

No. 26-2787

**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.

Appeal from the
United States District Court for the Central District of California
Case No. 81-cv-01457, Hon. Michael W. Fitzgerald

**ANSWERING BRIEF FOR PLAINTIFFS-APPELLEES
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Introduction

Age is “more than a chronological fact.” *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). It is common sense that children are more susceptible to “outside pressures” than are adults, *Roper v. Simmons*, 543 U.S. 551, 569 (2005), and “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality). Because of their unique vulnerability, children face an increased risk that undue influence will lead them to waive their rights unknowingly or involuntarily. When “due process interests are at stake,” therefore, specific procedures are necessary to ensure that “juveniles are given a meaningful chance” to exercise their constitutional rights. *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1160-62 (9th Cir. 2004).

The district court’s injunction stems from these deeply rooted principles. It arose after a class of unaccompanied immigrant children challenged the voluntary-return procedure used by the Immigration and Naturalization Service (INS). *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez II)*, 619 F. Supp. 656, 658-59 (C.D. Cal. 1985). A full trial on the merits featured testimony from nearly 20 undocumented children, who

explained that because they were not advised of their rights “in a meaningful manner,” they accepted voluntary return “unknowingly and involuntarily.” *Id.* at 657-58. This testimony confirmed what “common sense” suggested: Children confused about their rights and facing the “inherently coercive” environment of immigration detention will feel compelled to accept voluntary return (and give up their ability to seek immigration relief). *Id.* at 662.¹

The district court accordingly entered a permanent injunction requiring the Government to provide a certified class of unaccompanied minors both a simplified advisal outlining their rights—now embodied in Form I-770—and, at a minimum, an opportunity to contact a parent, trusted adult, or legal services provider. *Perez-Funez II*, 619 F. Supp. at 669-70; *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez I)*, 611 F. Supp. 990,

¹ Plaintiffs use the phrase “voluntary return” to refer to the process whereby unaccompanied children are screened by federal officials, outside of formal removal proceedings, for their ability and legal eligibility to return to their home country after “waiving the right to a deportation hearing and all alternative forms of relief.” *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez II)*, 619 F. Supp. 656, 658 (C.D. Cal. 1985). Voluntary return is governed by both statute and regulation. 8 U.S.C. § 1232(a)(2); 8 C.F.R. § 1236.3(g)-(h). It is distinct from “voluntary departure” undertaken through formal removal proceedings before an immigration judge, which is governed by a different statute and regulations. *See, e.g.*, 8 U.S.C. § 1229c; 8 C.F.R. § 1240.26.

1005 (C.D. Cal. 1984). The injunction also bars immigration officials from persuading or dissuading class members regarding voluntary return or pressuring any child to change their decision about whether to seek a hearing in immigration court. *Perez-Funez I*, 611 F. Supp. at 1005; *Perez-Funez II*, 619 F. Supp. at 669-70 (making preliminary injunctive relief permanent with some modification).

The Government chose not to appeal. SER-79-81 (1986 appeal dismissal). Rather, for four decades, the Government complied with the injunction, even incorporating some of its safeguards in regulations. *See* 8 C.F.R. § 1236.3(g)-(h). Yet, in November 2025, three months after a failed attempt to remove Guatemalan unaccompanied children in the middle of the night under the guise of “reunification,” *see L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 112-15 (D.D.C. 2025), the Government moved to terminate the injunction. The reason soon became clear: The Government had secretly introduced a new form, which it termed the “UAC Processing Pathway Advisal,” that coerced unaccompanied children (UAC) into accepting voluntary return by inaccurately describing their rights. It had also been threatening some children with dogs and tasers until they agreed to voluntary return. SER-59-65 (Fisher

Flores Decl.) ¶¶ 5-16; SER-69-71 (Decl. of D.A.T.M.) ¶¶ 3-6; SER-75-78 (Decl. of Y.Y.Z.O.) ¶¶ 9, 17-19. And once children acceded to this pressure, the Government was attempting to remove them before they could make *any* contact with *any* adult who might explain their rights to them. SER-64 ¶ 14.

These actions flagrantly violated the injunction's requirements that ensure unaccompanied minors are not coerced into accepting voluntary return until they understand their rights and have an opportunity to contact an adult. *Perez-Funez I*, 611 F. Supp. at 1005; *Perez-Funez II*, 619 F. Supp. at 669-70. Yet the Government secretly engaged in its extra-legal pressure campaign for months before eventually moving to terminate the injunction under Federal Rule of Civil Procedure 60(b)(5). Now, having finally come to court, the Government chiefly argues that 8 U.S.C. § 1252(f)(1), as interpreted in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), nullified the district court's authority to maintain the injunction. It further contends that the district court abused its discretion by concluding that the injunction's prospective application remains equitable and by barring further use of the new Pathway Advisal.

These arguments all fail. Section 1252(f)(1) prohibits classwide injunctive relief that directly implicates immigration provisions codified at 8 U.S.C. §§ 1221-1231. But the Trafficking Victims Protection Reauthorization Act (TVPRA) placed the procedures for processing unaccompanied children in 8 U.S.C. § 1232, a statutory section outside of the range covered by Section 1252(f)(1). The injunction likewise dictates procedures for unaccompanied children, so it directly implicates the TVPRA rather than Sections 1221-1231. Section 1252(f)(1) therefore does not reach the injunction. That is so even if the injunction ultimately has a collateral, downstream effect on the Government's operation of Sections 1221-1231. *See Gonzales v. Dep't of Homeland Sec.*, 508 F.3d 1227, 1233 (9th Cir. 2007).

The district court also correctly determined that the Government had not met its burden to show that legal or factual changes require termination, while Plaintiffs had shown that the Pathway Advisal violates both the letter and the spirit of the injunction. Although the Government (mistakenly) criticizes the district-court decisions, it makes no attempt before this Court to argue affirmatively that the injunction's prospective application is, in fact, inequitable.

That choice is understandable: No developments since the injunction's inception fully protect unaccompanied minors' constitutional rights. The Government's clandestine attempts to coerce unaccompanied minors into voluntary removal, moreover, weigh heavily against the injunction's termination and create an unacceptable risk that class members—vulnerable children—will unknowingly waive their rights.

True, federal courts may terminate injunctions and “return power to make policy to the elected branches” once an injunction is “no longer warranted.” Appellants’ Br. 1. But the injunction here is needed now more than ever. As the district court determined, the record demonstrates that “[t]he Government has not proven that it is complying with (or will comply with)” the “constitutional command” that “any waivers of rights are voluntary, knowing, and intelligent.” ER-82. Because that conclusion was neither erroneous nor an abuse of discretion, this Court should affirm.

Issues Presented

1. Whether the district court correctly held that 8 U.S.C. § 1252(f)(1) does not preclude this case’s injunction because it directly

implicates the Trafficking Victims Protection Reauthorization Act, 8 U.S.C. § 1232, not 8 U.S.C. §§ 1221-1231.

2. Whether the district court abused its discretion in concluding (a) that the Government failed to justify the injunction’s termination, given the record evidence of the Government’s continued threats to and violations of unaccompanied minors’ rights, or (b) that the secretive introduction of the Pathway Advisal—which subjected vulnerable children to inaccurate and coercive threats—represented a substantial violation of the injunction warranting modification to bar its use.

Statement of the Case

I. The original injunction

In March 1981, 16-year-old Jose Antonio Perez-Funez—an unaccompanied child fleeing violence in El Salvador—filed a petition for a writ of habeas corpus in the Central District of California. The petition alleged that the Government violated Jose Antonio’s constitutional right to procedural due process by seeking to remove him from the United States following a purported waiver of a removal hearing. ER-07-08; *see* ER-59. In May 1981, Jose Antonio amended his petition and sued the INS on behalf of a class of unaccompanied children, challenging the agency’s practice of removing unaccompanied children from the United States

without a removal hearing or other adequate procedural safeguards. Jose Antonio argued that these practices created an unacceptably high risk of erroneous waiver of his and similarly situated children's due-process rights. *See* ER-08-10.

In January 1984, the district court certified a class of unaccompanied children and issued a preliminary injunction. It found that Plaintiffs had shown irreparable harm and a likelihood of success “on the merits of their claim that the procedures ... employed by ... INS when implementing voluntary departure in the case of an unaccompanied minor [were] constitutionally defective.” *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez I)*, 611 F. Supp. 990, 1003 (C.D. Cal. 1984); *see* ER-59.

The case proceeded to a bench trial in April 1985, where the district court heard testimony from nearly 20 class members and multiple expert witnesses. *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez II)*, 619 F. Supp. 656, 657-58, 661 (C.D. Cal. 1985). The children provided troubling, uncontroverted testimony. They said that they could not read or understand the forms they were given, but INS agents told them that they should sign because they would otherwise be subject to “a lengthy

detention period” and “could not afford bail.” *Id.* at 657. They recounted that “INS presented the voluntary departure forms without any explanation of rights and told them to sign,” and they signed the forms “believing they had no other alternative.” *Id.* Expert witnesses explained that children “generally do not understand the concept of legal rights without explanation,” and in exceptionally stressful situations—separated from family in a completely foreign environment—they “cannot make a knowing and voluntary choice.” *Id.* at 661. Instead, they “defer to the authority before them, especially for those children accustomed to autocratic governments.” *Id.*

The district court determined that unaccompanied children uniformly did not understand their rights when confronted with the voluntary departure form. *Id.* at 661. The court explained:

[U]naccompanied children of tender years encounter a stressful situation in which they are forced to make critical decisions. Their interrogators are foreign and authoritarian. The environment is new and the culture completely different. The law is complex. The children generally are questioned separately. In short, it is obvious to the Court that the situation faced by unaccompanied minor aliens is inherently coercive.

Id. at 662.

Following the trial, the district court made permanent much of the preliminary injunction, *id.* at 669-70, including requirements that

- immigration officials provide each unaccompanied child, in a language understood by the child, (a) an oral and written advisal of rights and (b) a copy of a free legal services list compiled pursuant to applicable regulations, *Perez-Funez I*, 611 F. Supp. at 1005; and
- if any unaccompanied child informed an immigration official that “he or she wishe[d] to apply for ... any ... form of relief,” the official could not “advise, encourage, or persuade the class member to change his or her decision.” *Id.*

The district court also made several modifications to the preliminary injunction to account for the trial evidence. According to the court, Plaintiffs had failed to show that “the INS engages in a policy of overt coercion of unaccompanied minors.” *Perez-Funez II*, 619 F. Supp. at 661. So, the court struck the preliminary injunction’s language barring the Government from engaging in explicit “threats, misrepresentations, subterfuge, or other forms of coercion,” *id.* at 669-70, though it made permanent the requirement that the Government not “in any way

attempt to persuade or dissuade class members when informing them of the availability of” voluntary return, *Perez-Funez I*, 611 F. Supp. at 1005.

After trial, the court found that “all the evidence presented” demonstrated that “access to telephones” for unaccompanied children was “the only way to ensure a knowing waiver of rights.” *Perez-Funez II*, 619 F. Supp. at 664. The evidence also suggested that the risk of an unknowing waiver of rights depended in part on whether an unaccompanied child (a) was apprehended at or near the border, or (b) arrived from Canada or Mexico (contiguous countries) or from another, noncontiguous country. *Id.* at 662-63.

The court added several provisions to the permanent injunction to account for these findings. *First*, for unaccompanied children “apprehended in the immediate vicinity of the border and who reside permanently in Mexico or Canada,” the Government must inform them of their right to “make a telephone call to a parent, close relative, or friend, or to an organization found on the free legal services list.” *Perez-Funez II*, 619 F. Supp. at 670. *Second*, for unaccompanied children from countries other than Mexico or Canada, or those not apprehended near the border, the Government must provide them with “access to

telephones and ensure that the class member has in fact communicated, by telephone or otherwise, with a parent, close adult relative, friend, or with an organization found on the free legal services list.” *Id. Third*, the Government must “obtain a signed acknowledgment from the class member on a separate copy of the simplified rights advisal showing that [officials] provided all notices and required information, including confirmation of communication with a parent, close adult relative, friend, or legal organization, when applicable.” *Id.*

The permanent injunction requires the Government to undertake these procedures and inform unaccompanied children of their rights before they choose between voluntary return or seeking relief from removal in immigration court. This was important, the court explained, so that children did not inadvertently waive their rights and then have “to withdraw the prior waiver.” *Perez-Funez II*, 619 F. Supp. at 665. The district court acknowledged that these protections would “entail some expense,” but it found that cost “to be a minimal burden upon the government” when balanced against the “great” risk of depriving unaccompanied children of their “significant constitutional and statutory rights.” *Id.* at 668.

In February 1986, the district court clarified the injunction. SER-82-85. This clarifying order specified that immigration officials can provide unaccompanied children with the form “used for the election between voluntary return and a deportation hearing” before completing the injunction’s other requirements. SER-85 ¶ 5; *contra* Appellants’ Br. 27 (“DHS must provide [the injunction’s requirements] prior to presenting a voluntary departure or withdrawal form.”). What is forbidden, the court explained, is “for the minor to *make an election* by signing the form” before the injunction’s protections are provided. SER-85 ¶ 5 (emphasis added).

Finally, in May 1986, the district court adopted an advisal form specifying the precise language to be provided to unaccompanied children. ER-43. That advisal “has developed into Form I-770,” which the Government used for four decades without seeking modification. ER-66; *see also* ER-51-55 (translated copy of Form I-770).

II. Intervening legal and factual changes

1. Statutory and regulatory changes

Several statutory and regulatory changes have altered immigration law since the injunction’s inception. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA or

IIRAIRA), which restructured the Immigration and Nationality Act (INA). IIRIRA is most relevant here because it established Section 1252(f)(1)'s remedial bar precluding classwide injunctive relief that enjoins or restrains the operation of 8 U.S.C. §§ 1221-1231. *See* 8 U.S.C. § 1252(f)(1) (discussed below at 31-52).

Congress thereafter passed the Homeland Security Act (HSA) in 2002. Pub. L. No. 107-296, 116 Stat. 2135. The HSA dismantled INS and redistributed its functions to other agencies. Among other changes, the HSA made the Office of Refugee Resettlement (ORR) responsible for the care and well-being of unaccompanied children. 6 U.S.C. § 279.

The most significant statutory change regarding unaccompanied children came via the Trafficking Victims Protection Reauthorization Act, which Congress passed in 2008. The TVPRA imposes a comprehensive scheme of legal procedures and safeguards ensuring that unaccompanied children are properly cared for while in Government custody and repatriated only when doing so is safe for the children. Pub. L. No. 110-457, 122 Stat. 5044 (codified in relevant part at 8 U.S.C. § 1232). It requires immigration agents to screen unaccompanied children from contiguous countries—Mexico and Canada—before

removing any such child outside of formal removal proceedings. 8 U.S.C. § 1232(a)(2). Immigration officials may return an unaccompanied child to their contiguous home country only if that child is not a trafficking victim, does not have a credible fear of persecution, is determined to be inadmissible, is capable of making an independent decision, and in fact chooses to withdraw their application for admission. *Id.*

For all other unaccompanied children, including all children from noncontiguous countries, the Government must provide them “access to counsel” to “the greatest extent practicable.” 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5). These children must also be placed in “removal proceedings under” 8 U.S.C. § 1229a. Thereafter, they are eligible for voluntary departure under 8 U.S.C. § 1229c “at no cost to the child.” *Id.* § 1232(a)(5)(D)(i)-(ii).

Finally, under the TVPRA, a federal agency encountering an unaccompanied child must transfer custody of that child to ORR within 72 hours absent “exceptional circumstances.” 8 U.S.C. § 1232(b)(3). When unaccompanied children enter ORR custody, they receive additional protections not available during the 72-hour period before transfer. For example, children in ORR custody must receive an “in-person, telephonic, or video presentation concerning the rights and responsibilities of

undocumented children in the immigration system, presented in the native or preferred language of the unaccompanied child,” 45 C.F.R. § 410.1309(a)(2)(i), and a “confidential legal consultation with a qualified attorney ... to determine possible forms of relief from removal,” *id.* § 410.1309(a)(2)(v).

2. The “UAC Processing Pathway Advisal” and the Government’s recent tactics

Until recently, and for roughly 40 years, the Government had provided children with the advisals required by the injunction without objection. ER-159; *see* ER-51-55 (Form I-770). Then, around September 2025, without informing the district court or Plaintiffs, the Government began providing to unaccompanied children a new advisal, which it termed the “UAC Processing Pathway Advisal.” ER-57 ¶ 4 (Julien Decl.); *see* ER-50 (the Pathway Advisal). Although the injunction forbids immigration officials from attempting to convince class members to accept voluntary return, *Perez-Funez I*, 611 F. Supp. at 1005, the Pathway Advisal warns unaccompanied children that

- they should “expect” prolonged detention if they “indicate a fear of returning to [their] country;”

- if they “choose to seek a hearing with an immigration judge or indicate a fear of returning to [their] country, [they] can expect” that their “sponsor may be subject to criminal prosecution for aiding [their] illegal entry,” and
- a choice to exercise their rights may leave unaccompanied children “barred” from applying for a visa in the future.

ER-50.

Despite its threat of prolonged detention, the Pathway Advisal does not inform unaccompanied minors that immigration officials are required to place unaccompanied children “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A); *see also* 45 C.F.R. § 410.1003(f) (requiring the same). Nor does the Pathway Advisal explain, when warning unaccompanied minors about criminal prosecution of their sponsors, that a child’s articulation of fear or choice to seek a hearing with an immigration judge has no bearing on whether someone has committed the crime of aiding illegal entry. *See* 8 U.S.C. § 1327. Finally, the Pathway Advisal does not inform class members that any visa bar resulting from declining voluntary return would be time-limited. *See* 8 U.S.C. § 1182(a)(9)(A).

The Government paired its introduction of the Pathway Advisal with other measures likely to induce voluntary return from unaccompanied minors. Some children were placed in uncomfortably cold jail cells known as “hieleras,” yelled at by immigration officials, or threatened with dogs and tasers. SER-59-65 (Fisher Flores Decl.) ¶¶ 5-16; SER-69-71 (Decl. of D.A.T.M.) ¶¶ 3-6; SER-75-78 (Decl. of Y.Y.Z.O.) ¶¶ 9, 17-19. These tactics, moreover, were perpetrated during the 72 hours before an unaccompanied child was transferred to ORR custody (and additional regulatory protections attach). SER-59-65 ¶¶ 5-16; *see* 45 C.F.R. § 410.1309(a)(2)(i), (v).

In theory, the TVPRA’s requirements should limit the consequences flowing from this coercion. As explained above (at 14-15), the TVPRA dictates that children arriving from only Canada or Mexico who pass certain screening requirements may accept voluntary return outside of the presence of an immigration judge. 8 U.S.C. § 1232(a)(2). All other children—including *all* children arriving from noncontiguous countries—must be placed in removal proceedings under 8 U.S.C. § 1229a, and are accordingly not eligible for voluntary return without access to counsel and the involvement of an immigration judge. 8 U.S.C. § 1232(a)(5)(D).

The Government, however, has asserted that the One Big Beautiful Bill Act (OBBA), Pub. L. No. 119-21, 139 Stat. 72 (2025), impliedly repeals the TVPRA's specific requirements distinguishing between children from contiguous and noncontiguous countries. Appellants' Br. 17. As explained below (at 58), that interpretation is unsupportable. Yet the Government has relied on its misconstruction of the OBBA to authorize the removal of *any* unaccompanied minor who accedes to voluntary return, before that child is transferred into ORR custody, "regardless of the processing track the TVPRA would otherwise require." *Id.*; see SER-59-65 ¶¶ 5-16; SER-66-68 (letter from CBP Comm'r Scott).

III. The Government's motion to terminate and Plaintiffs' cross-motion for modification

In November 2025, months after its covert introduction of the new Pathway Advisal, the Government moved to terminate the injunction. The Government's motion did not inform the district court or Plaintiffs of the Pathway Advisal's existence, its content, or how the Government was using it.

Plaintiffs opposed. ECF 268. And after learning about the Pathway Advisal from evidence provided in another suit, Plaintiffs filed a cross-motion to modify the injunction and for leave to conduct discovery. ECF

269. As to modification, Plaintiffs requested that the district court explicitly prohibit the use of the Pathway Advisal in any manner with respect to any unaccompanied minors electing between voluntary return or removal proceedings. *Id.* at 12.

Following briefing and a hearing, the district court denied the Government's motion to terminate and granted Plaintiffs' motion to modify, as we now explain. ER-84-85, ER-94.²

1. Motion to terminate

The district court first rejected the Government's requests for relief under Rules 60(b)(4) and 60(b)(6). ER-68-69. As to Rule 60(b)(4), the court concluded that the judgment was not void because "there can be no argument that the Court lacked jurisdiction to award the relief it did in 1985, as § 1252(f)(1) was not yet the law." ER-69. And the argument that "exceptional circumstances" justified vacatur under Rule 60(b)(6), the court explained, lacked merit because the Government made no arguments "separate and apart from [its] arguments under Rule 60(b)(4)

² The district court also denied without prejudice Plaintiffs' cross-motion for leave to conduct discovery. ER-94. Plaintiffs do not appeal that ruling.

or (5) that would sufficiently invoke clause (6).” ER-68-69. The Government does not appeal these rulings. Appellants’ Br. 19 n.1.

The court then turned to the Government’s Rule 60(b)(5) argument that the injunction should be terminated as no longer equitable. ER-70. As in this Court, the Government’s argument for termination below focused primarily on 8 U.S.C. § 1252(f)(1), which limits courts’ authority to issue injunctive relief “to enjoin or restrain the operation of the provisions” of specified sections of the INA.

But as the district court noted, the Government simultaneously (and paradoxically) insisted that a different statute—the TVPRA—“occupies the field” and supplies the “binding legal framework” for processing of unaccompanied children. ER-75 (quotation marks omitted). The court agreed, recognizing that “Congress saw fit to take the treatment of UAC completely out of the IIRAIRA’s generalized provisions with the enactment of the TVPRA” and “instead placed all rules for the processing of such children within a separate statutory provision, § 1232, which is *not* a covered provision within § 1252(f)(1).” ER-74-75. “[T]he Injunction’s procedural requirements,” the court reasoned, “are thus enjoining or restraining the way the Government ‘enforces, implements,

or carries out' the *TVPRA*, rather than any [Section 1252(f)(1)-]covered provision." ER-75.

The district court also rejected the Government's contention that intervening legal developments have rendered the permanent injunction unnecessary. It explained that notwithstanding "changes in the law provid[ing] additional requirements as to the Government's treatment and processing of UAC, including the TVPRA, none provide for the minors to be explained their rights in the manner that the Court found was required by the Fifth Amendment in 1985," and there was nothing "in the statutory or regulatory landscape that constitutes a meaningful cure to the scenario that UAC encounter upon apprehension by immigration agents." ER-78-79.

The district court noted in particular that the TVPRA's protections could not supplant the injunction's so long as the Government was interpreting the OBBB to "allow UAC from *any* country, not just contiguous countries, to withdraw their application for admission and return to their home country" before they could "make it to an Immigration Judge" or ORR custody. ER-80. Evidence submitted by the Government "confirm[ed] that DHS has implemented voluntary return

procedures for all UAC, not just those who are authorized for such procedures under the TVPRA.” ER-81. This meant that the Government sought “a return to the exact situation the Court identified” as unacceptable in 1985: “unfettered discretion of immigration agents to present UAC with the option to voluntarily depart.” *Id.*

The district court also found that no factual changes since the injunction’s issuance justified termination. For instance, nothing had changed since the 1985 permanent-injunction trial about “the period after initial apprehension and before the child was advised of the option to voluntarily depart, typically within the first few hours or days of detention,” which remains a time in which the risk of erroneous deprivation of rights is high. ER-78. The court explained that “the Government ha[d] failed to point to anything ... that constitutes a meaningful cure” for “minors’ lack of understanding of their rights during this period.” ER-78-79. The district court thus found that the “inherently coercive” environment experienced by unaccompanied minors in immigration detention, *Perez-Funez II*, 619 F. Supp. at 662, “persists to this day.” ER-79.

Nor, according to the district court, was Form I-770 outdated so as to justify termination of the injunction. ER-82-83. The Government's assertion "that it may be trusted to develop a more flexible form of notice without the judicial oversight that would inherently arise from modifying—not terminating—the Injunction" was, in the court's words, "dubious based on the Government's provision of the UAC Pathway Processing Advisal." *Id.* In any event, complete termination of the injunction, as opposed to modification to account for any on-the-ground factual changes, was not a remedy "suitably tailored" to address the Government's concerns regarding certain elements of Form I-770. ER-83 (citing *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992)).

Finally, the court acknowledged that the Executive Branch has substantial latitude in immigration matters. ER-83. But when constitutional "violations remain unremedied by any durable protections," the court reasoned, termination is not warranted under Rule 60(b)(5). ER-84. The Government's clandestine introduction of the Pathway Advisal, the court found, provided another reason to deny the motion because it meant that the Government had come to court with

unclean hands. *Id.* (citing *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15 (1945)).

2. Cross-motion to modify

Through their cross-motion, Plaintiffs alleged that the Pathway Advisal violated the injunction and that the violation, in turn, constituted a significant change in factual circumstances warranting modification to bar the Pathway Advisal’s use. ECF 269 at 1 (citing *Kelly v. Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016)).

In evaluating Plaintiffs’ cross-motion to modify, therefore, the district court measured the Pathway Advisal against the injunction’s requirement that the Government not “attempt to persuade or dissuade class members when informing them of the availability of voluntary departure.” *Perez-Funez I*, 611 F. Supp. at 1005. The court also considered the spirit of the injunction—that is, the “objects for which the relief was granted.” ER-91 (quoting *Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1176 (9th Cir. 2025)). In a thorough analysis, the court found that the Pathway Advisal “violates both the letter and the spirit” of the injunction. *Id.*

The court identified three categories of violations, the factual premises of which the Government did not dispute. First, the Pathway Advisal's threat that unaccompanied children "can 'expect' to be held in 'prolonged' detention if they invoke their right to a hearing before an Immigration Judge or their right to apply for asylum," the court found, "disturbingly mirrors the testimony by the named Plaintiff Perez-Funez in the trial in 1985." ER-91; *see Perez-Funez II*, 619 F. Supp. at 657 (INS threatened "a lengthy detention period" for children who did not accept voluntary return). So, the Government was "already on notice that such a statement delivered in this environment is precisely the kind of inappropriate persuasion the Injunction sought to prevent." ER-91.

Second, the Pathway Advisal's statement "that the child can 'expect' that the child's sponsor 'may be subject to criminal prosecution for aiding [their] illegal entry' if they invoke their right to a hearing or to apply for asylum" was, according to the district court, "blatantly" and "obviously coercive." ER-92. That is because "there is no logical connection between a child's right to invoke a right to a hearing or asylum protections, on the one hand, and the decision to pursue criminal prosecution for adult sponsors ... on the other." *Id.*

Finally, the district court found that the Pathway Advisal's language threatening visa-related consequences for unaccompanied children who exercise their rights misleadingly "implies a permanent bar" and "fails to explain that a bar to permanent admission is not an immediate consequence of choosing to exercise the rights explained in Form I-770." ER-93.

Because the Pathway Advisal violated the injunction in these respects, the court reasoned, explicitly barring the Pathway Advisal's use did "nothing more than subject the Government to the precise requirements imposed by the Injunction ... for the past forty years"—namely, that the Government could not dissuade unaccompanied minors from exercising their rights. ER-94. The district court accordingly found that prohibiting use of the Pathway Advisal was a suitably tailored modification and granted Plaintiffs' cross-motion. ER-93-94; *see* ER-96-97 (modified permanent injunction).

Summary of Argument

I. Section 1252(f)(1) does not preclude the district court's injunction. That provision bars injunctions that "enjoin or restrain the operation of" Sections 1221-1231 of the INA. 8 U.S.C. § 1252(f)(1); *Galvez*

v. Jaddou, 52 F.4th 821, 829-31 (9th Cir. 2022). Under Section 1252(f)(1), injunctions “directly implicat[ing]” Sections 1221-1231 are barred, while injunctions having only a “collateral” effect on these covered sections are not. *Gonzales v. Dep’t of Homeland Sec.*, 508 F.3d 1227, 1233 (9th Cir. 2007). Because the permanent injunction directly implicates the TVPRA—the specific section governing the processing of unaccompanied children—and because the TVPRA is outside of Sections 1221-1231, Section 1252(f)(1)’s remedial bar does not reach the injunction.

The Government responds by asking this Court to defer to its view of whether the injunction directly implicates a Section 1252(f)(1)-covered section. *See* Appellants’ Br. 27-28. The Government’s remarkable theory, which contains no limiting principle, ignores precedent and text alike. Its reliance on *Aleman Gonzalez* is misplaced because that case says nothing about the sections on which a given injunction operates, which is the dispositive issue here. And this Court’s precedent disposes of the Government’s argument that, because the TVPRA contains internal cross-references to INA sections covered by Section 1252(f)(1), the collateral-effects doctrine does not apply. The Government, moreover, wholly ignores the specific language and statutory context of Section

1252(f)(1), both of which foreclose its expansive argument. The district court thus rightly rejected the Government’s Section 1252(f)(1)-based termination arguments.

II. Other legal and factual changes, while justifying the injunction’s modification to bar use of the coercive “Pathway Advisal,” do not warrant termination. As to termination, the Government faults the district court for supposedly failing to sufficiently evaluate current circumstances in its due-process analysis. But that argument shirks the Government’s “burden of establishing that changed circumstances warrant relief.” *Horne v. Flores*, 557 U.S. 433, 447 (2009) (citing *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992)). It also ignores the district court’s careful consideration of legal and factual changes since the injunction’s inception, all of which it ultimately found inadequate to sufficiently protect unaccompanied children’s rights.

Tellingly, the Government does not actually argue that due-process balancing under *Mathews v. Eldridge*, 424 U.S. 319 (1976), tips in its favor or that legal or factual changes render the injunction “detrimental to the public interest.” *Horne*, 557 U.S. at 447 (quoting *Rufo*, 502 U.S. at 384). Nor could it, as the Government has not implemented any

sufficiently “durable” changes justifying termination of the injunction. *Id.* at 450. That is particularly so given the Government’s unsupportable misreading of the OBBB, misleading threats to unaccompanied minors, and refusal to comply with the constitutional requirement that minors may waive their rights only if they do so knowingly, voluntarily, and intelligently.

Meanwhile, as the district court found, Plaintiffs amply demonstrated that the Government’s “Pathway Advisal” pressured children to unknowingly accept voluntary return in violation of the injunction’s letter and spirit. Accordingly, the district court correctly concluded that the relevant Rule 60(b)(5) considerations precluded termination and warranted modification to bar the Pathway Advisal. In any event, these findings cannot remotely be reversed as abuses of the district court’s broad discretion.

Standard of Review

A party may obtain relief under Rule 60(b)(5) from a permanent injunction if “applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5). To obtain termination, the party challenging the injunction bears the burden of demonstrating that “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) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992))). Additionally, a “substantial violation of a court order constitutes a significant change in factual circumstances” justifying modification under Rule 60(b)(5). *Kelly v. Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016).

This Court reviews decisions to deny or grant relief under Rule 60(b) “only for abuse of discretion.” *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 216 (2025) (quoting *Browder v. Dir., Dept. of Corr. of Ill.*, 434 U.S. 257, 263 n.7 (1978)). “To be upheld, a district court’s decision need only ‘apply the correct legal standard and offer substantial justification’ for its conclusion.” *Id.* (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990)) (cleaned up). Questions of law underlying the district court’s decision are reviewed de novo. *Hall v. Haws*, 861 F.3d 977, 984 (9th Cir. 2017).

Argument

I. The district court correctly concluded that 8 U.S.C. § 1252(f)(1) does not bar the permanent injunction.

A. “By its terms, § 1252(f)(1) does not ... categorically insulate immigration enforcement from judicial classwide injunctions.” *Gonzalez*

v. U.S. Immigr. & Customs Enft, 975 F.3d 788, 812 (9th Cir. 2020) (quotation marks omitted). That provision prohibits courts (other than the Supreme Court) from issuing classwide injunctive relief restraining the operation of “specified statutory provisions” of the INA, *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2002), including 8 U.S.C. §§ 1221-1231. *Galvez v. Jaddou*, 52 F.4th 821, 829-31 (9th Cir. 2022); accord Appellants’ Br. 25. But Section 1252(f)(1)’s “textual limitation” to Sections 1221-1231 makes clear that its “limitations on injunctive relief do not apply to *other* provisions of the INA.” *Gonzalez*, 975 F.3d at 813.³

As the district court recognized, Section 1252(f)(1) does not apply to the permanent injunction here because the injunction directly implicates

³ Some decisions have suggested that 8 U.S.C. § 1232 is within the range of INA sections covered by Section 1252(f)(1) because “the reference in § 1252(f)(1) to ‘the provisions of part IV of this subchapter’ appears to refer to 8 U.S.C. §§ 1221-1232.” *Galvez*, 52 F.4th at 830 (citing 8 U.S.C. § 1252(f)(1)); cf. *Aleman Gonzalez*, 596 U.S. at 549 (citing 8 U.S.C. §§ 1221-1232 as the range of provisions referenced in Section 1252(f)(1)). But as this Court explained in *Galvez*, both the text of 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), demonstrate 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. v. Noem*, 800 F. Supp. 3d 100, 123 n.6 (D.D.C. 2025). The parties agree on this point. See Appellants’ Br. 25.

the TVPRA (8 U.S.C. § 1232), not 8 U.S.C. §§ 1221-1231. ER-72-76. The injunction requires officials to provide unaccompanied children with understandable written and verbal advisals of their rights, as well as (at minimum) the opportunity to make a phone call to a parent, trusted adult, or legal services provider. *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez I)*, 611 F. Supp. 990, 1005 (C.D. Cal. 1984); *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez II)*, 619 F. Supp. 656, 669-70 (C.D. Cal. 1985). The injunction also bars the Government from “in any way attempt[ing] to persuade or dissuade class members when informing them of the availability” of voluntary return and mandates that officials “not advise, encourage, or persuade [any] class member” who seeks to access any form of relief to change their decision. *Perez-Funez I*, 611 F. Supp. at 1005.

These constitutional requirements, *see Perez-Funez II*, 619 F. Supp. at 659, all concern the process due to unaccompanied minors. And the statutory framework governing the same subject is the TVPRA. ER-74-75. Indeed, the Government has vigorously argued throughout this litigation that the TVPRA, codified as relevant at 8 U.S.C. § 1232, “occupies the field” concerning the procedures due to unaccompanied minors. ECF 275 at 2; *see also* Appellants’ Br. 14 (the TVPRA

“addresse[s] the processing and care and custody of unaccompanied alien children”); ER-167 (the TVPRA represents the “detailed, comprehensive, and binding statutory scheme governing UAC”). As the district court stated, “[i]t thus follows that to the extent the Injunction compels the Government to take certain procedural steps when processing UAC, it does so with respect to the TVPRA’s requirements.” ER-75. And because Section 1252(f)(1) does not reach the TVPRA, it does not bar the injunction.

B. It may be that the injunction, though directly implicating the TVPRA, ultimately has downstream effects on the operation of Sections 1221-1231. But under this Court’s collateral-effects doctrine, those effects would not trigger Section 1252(f)(1)’s remedial bar.

Under the doctrine, Section 1252(f)(1) prohibits classwide injunctions that “directly implicate[]” Sections 1221-1231, but it does not bar injunctions that have a “collateral” effect on or are at least “one step removed” from these covered sections. *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1125 (9th Cir. 2025) (quoting *Gonzales v. Dep’t of Homeland Sec.*, 508 F.3d 1227, 1233 (9th Cir. 2007)), *rev’d on other grounds sub. nom.*, *Mullin v. Al Otro Lado*, 2026 WL 1825741 (June

25, 2026). The Supreme Court recognized and declined to disturb the collateral-effects rule in *Aleman Gonzalez*. 596 U.S. at 553 n.4. And this Court has repeatedly applied it to reject the same arguments that the Government advances here.⁴

For example, a court may provide classwide relief regarding asylum rules, which are not covered by Section 1252(f)(1), because “[e]ven though asylum eligibility may change the outcome of a removal proceeding under a” Section 1252(f)(1)-covered provision, “such an effect is collateral.” *Al Otro Lado*, 138 F.4th at 1126. Likewise, a court may enjoin “the unlawful application of statutory provisions regarding adjustment of status,” which are not covered by Section 1252(f)(1), “notwithstanding that a [Section 1252(f)(1)-covered] reinstatement proceeding may be a collateral

⁴ This Court denied en banc rehearing in *Al Otro Lado*. 138 F.4th at 1108. A total of 15 judges joined at least one of two dissents from the denial of rehearing en banc or a separate opinion respecting the en banc denial. *Id.* at 1128-78. None of these three opinions took issue with the panel’s articulation of the collateral-effects doctrine or the application of the doctrine to the injunctions under review in *Al Otro Lado*. *Id.*

On June 25, 2026, the Supreme Court reversed *Al Otro Lado* on the merits. *Mullin v. Al Otro Lado*, 2026 WL 1825741 (June 25, 2026). In doing so, it left “intact” this Court’s “decisions reached on other grounds,” including those regarding Section 1252(f)(1). *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1041 (9th Cir. 2010).

consequence of an unsuccessful adjustment application.” *Gonzales*, 508 F.3d at 1233. So too here: The permanent injunction layers procedures atop the TVPRA, a statute not covered by Section 1252(f)(1). That the injunction’s requirements may have a downstream *effect* on covered INA sections does not trigger Section 1252(f)(1)’s remedial bar.⁵

A straightforward, practical thought experiment demonstrates that the injunction’s effects on Section 1252(f)(1)-covered sections, if any, are collateral. If the injunction did not exist, all agree that it would be error for the Government to turn first to any section within 8 U.S.C. §§ 1221-

⁵ As explained, this Court’s precedent amply suffices to reject the Government’s Section 1252(f)(1) argument. And decisions nationwide agree. *E.g.*, *Castañon-Nova v. U.S. Dep’t of Homeland Sec.*, 175 F.4th 828, 838-39 (7th Cir. 2026) (although requiring the Government to comply with (non-covered) 8 U.S.C. § 1357 may require it to change its practice under (covered) 8 U.S.C. § 1226(a), “such indirect, collateral effects do not run afoul of § 1252(f)(1)”; *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 117-20 (D.C. Cir. 2026) (injunction barring implementation of proclamation and guidance regarding asylum, as otherwise governed by 8 U.S.C. § 1158, is lawful notwithstanding any “indirect effect” on 8 U.S.C. §§ 1225(b) and 1229a); *Garcia Ramirez v. U.S. Immigr. & Customs Enf’t*, 812 F. Supp. 3d 86, 109-10 (D.D.C. 2025) (injunction operating primarily on the TVPRA’s provision concerning “age-outs” is lawful despite potential downstream effect on 8 U.S.C. § 1225(b)); *see also United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 705-06 (E.D. Cal. 2025) (injunction based on Fourth Amendment and non-covered INA subpart is lawful “*even if* there may be collateral effects upon a provision covered by Section 1252(f)(1)”).

1231 when encountering, processing, or removing an unaccompanied child. Instead, the Government would be obligated to proceed via the TVPRA and any applicable ORR regulations. *See* Appellants’ Br. 14-17. And the Government contends that it can also remove unaccompanied children through the OBBB. *Id.* at 17. It follows, then, that when the injunction regulates what the Government must do when screening, processing, or attempting to remove an unaccompanied child, the injunction can directly implicate only the TVPRA and ORR regulations (and, on the Government’s view, the OBBB)—all of which are outside of Sections 1221-1231. Any effects on other statutes are necessarily at least “one step removed” from the injunction itself. *Gonzales*, 508 F.3d at 1233. Put differently, they are collateral.

Nor is the collateral-effects doctrine any less applicable because the TVPRA cross-references Section 1252(f)(1)-covered INA sections. *See* 8 U.S.C. § 1232(a)(2)(B)(i), (a)(5)(D)(i). The same was true in *Al Otro Lado*, which upheld (as relevant) an injunction prohibiting the Government from effectuating a policy promulgated under the asylum statute, 8 U.S.C. § 1158, even though Section 1158 contains internal cross-references to 8 U.S.C. §§ 1225 and 1229a, which are covered by

Section 1252(f)(1). *Al Otro Lado*, 138 F.4th at 1126; *see* 8 U.S.C. § 1158(a)(1), (d)(5)(A)(iv)-(v). As this Court explained, the injunction was permissible because the cross-referenced provisions do not “shift asylum determinations out from § 1158, which is not covered by § 1252(f)(1).” *Al Otro Lado*, 138 F.4th at 1227; *see also U.H.A. v. Bondi*, 819 F. Supp. 3d 946, 955 (D. Minn. 2026) (finding that a cross-reference to 8 U.S.C. § 1225(b) within 8 U.S.C. § 1159(a) did not bring the latter statute within Section 1252(f)(1)’s scope).

As the district court recognized, the same reasoning applies here. ER-74. Like the asylum statute’s cross-references in *Al Otro Lado*, the TVPRA’s cross-references to Section 1252(f)(1)-covered sections do not shift the rules governing what procedures are due to unaccompanied children outside of the TVPRA. So when the injunction regulates unaccompanied minors’ rights, it directly implicates the TVPRA, not cross-referenced provisions within that statute. And if the injunction affects how the cross-referenced provisions within the TVPRA apply in a given unaccompanied child’s case, that effect “is collateral under [this Court’s] precedents.” *Al Otro Lado*, 138 F.4th at 1126.

C. The remainder of the Government’s counterarguments fail. To resist the application of this Court’s precedent, the Government seizes on the district court’s statement that, in its view, no case “answered the precise question posed” here. Appellants’ Br. 30 (quoting ER-73). But that statement recognized only the unremarkable reality that “[n]o two cases [are] factually identical.” *United States v. Lustig*, 830 F.3d 1075, 1081 (9th Cir. 2016) (quoting *United States v. Katzin*, 769 F.3d 163, 176 (3d Cir. 2014) (en banc)). “The district court, like this panel, was bound to follow the *reasoning* of” this Court’s cases. *United States v. Gonzalez-Zotelo*, 556 F.3d 736, 740 (9th Cir. 2009) (emphasis added). That’s exactly what it did. ER-74.

The Government next notes that *Al Otro Lado* invalidated the district court’s (affirmative) requirement that the Government “revisit determinations in removal proceedings even absent a motion by the noncitizen.” 138 F.4th at 1127; see Appellants’ Br. 34-35. From this fact, the Government suggests that *Al Otro Lado* drew a line between (impermissible) affirmative and (permissible) negative relief, and that because the injunction here is “entirely affirmative,” it is barred by Section 1252(f)(1). Appellants’ Br. 34-35.

Wrong twice over. To begin with, the injunction here contains both affirmative components (such as the requirements that officials issue advisals and provide phone calls) and negative ones (such as the requirement that officials not persuade or dissuade unaccompanied children when informing them of the availability of voluntary departure, *Perez-Funez I*, 611 F. Supp. at 1005). In any event, *Al Otro Lado* did not draw the novel affirmative-negative distinction proffered by the Government—as demonstrated by this Court’s ratification of two other components of the district court’s affirmative relief there. *See* 138 F.4th at 1127. Nor did *Aleman Gonzalez*, which also treats affirmative and negative injunctive relief equally. 596 U.S. at 544.

The dispositive question is whether a classwide injunction *directly* implicates a Section 1252(f)(1)-covered section, in which case the relief is barred, or only *collaterally* implicates that section, in which case it is not. *Al Otro Lado*, 138 F.4th at 1125. That fault line—not the affirmative-negative relief line concocted by the Government—dictated whether each form of relief in *Al Otro Lado* was affirmed or narrowed. *Id.* at 1124-28. That’s the line applied repeatedly by this Court to determine the permissibility of classwide immigration relief. *Id.*; *Gonzalez*, 975 F.3d at

812-15; *Gonzales*, 508 F.3d at 1232-33; *Cath. Soc. Servs., Inc. v. I.N.S.*, 232 F.3d 1139, 1149-50 (9th Cir. 2000) (en banc). And that line demonstrates the permissibility of the injunction in this case.

Aleman Gonzalez does not say otherwise. *Contra* Appellants’ Br. 24-28. That case turned on whether “the operation of” Section 1252(f)(1)-covered sections is controlled by “the Government’s view” of those statutes—a question the Supreme Court answered in the affirmative. *Aleman Gonzalez*, 596 U.S. at 551-54. But because the injunctions at issue in *Aleman Gonzalez* added a bond-hearing requirement for immigrants “detained pursuant to [8 U.S.C.] § 1231(a)(6), ... no one dispute[d]” that the injunctions—in Section 1252(f)(1)’s language—directly “enjoin[ed]” and “restrain[ed]” the operation of Section 1231, which is within Section 1252(f)(1)’s ambit. *Id.* at 551. Put simply, *Aleman Gonzalez* said nothing about the dispositive question here: how to determine the particular statutory provisions, if any, whose operation is enjoined or restrained by a given injunction.

The same is true of the only other decision offered by the Government to support its view that the injunction in this case directly affects a Section 1252(f)(1)-covered section: *N.S. v. Dixon*, 141 F.4th 279

(D.C. Cir. 2025). *See* Appellants’ Br. 28. The injunction in *N.S.* enjoined officials from “arresting and detaining any criminal defendant suspected of a civil immigration violation, which includes arrests made with a warrant issued pursuant to § 1226(a) and the detention of any alien charged with any of the crimes listed in § 1226(c).” 141 F.4th at 290. There was thus no intermediate, directly applicable statute—like the TVPRA—that the injunction could have directly implicated instead of the sections referenced in Section 1252(f)(1). As in *Aleman Gonzalez*, therefore, the injunction in *N.S.* indisputably enjoined and restrained the operation of covered sections; that case thus provides this Court no guidance on the dispositive question here.

The Government’s reliance on *Aleman Gonzalez* largely rests on a fundamental misunderstanding of the Supreme Court’s explanation that Section 1252(f)(1) prohibits injunctions that “require officials to take actions that (in the Government’s view) are not required by [a covered section] and to refrain from actions that (again in the Government’s view) are allowed by [that section].” 596 U.S. at 551. As just discussed, this analysis recognizes that “the Government’s view” controls the requirements of Section 1252(f)(1)-covered sections; in Section

1252(f)(1)'s language, the Government establishes “the operation of” these covered sections. 596 U.S. at 551-54. But the Court did not conclude, as the Government implies, that the Government may *also* unilaterally dictate whether an injunction “enjoins” or “restrains” a Section 1252(f)(1)-covered section. *Contra* Appellants’ Br. 26-28.

To the contrary, that reading of *Aleman Gonzalez* is foreclosed by the Supreme Court’s decision to leave intact this Court’s collateral-effects doctrine. 596 U.S. at 553 n.4. It’s also a stunningly expansive interpretation of Section 1252(f)(1) that “lacks any limiting principle.” *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 657, 637 (2013). If that understanding of *Aleman Gonzalez* were correct, the Government could obtain vacatur of *any* classwide injunction, no matter how far afield of Sections 1221-1231 or how egregious the underlying constitutional violations, based simply on its say-so regarding the sections to which the injunction applies. No court has endorsed this attempt to transform Section 1252(f)(1) into a get-out-of-consequences-free card, and this Court should not be the first.

D. The Government’s position also fails to meaningfully engage with Section 1252(f)(1)’s “ordinary meaning” and “statutory context.” *Aleman Gonzalez*, 596 U.S. at 553.

Section 1252(f)(1) bars classwide injunctions that “enjoin” or “restrain” the operation of Sections 1221-1231. 8 U.S.C. § 1252(f)(1). In *Aleman Gonzalez*, the Court explained that the ordinary meaning of these words forecloses injunctions that “command” or “prevent” officials from taking some action under the covered statutory sections. 596 U.S. at 548-49. The Court further noted that “restrain” can sometimes carry a broader meaning “that refers to judicial orders that ‘inhibit’ particular actions.” *Id.* at 549 (quoting *Direct Mktg. Ass’n v. Brohl*, 575 U.S. 1, 13 (2015)). But the Court declined to incorporate that broader interpretation into its definition of the injunctions barred by Section 1252(f)(1): those that “order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” *Id.* at 550. That makes sense because Section 1252(f)(1) contains much of the “statutory context” that led the Court in *Brohl* to likewise narrowly interpret “restrain”—the word is next to “enjoin,” and the statute focuses on equitable remedies. *See Brohl*, 575 U.S. at 12-14.

The Government’s insistence that the injunction restrains its operation of covered sections, *see* Appellants’ Br. 24, 26, 29, 35, relies on the broader meaning of “restrain” that *Aleman Gonzalez* rejected. It is the TVPRA, not the injunction, that first “order[s] federal officials” to take certain actions before they can “carry out” Sections 1225 or 1229c. *Aleman Gonzalez*, 596 U.S. at 550. So, to the extent that the requirements to provide an advisal and allow a phone call constitute “affirmative, extra-statutory procedural hurdles,” Appellants’ Br. 26, these requirements “order federal officials to take or refrain from taking actions” respecting—*i.e.*, enjoin or restrain—only the TVPRA. *Aleman Gonzalez*, 596 U.S. at 550. And that is so even if these “hurdles” may have the collateral effect of inhibiting the Government’s preferred implementation of Section 1252(f)(1)-covered sections. *Contra* Appellants’ Br. 26.

Just as the Government fails to seriously examine Section 1252(f)(1)’s “enjoin or restrain” clause, it gives short shrift to Congress’s choice to limit Section 1252(f)(1) to “the provisions of part IV” of the INA—that is, to Sections 1221-1231. *Galvez*, 52 F.4th at 829-31. This Court “must presume that Congress acted intentionally” when it

excluded “any reference” to the procedures due to unaccompanied children from “the provisions to which § 1252(f)(1)’s limitations apply,” while codifying these procedures “in a provision to which the limitations of § 1252(f)(1) do *not* apply”: the TVPRA. *Gonzalez*, 975 F.3d at 814-15; *see also Texas v. U.S. Dep’t of Homeland Sec.*, 123 F.4th 186, 210 (5th Cir. 2024) (“Congress legislated which sections are covered by § 1252(f)(1). The Executive Branch does not get to propose additions.”); *Mullin v. Al Otro Lado*, 2026 WL 1825741, at *7 (June 25, 2026) (noting that courts “are required to give effect to Congress’ express inclusions and exclusions” (quotation marks omitted)). The district court respected Congress’s choices by reasoning that because its injunction covers only the process due to unaccompanied children, and that topic is governed by the TVPRA, the injunction is not foreclosed by Section 1252(f)(1). ER-74-75.

The “written word” of Section 1252(f)(1) is “quite clear,” *Gonzalez*, 975 F.3d at 815: it bars classwide relief directly enjoining or restraining the operation of specified INA sections. It does not prohibit orders that only affect or inhibit the operation of these covered sections, even though Congress knows well how to write statutes that turn on effects. *See, e.g.,*

42 U.S.C. § 2000e-2(a)(2) (making unlawful employer practices that “adversely *affect*” an employee’s status based on the employee’s protected characteristic) (emphasis added); 52 U.S.C. § 10301(a) (making unlawful any voting-related rule “which *results in* a denial or abridgement of the right of any citizen of the United States to vote on account of race or color”) (emphasis added).

As explained below in Section II, whatever burden the injunction causes the Government, the equitable balance tilts heavily in favor of the class. But even were it otherwise, the Government’s reading of Section 1252(f)(1) is foreclosed by the statute’s text. And “when the express terms of a statute give us one answer and extratextual considerations suggest another, it’s no contest. Only the written word is the law, and all persons are entitled to its benefit.” *Gonzalez*, 975 F.3d at 815 (quoting *Bostock v. Clayton County*, 590 U.S. 644, 653 (2020)).

E. Faced with all this, the Government spins out a flawed syllogism. It notes that the TVPRA postdates the injunction by over 20 years. And it reasons that the injunction must have been operating on *something* during that period. So, it says, “basic logic” dictates that the injunction must have been operating on 8 U.S.C. §§ 1225 and 1229c during that

period—which, in turn, supports its termination motion. *See* Appellants’ Br. 32-33.

This position, like the Government’s others, mangles both facts and law. When it issued the injunction, the district court discussed its effects on the then-existing version of 8 U.S.C. § 1252(b). *See Perez-Funez I*, 611 F. Supp. at 1005; *Perez-Funez II*, 619 F. Supp. at 659. At that time, Section 1252(b) addressed proceedings to determine noncitizens’ deportability, including via voluntary departure. 8 U.S.C. § 1252(b) (1982). Meanwhile, Section 1225 addressed inspection by immigration officers, and Section 1229c did not exist. 8 U.S.C. § 1225 (1982).⁶ So the injunction could not (and did not) implicate Sections 1225 and 1229c until, at the earliest, they were codified in substantially their current form by IIRIRA’s 1996 enactment. Pub. L. No. 104-208, Div. C (IIRIRA) § 235, 110 Stat. 3009-579 (codified at 8 U.S.C. § 1225); *id.* § 240B, 110 Stat. 3009-596 (codified at 8 U.S.C. § 1229c).

Even if the injunction could be interpreted as directly implicating Sections 1225 and 1229c from 1996 (when IIRIRA was enacted) to 2008

⁶ The relevant sections of Title 8 of the 1982 U.S. Code, which were in effect at the injunction’s inception, can be accessed from the Library of Congress’s archives here: <https://perma.cc/U3J5-UCZD>.

(when the TVPRA was enacted), the Government did not move to terminate the injunction in that period. It moved for termination in 2025—17 years after the TVPRA’s passage. To state the obvious, the Government was obligated to show that termination was warranted *when it moved for termination*. As explained above (at 31-38), because the TVPRA placed the statutory provisions governing the processing of unaccompanied minors in a specific section outside of Section 1252(f)(1)’s ambit, the Government cannot make that showing.

F. The inapplicability of Section 1252(f)(1) to the injunction here is further confirmed by bedrock rules of statutory construction. The Supreme Court has long explained that because “[t]he great principles of equity ... should not be yielded to light inferences, or doubtful construction,” *Brown v. Swann*, 35 U.S. (10 Pet.) 497, 503 (1836), it is error to “construe a statute to displace courts’ traditional equitable authority absent the clearest command,” *McQuiggin v. Perkins*, 569 U.S. 383, 397 (2013) (quoting *Holland v. Florida*, 560 U.S. 631, 646 (2010)). That principle counsels against stretching Section 1252(f)(1)’s remedial bar beyond its textual bounds: injunctions directly implicating 8 U.S.C. §§ 1221-1231.

Adopting the Government’s position would also force this Court to answer yes to “the ‘serious constitutional question’” whether “a federal statute” can “deny *any* judicial forum for a colorable constitutional claim.” *Webster v. Doe*, 486 U.S. 592, 603 (1988) (emphasis added) (quoting *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 681 n.12 (1986)). Theoretically, Section 1252(f)(1) permits individual (rather than classwide) injunctions directly implicating Sections 1221-1231. *See* 8 U.S.C. § 1252(f)(1); Appellants’ Br. 36 n.2. But the Government’s recent tactics have nullified that aspect of Section 1252(f)(1) by making unaccompanied children feel “pressured or coerced into signing forms providing for voluntary departure or withdrawal of their applications for admission ... without understanding their rights.” ER-89. As a result, if Section 1252(f)(1) forbids this injunction, unaccompanied children will be coerced by the Government to leave the country without ever learning of the rights that have been taken from them or having the opportunity to enjoin the Government’s misconduct.

Congress could “have surely made the point more directly” if it intended Section 1252(f)(1) to produce such a “far-fetched” result. *Aleman Gonzalez*, 596 U.S. at 554. Absent clear language to the contrary, “it is

most unlikely that Congress intend[s] to foreclose all forms of meaningful judicial review” of legitimate claims. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991). That principle carries extra force for constitutional claims, where courts “requir[e] ‘clear’ indication of congressional intent” to preclude review. *Aleman Gonzalez*, 596 U.S. at 554 (quoting *Webster*, 486 U.S. at 603). And although Section 1252(f)(1) limits remedies rather than jurisdiction, *Biden v. Texas*, 597 U.S. 785, 798 (2022), rejecting the Government’s interpretation of Section 1252(f)(1) is consistent with this Court’s “narrow construction of jurisdiction-stripping statutes except where their meaning is clear and unequivocal,” *Powers v. McDonough*, 163 F.4th 1162, 1182 (9th Cir. 2025): Both ensure that plaintiffs are not improperly left “without judicial recourse to enforce their rights.” *Id.* at 1184; see ER-75 (recognizing the same).

These interpretive presumptions could be overcome only by unambiguous text demonstrating that Section 1252(f)(1) bars the injunction. But that language doesn’t exist. On the contrary, Section 1252(f)(1) is bereft of support for the Government’s supposition that even though Congress drafted the TVPRA specifically to govern unaccompanied children’s rights and placed it outside of the statutes

covered by Section 1252(f)(1), the remedial-bar provision nonetheless precludes unaccompanied children's claims. At the very least, the Government's position—which would greenlight irremediable violations of children's constitutional rights—"raises serious constitutional doubts," which is reason enough to reject it under the canon of constitutional avoidance. *Clark v. Martinez*, 543 U.S. 371, 381 (2005). This statutory context confirms Section 1252(f)(1)'s ordinary meaning: Because the injunction directly implicates the TVPRA, not Sections 1221-1231, it is not subject to any remedial bar.⁷

⁷ Because Section 1252(f)(1) does not bar the injunction, the Court need not address declaratory relief. Should the Court agree with the Government's interpretation of Section 1252(f)(1), however, the Government has not moved to vacate the declaratory relief issued below. *See Perez-Funez II*, 619 F. Supp. at 669. Even if it had, this Court's precedent dictates that Section 1252(f)(1) does not bar classwide declaratory relief. *Al Otro Lado*, 138 F.4th at 1123-24; *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010).

Justice Thomas's solitary *Al Otro Lado* concurrence contended that Section 1252(f)(1) likely bars at least some declaratory relief. *Mullin*, 2026 WL 1825741, at *11-13 (Thomas, J., concurring). That opinion does not, of course, overrule this Court's declaratory-relief precedent. It is also incorrect on first principles, because Section 1252(f)(1)'s use of the term of art "enjoin or restrain" and its heading limiting only "injunctive relief," 8 U.S.C. § 1252(f), make clear that "[b]y its plain terms, and even by its title, [Section 1252(f)(1)] is nothing more or less than a limit on injunctive relief." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999); *see Rodriguez*, 591 F.3d at 1119 ("[I]t is the text of the IIRIRA

II. The district court was well within its discretion in concluding that legal and factual changes did not warrant the injunction’s termination but did justify modification to bar the Pathway Advisal’s use.

A. A permanent injunction may be modified or vacated when “applying it prospectively is no longer equitable.” Fed. R. Civ. P. 60(b)(5); *see Horne v. Flores*, 557 U.S. 433, 447 (2009). To demonstrate inequity, the party challenging the injunction bears the burden of proving that “a significant change either in factual conditions or in law’ renders continued enforcement ‘detrimental to the public interest.’” *Horne*, 557 U.S. at 447 (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). If the “objective” of a court’s order “has been achieved,” and a sufficiently “durable remedy has been implemented,” termination of the injunction is appropriate. *Id.* at 450. And modification may be warranted

itself that most clearly shows that Section 1252(f) was not meant to bar classwide declaratory relief.”).

In any event, this is a “court of review, not first view.” *Roth v. Foris Ventures, LLC*, 86 F.4th 832, 838 (9th Cir. 2023) (quoting *Shirk v. U.S. ex rel. Dep’t of Interior*, 773 F.3d 999, 1007 (9th Cir. 2014)). Should this Court determine that Section 1252(f)(1) requires the injunction’s vacatur, and that decision is not overturned en banc or by the Supreme Court, Plaintiffs request that this Court’s mandate be sufficiently stayed to allow them to seek appropriate modification of previously entered declaratory relief in the district court. *See* ECF 268 at 22-23 (preserving request for modified declaratory relief).

if a party engages in a “substantial violation of a court order,” which “constitutes a significant change in factual circumstances” justifying relief. *Kelly v. Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016).

Applying these standards, the district court concluded that the Government had not carried its burden to justify termination, while Plaintiffs had shown a substantial violation and sufficient need to prohibit the Government from using the Pathway Advisal. ER-84-85, 94-95. Because these conclusions were nowhere near an abuse of discretion, *see Horne*, 557 U.S. at 447, they should be affirmed.

B. Besides rehashing its Section 1252(f)(1) argument, *see* Appellants’ Br. 37-38, the Government advances only two challenges to the district court’s Rule 60(b)(5) determinations. Neither passes muster.

First, critiquing the denial of its termination motion, the Government contends that the district court was required (and failed) to conduct a “new due process analysis” supporting the modified injunction “under current law.” Appellants’ Br. 38. But that misunderstands the nature of a Rule 60(b)(5) motion: In moving to terminate the injunction, it was the Government’s burden to show sufficient changes rendering the injunction’s continued enforcement inequitable. *Horne*, 557 U.S. at 447;

Rufo, 502 U.S. at 383. As the district court explained in detail—and as the Government does not meaningfully contest—the Government failed to carry that burden. ER-76-84.

In any event, the Government’s critique ignores the district court’s present-day conclusions that the coercive environment described in the permanent-injunction trial “persists to this day,” ER-79, intervening laws are “inadequate” to safeguard unaccompanied children’s rights, ER-79-82, and no factual changes warrant termination, ER-82-83. These findings amply explain why the injunction remains necessary to protect unaccompanied children’s due-process rights. And to the extent that the Government suggests that the district court should have ignored the facts from the 1985 trial and started the *Mathews v. Eldridge* analysis from scratch, that argument was never presented below—rendering it both unfair to the district court and forfeited. *See Gribben v. United Parcel Serv., Inc.*, 528 F.3d 1166, 1171 (9th Cir. 2008).

Second, regarding Plaintiffs’ cross-motion to bar the Pathway Advisal’s use, the Government faults the district court for analyzing “only whether the supplemental advisal violated the spirit of the court’s forty-year-old injunction.” Appellants’ Br. 38. That misstates the law and

misrepresents the district court's order. Legally, binding precedent establishes that courts should "look to the spirit of the injunction" in determining whether it was violated. *Epic Games, Inc. v. Apple Inc.*, 161 F.4th 1162, 1176 (9th Cir. 2025) (citation omitted). The district court would thus have been well within its discretion to bar the Pathway Advisal because it was introduced secretly and represented an overly "literal and formalistic"—if not bad-faith—"interpretation of the Injunction." ER-90. As the district court put it, the injunction's spirit was violated, for example, by the Government's cynical understanding "that it could provide Form I-770 and then provide another form stating that the Form I-770 just provided should in fact be ignored." *Id.*

In any event, it is simply not true that the district court looked only to the injunction's spirit. The district court could not have been clearer: It examined "the literal terms of the Injunction" as well as its spirit and found that "the Pathway Advisal violates both." ER-91. The court held that the Pathway Advisal's inaccurate threats of prolonged detention, prosecution, and immigration consequences violated thrice-over the injunction's express prohibition barring defendants from "in any way attempt[ing] to persuade or dissuade class members when informing

them” about voluntary departure. *Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez I)*, 611 F. Supp. 990, 1005 (C.D. Cal. 1984); *see* ER-91-93. Because this language improperly pressured unaccompanied children not to “exercis[e] their rights,” the court reasoned, the Pathway Advisal’s use “substantially violated the letter and spirit of the Injunction.” ER-91-93. Though the Government maligns the district court’s line-by-line examination as “hyper-technical,” Appellants’ Br. 39, that careful textual analysis of its earlier handiwork was entirely appropriate.

C. But no matter. At the end of the day, the Government never actually says that legal and factual changes since the injunction’s inception render it no longer necessary to protect unaccompanied children’s due-process rights. Nor does it even argue that that *Mathews* balancing in fact tilts in its favor. These arguments are therefore forfeited. *Lui v. DeJoy*, 129 F.4th 770, 780 (9th Cir. 2025). But should this Court wish to do the Government’s work for it and independently assess whether the injunction remains equitable based on legal or factual changes, the answer is yes because the Government has not provided a “durable remedy” to otherwise protect unaccompanied children. *Horne*, 557 U.S. at 450.

Before the district court (though not here), the Government argued that the TVPRA and implementing regulations rendered the injunction no longer necessary. ER-167-68. This contention, however, is fatally undermined by the Government’s removal of unaccompanied children, under the OBBB, before those children can access *any* statutory or regulatory protections—including those provided by the TVPRA or related regulations. Appellants’ Br. 17; *see* SER-66-68 (letter from CBP Comm’r Scott).

To be clear: The Government’s position—that the OBBB permits it to remove unaccompanied alien children from any country outside of the TVPRA’s strictures—is wrong. The section of the OBBB on which the Government relies is titled “APPROPRIATION,” *see* Pub. L. No. 119-21, § 100051, 139 Stat. 385, and nothing in it suggests that it impliedly repeals “the TVPRA’s protections keyed to removal.” *L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 128 n.9 (D.D.C. 2025); *see Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 190 (1978) (the doctrine disfavoring repeals by implication applies with “even *greater* force” when the purported repeal is in appropriations legislation).

Regardless, what matters for the Rule 60(b)(5) analysis is that the Government's position regarding the OBBB nullifies protections otherwise provided by the TVPRA or by regulation. Unless the Government concedes that the OBBB does not permit it to ignore other applicable law—which it clearly does not do, *see* Appellants' Br. 17—only the injunction guarantees unaccompanied children the opportunity to understand their rights and contact a trusted adult or legal services provider before they elect voluntary return. *See* ER-80-81.

Even if (counterfactually) the Government were faithfully following the TVPRA, the injunction would remain necessary to protect unaccompanied children's rights. For children from Canada or Mexico, the injunction guarantees that whether a "child is able to make an independent decision" to accept voluntary return, 8 U.S.C. § 1232(a)(2)(A)(iii), is informed by the child's receipt of a rights advisal read in her native language and the ability to call a parent, other trusted adult, or legal services organization. *See Perez-Funez v. Dist. Dir., I.N.S. (Perez-Funez II)*, 619 F. Supp. 656, 670 (C.D. Cal. 1985). Absent the injunction's protections, these children would be intolerably susceptible to involuntarily or unknowingly relinquishing their rights when placed

under pressure and “at the mercy of summary procedures” implemented by the Government. *Id.* at 663.

And although the TVPRA guarantees that unaccompanied minors from noncontiguous countries may be removed only through procedures in front of an immigration judge after being provided access to counsel, *see* 8 U.S.C. § 1232(a)(5)(D), only the injunction mandates that Government officials not “advise, encourage, or persuade the class member to change his or her decision” regarding which statutory pathway to invoke. *Perez-Funez I*, 611 F. Supp. at 1005; *see* 8 U.S.C. § 1232(a)(5)(D)(i)-(ii).

Nor have intervening regulations fully mitigated the injunction’s purpose. These regulations apply only to unaccompanied children who have been transferred to the custody of the Office of Refugee Resettlement (ORR), not to children who would be subject to expedited return under the TVPRA (or, on the Government’s misreading, under the OBBB). *See, e.g.*, 45 C.F.R. § 410.1309(a)(1) (describing “ORR’s responsibilities in relation to legal services for unaccompanied children”); *id.* § 410.1309(a)(2) (“An unaccompanied child *in ORR’s legal custody* shall receive ...” (emphasis added)). In any event, the Government’s

unilateral creation of law through rulemaking is insufficiently durable to justify vacatur of the injunction. *See Flores v. Rosen*, 984 F.3d 720, 741 (9th Cir. 2020).

Factual changes also do not support the injunction's termination, as the relevant facts remain largely unchanged since the injunction's inception. Kids are still kids, and “[o]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.” *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982)). “[U]naccompanied children of tender years” remain as vulnerable as ever to the “inherently coercive” environment of Government custody, *Perez-Funez II*, 619 F. Supp. at 662, and “the Government has failed to point to anything” that “constitutes a meaningful cure to the scenario that UAC encounter upon apprehension by immigration agents, which persists to this day.” ER-79. Tellingly, other than attaching Form I-770, the Government entered no factual evidence below to support its motion. And none exists.

In fact, the most salient on-the-ground change is one that renders the injunction necessary now more than ever: the Government's newfound enthusiasm for inducing voluntary return from frightened

children. Uncontested, recent record evidence demonstrates that the Government has provided inaccurate and coercive information through the Pathway Advisal, yelled at children while ignoring articulated fears of return, and even threatened kids with dogs and tasers—all to strongarm vulnerable unaccompanied minors into accepting voluntary return without an adequate understanding of their rights. ER-50 (Pathway Advisal); ER-57 (Julien Decl.) ¶ 4; SER-59-65 (Fisher Flores Decl.) ¶¶ 5-16; SER-69-71 (Decl. of D.A.T.M.) ¶¶ 3-6; SER-75-78 (Decl. of Y.Y.Z.O.) ¶¶ 9, 17-19. The injunction provides a critical means—often the only means—of discovering and remedying these unconstitutional tactics.

More than that, the Government’s recent actions—in particular, its secretive introduction of the Pathway Advisal *before* seeking the injunction’s termination—demonstrate that it has not “acted fairly and without fraud or deceit as to the controversy in issue.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814-15 (1945). That alone “closes the doors of [this] court of equity” to the Government. *Id.* at 814; *see* ER-84. As two equity scholars recently put it, the “particularly open and notorious course of inequitable, disobedient, deceptive, manipulative, and even lethal conduct in some aspects of the

executive’s enforcement of the immigration laws” is an appropriate context for courts “to be more skeptical of the executive’s requests for equity.” William Baude & Samuel L. Bray, *When the Executive Has Unclean Hands*, 135 Yale L.J. Forum 567, 592 (2026).

D. Plaintiffs remain open to potential modifications of genuinely “anachronistic” aspects of Form I-770 or to the injunction itself, should any exist. Appellants’ Br. 27; *see* ER-84 (explaining that Plaintiffs have no intention of unduly preventing the Government from requesting modification); SER-30-31 (transcript of Feb. 11, 2026, oral argument). Depending on the specifics, modifications of that type likely would not “create or perpetuate a constitutional violation,” and accordingly could be “suitably tailored to the changed circumstance”—as Rule 60(b)(5) requires. *Rufo*, 502 U.S. at 391. And despite the Government’s contrary insistence, *see* Appellants’ Br. 40, Plaintiffs have no intention of unduly limiting the Executive’s legitimate “interests in immigration enforcement.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). Had the Government proposed lawful, modernization-focused adjustments to Form I-770 or the injunction that would more efficiently effectuate unaccompanied minors’ constitutional rights while lessening

any burden borne by immigration officials, relief may have been warranted. *See* ER-84-85.

But this case has proceeded far differently. Inverting the proper sequence of things, the Government started by covertly and repeatedly violating the injunction before asking the district court for relief. When the Government eventually came to court, it sought the injunction's complete termination without committing to comply with the constitutional command of ensuring that any child's waiver of rights be knowing, voluntary, and intelligent. ER-82. The district court saw that request for what it was—an unlimited license to violate unaccompanied children's constitutional rights without consequence—and rightly rejected it. This Court should do the same.

Conclusion

The Court should affirm.

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Respectfully submitted,

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**UNITED STATES COURT OF APPEALS
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