes like § 1252(f)(1) should be resolved "in favor of the narrower interpretation and by the strong presumption in favor of judicial review." ER.75 (quoting *Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025)). There is little reason to apply that presumption here given that the *Perez-Funez* injunction operates directly on provisions covered by § 1252(f)(1)'s limitations on injunctive relief. The district court here simply conjured ambiguity where none existed. While the court said it was "hesitant to expand the reach of § 1252(f)(1)" in this context, *id.*, that is a policy determination better left to Congress, not courts. And here, Congress has expressed its specific policy choice by curtailing class-wide injunctions in the context of INA provisions covered by § 1252(f)(1).

Because the *Perez-Funez* injunction directly affects the operation of INA provisions covered by § 1252(f)(1) as interpreted by *Aleman Gonzalez*, termination of the injunction is warranted under Rule 60(b)(5) due to a change in law.[2] Indeed, "[a] court errs [under Rule 60(b)(5)]

[2] The Government acknowledges the statute's exception for "the application of such provisions to an individual alien against whom proceedings ... have been initiated." 8 U.S.C. § 1252(f)(1). While this provision would not, by its terms, bar relief originally granted to the *named plaintiffs* as "individual aliens," any claim to maintain the injunction as to them is moot. The named plaintiffs were defined by their status as unaccompanied minors at the time of the original complaint's filing over four decades ago, but they are no longer unaccompanied minors today. Indeed, some of them may be approaching retirement. Because the injunction and its advisal requirements apply exclusively to the processing of unaccompanied alien children, there is no remaining legal or factual basis to maintain the district court's order, even as to the original individual parties.

when it refuses to modify an injunction or consent decree in light of" "changes in either statutory or decisional law." *Agostini v. Felton*, 521 U.S. 203, 215 (1997).

II. The District Court Abused Its Discretion by Expanding the Injunction.

The district court's ordering granting a modification expanding the injunction to prohibit the use of the supplemental advisal itself violates 8 U.S.C. § 1252(f)(1). Even if the modification did not violate § 1252(f)(1), the district court committed legal error by failing to conduct a new due-process analysis and instead granting the modification based only on the court's interpretation of the original injunction's prohibitions.

A. The District Court's Expanded Injunction Violates 8 U.S.C. § 1252(f)(1).

The district court's modified injunction itself violates 8 U.S.C. § 1252(f)(1) because it enjoins or restrains the operation of the same provisions discussed above, namely those related to voluntary departure (8 U.S.C. § 1229c) and withdrawal of applications for admission (8 U.S.C. § 1225(a)(4)) for unaccompanied alien children. Under the modified injunction, DHS is "enjoin[ed]" from "carry[ing] out" its authority to offer voluntary departure or withdrawal of applications for admission to unaccompanied alien children absent eliminating the supplemental advisal. *Aleman Gonzalez*, 596 U.S. at 550. If this Court reverses the district court on its reasoning that the original injunction is not subject to 8 U.S.C. § 1252(f)(1)'s limitations on class-wide injunctive relief, the Court must also vacate the district court's modification of the injunction.

B. The District Court Erred in Failing to Conduct a Fresh Due Process Analysis.

Even if this Court concludes that the original *Perez-Funez* injunction and modified injunction are not subject to § 1252(f)(1), the district court's order modifying the injunction must still be reversed. That is because the district court failed to conduct any new due process analysis to determine whether the supplemental advisal violates the Due Process Clause under current law.

1. The district court entered the original injunction after concluding that the then-existing voluntary departure procedures ran afoul of the Due Process Clause's requirements under the *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976) balancing test. *See Perez-Funez*, 619 F. Supp. 664-65. Yet when the district court considered the propriety of the supplemental advisal here, the court analyzed only whether the supplemental advisal violated the spirit of the court's forty-year-old injunction.

In doing so, the court applied recent Ninth Circuit precedent holding that "courts look to the spirit of the injunction" in addition to the injunction's literal text where litigants "appl[y] a dubious literation interpretation of the injunction … to evade the injunction's goals." ER.90 (quoting *Epic Games, Inc. v. Apple, Inc.*, 161 F.4th 1162, 1176 (9th Cir. 2025)). From there, the district court concluded that the fact that DHS continues to provide Form I-770 to unaccompanied alien children—as the district court's order denying the motion to terminate required—would not be a sufficient reason to conclude that DHS was complying with the injunction. The district court instead interpreted the injunction broadly to "require[] that the Government take no steps to persuade or dissuade class members from exercising their rights." ER.91 (citing *Perez-Funez*, 619 F. Supp. at 669-70). And then the district court conducted a hyper-technical review of the supplemental advisal's particular provisions to determine whether each one "improperly coerce[d]" unaccompanied alien children. ER.91-93. In doing so, the district court focused on the original injunction's terms and spirit, but never once cited the *Mathews v. Eldridge* balancing test nor purported to apply due-process standards. This was error.

The original *Perez-Funez* injunction rested on specific factual findings the court made *in 1985* about INS's practices and the coercive circumstances surrounding INS's provision of voluntary-departure forms. To expand the injunction beyond those circumstances to prohibit supplemental advisals, the district court needed to determine anew whether the supplemental advisals, considered in the context here and under modern due process decisional law, complied with the strictures of due process. As the Supreme Court has repeated time and again, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). It requires a careful analysis of the public and private interests at stake, as well as the potential value and drawbacks of new procedures. *Mathews*, 424 U.S. at 334-35. That includes consideration of "longstanding precedent" that due process for aliens needs to sufficiently "account for the government's countervailing interests in immigration enforcement." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022).

Here, the district court conducted no such analysis. Instead, the court simply concluded that on its interpretation of the supplemental advisal, the advisal "improperly coerces [unaccompanied alien children] from exercising their rights." ER.94. In doing so, the district court added a new prophylactic layer to the existing prophylactic protections of the original 1985 injunction without ever analyzing whether this new layer was necessary to vindicate the Due Process Clause itself. Instead, the district court treated its own injunction as if it had supplanted the Fifth Amendment as the governing law. But while the Constitution is designed to be permanent, institutional-reform injunction are supposed to end and authority instead be "*returned promptly* to the [government] and its officials." *Horne*, 557 U.S. at 450 (emphasis added). Perpetuating and expanding a four-decade old injunction is the antithesis of returning authority to the Executive promptly.

This legal error necessitates reversal of the district court's modification of the injunction.

2. The district court's modification order demonstrates the gravity of the problems with maintaining the original injunction. By bypassing the proper constitutional inquiry and relying on the broad "spirit" of the original injunction, the district court effectively transformed the injunction into an open-ended, court-supervised regime untethered from

the particular requirements of the Due Process Clause. That is especially problematic given that the district court's modified injunction added procedural constraints on the voluntary departure and application withdrawal INA provisions that are covered by 8 U.S.C. § 1252(f)(1).

CONCLUSION

This Court should reverse and vacate the district court's judgment declining to dissolve the *Perez-Funez* injunction, and remand for the district court to consider whether to exercise its equitable discretion to dissolve the injunction under the proper law. This Court should also vacate the district court's order expanding the *Perez-Funez* injunction.

May 27, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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[X] I am unaware of any related cases currently pending in this court.

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**UNITED STATES COURT OF APPEALS
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