

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' REPLY BRIEF

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INTRODUCTION

Where changes in the law render injunctions no longer warranted, federal courts have an obligation to step aside and vacate the injunctions, returning power to make policy to the elected branches. *Horne v. Flores*, 557 U.S. 433, 447-55 (2009). The district court below refused to do so by denying the Government's motion to terminate a forty-year-old permanent injunction that the court would lack jurisdiction to enter today. Not only did the district court refuse to terminate the injunction; it in fact *expanded* the injunction to cover new conduct on the basis that the new conduct was somehow prohibited by the decades' old injunction. The district court did so without conducting any inquiry to determine whether the Fifth Amendment's Due Process Clause actually prohibits the new conduct at issue, and instead relied on an expansive interpretation of the original injunction as if the injunction itself had been enshrined in our Constitution as the 28th Amendment.

Plaintiffs' attempts to rehabilitate the district court's order fall flat. As the district court recognized, none of this Court's cases cover the precise situation here, where the TVPRA—a non-covered provision—expressly incorporates provisions covered by 8 U.S.C. § 1252(f)(1)'s

remedial bar. Yet Plaintiffs insist that this Court’s precedents already resolve this case despite the district court concluding precisely the opposite. Regardless, the cases cited by Plaintiffs are clearly distinguishable. And none of the other reasons Plaintiffs offer to rehabilitate the district court’s erroneous reasoning pass muster.

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

ARGUMENT

I. 8 U.S.C. § 1252(f)(1) Bars the *Perez-Funez* Injunction.

Section 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 INA provisions, “other than with respect to the application of such provisions to an individual alien.” 8 U.S.C. § 1252(f)(1). Because the *Perez-Funez* injunction “enjoin[s]” and “restrain[s] the operation of” covered INA provisions—specifically those regarding voluntary departure (8 U.S.C. § 1229c) and withdrawal of applications for admission (8 U.S.C. § 1225(a)(4))—on a class-wide basis, the injunction would be barred by section 1252(f)(1) if entered today. Plaintiffs’ arguments to the contrary do not withstand scrutiny.

A. The Injunction Operates Directly on Covered INA Provisions, Namely Voluntary Departure and Withdrawal of Applications for Admission.

1. Plaintiffs do not dispute that INA provisions regarding aliens' voluntary departure and withdrawal of applications for admission are provisions covered by section 1252(f)(1)'s remedial bar. Echoing the district court below, Plaintiffs insist that because the *Perez-Funez* injunction involves the application of those procedures to unaccompanied alien children, the injunction "directly implicates" the TVPRA, not covered provisions like those governing voluntary departure and withdrawal. Answering Br. 32-33 (citing ER-72-76). At most, they contend, the injunction has a "collateral effect" on the INA provisions pertaining to voluntary departure and withdrawal. Answering Br. 34-38.

That cannot be right. The *Perez-Funez* injunction imposes affirmative, extra-statutory procedural obligations that the Government must satisfy before it can "carry out" the voluntary departure or withdrawal provisions for any member of the class of unaccompanied alien children. Opening Br. 26-29. Like 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. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 551 (2022).

Here, the injunction requires that before even providing unaccompanied alien children voluntary departure or withdrawal forms, DHS must provide the children with a rights advisal, a list of free legal services, and a free telephone call to a parent, relative, friend, or legal organization. Opening Br. 26-27 (citing *Perez-Funez v. Dist. Dir., INS*, 619 F. Supp. 656, 670 (C.D. Cal. 1985)). Like *Miranda* warnings, the district court's 1986 Order re Advisal requires a standardized, highly reticulated (but severely outdated) advisal DHS must use to inform unaccompanied alien children of their right to removal proceedings and a mandatory telephonic access policy before offering those aliens voluntary departure or withdrawal of their applications for admission. Opening Br. 28 (citing ER.178-182 (Attach. A)). The injunction thus 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 it satisfies the

court-mandated requirements. *Aleman Gonzalez*, 596 U.S. at 550. The Government cannot “operat[e]” those INA provisions without complying with the *Perez-Funez* injunction’s requirements. See 8 U.S.C. § 1252(f)(1).

2. Like the district court, the Plaintiffs contend that because the injunction “directly implicates” the TVPRA, it does not directly implicate covered provisions like those governing voluntary departure and withdrawal. Answering Br. 32-33; see ER-75.¹ Not so.

The relevant question under section 1252(f)(1) and the Supreme Court’s *Aleman Gonzelez* decision is whether the “operation of” specified INA provisions—that is, “the Government’s efforts to enforce or implement them”—is “enjoin[ed] or restrain[ed]” by the district court’s injunction. *Aleman Gonzelez*, 596 U.S. at 549-50 (quoting 8 U.S.C.

¹ The Government acknowledges that under Ninth Circuit precedent, provisions of the TVPRA that do not “directly amend” the INA are not covered provisions of 8 U.S.C. § 1252(f)(1). See *Galvez v. Jaddou*, 52 F.4th 821, 830-31 (9th Cir. 2022). That is irrelevant here because the *Perez-Funez* injunction directly implicates indisputably covered provisions. See, e.g., *Al Otro Lado v. Exec. Off. for Immig. Rev.*, 138 F.4th 1102, 1125 n.15 (9th Cir. 2025) (using similar reasoning). In any event, *Galvez* does not hold that any and all provisions of the TVPRA are not subject to 8 U.S.C. § 1252(f)(1), *contra* Answering Br. 32 n.3, a contention that could sweep in provisions of the INA that were amended by the TVPRA and other covered INA provisions that are incorporated into the TVPRA.

§ 1252(f)(1)). If so, the class-wide injunction is barred by section 1252(f)(1).

Here, there can be little dispute that the *Perez-Funez* injunction places several affirmative burdens on the Government beyond what is required by statute and which the Government must comply with before implementing covered provisions as to the class of unaccompanied alien children. *See supra* pp.4-5; Opening Br. 9-11, 26-29. The Government cannot “operat[e]” the INA provisions governing voluntary departure and withdrawal of application for admissions with respect to the class of unaccompanied alien children without complying with the injunction. *See* 8 U.S.C. § 1252(f)(1). Covered provisions are thus *directly* “enjoin[ed] or restrain[ed]” by the injunction. That is enough under *Aleman Gonzalez* to conclude that continued enforcement of the permanent class-wide injunction is impermissible under federal law, justifying dissolution of the injunction.

Plaintiffs’ (and the district court’s) theory is that because the TVPRA “occupies the field concerning procedures due to” unaccompanied alien children, “to the extent the [*Perez-Funez*] Injunction compels the Government to take certain procedural steps

when processing UAC, it does so with respect to the TVPRA’s requirements.” Answering Br. 33-34 (quoting ER-75). But even if that is an accurate characterization, 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). In particular, 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*.” *Id.* (emphasis added). It is thus impossible to enjoin the TVPRA’s return procedures for unaccompanied alien children without directly enjoining and restraining covered INA provisions pertaining to withdrawal and voluntary departure. Opening Br. 30.

The district court even 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. And on that basis, the district court opined that the Government has

“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 IIRAIRA provisions covered by § 1252(f)(1).” ER-73. Yet the court still declined to vacate the forty-year-old injunction.

Plaintiffs’ argument boils down to a logical fallacy, namely that because some provisions of the TVPRA are implicated by the injunction—even though those TVPRA provisions expressly incorporate covered provisions—*any* impact on covered provisions is always necessarily and invariably “collateral.” *See* Answering Br. 34. Even assuming that provisions of the TVPRA not covered by section 1252(f)(1)’s remedial bar are directly implicated, that does not somehow preclude other, explicitly covered statutory provisions from direct implication.

Here, the Government cannot offer the class of unaccompanied alien children withdrawal of applications for admission or voluntary departure—procedures governed by INA provisions covered by section 1252(f)(1)’s remedial bar—without complying with the *Perez-Funez*

injunction. Thus, continued enforcement of the injunction is impermissible under federal law, and the injunction should be dissolved.

B. The Injunction Does Not Have Only “Collateral Effects” on Covered Provisions Under Ninth Circuit Case Law.

1. Plaintiffs (at 34-38) contend that, under Ninth Circuit precedent, the injunction at most has “collateral effects” on provisions covered by section 1252(f)(1)’s remedial bar. The case law Plaintiffs invoke is readily distinguishable.

First of all, the district court below recognized that no case “answered the precise question posed” here. ER-73. Plaintiffs (at 39) downplay the district court’s recognition, framing it merely as an “unremarkable reality” that “no two cases [are] factually identical.” Notwithstanding the district court’s honest acknowledgment that no case controls, Plaintiffs persist in heavily relying on *Al Otro Lado v. Executive Off. for Immigration Review*, 138 F.4th 1102 (9th Cir. 2025), *rev’d on other grounds*, 609 U.S. ___, 2026 WL 1825741 (June 25, 2026), and *Gonzales v. Dep’t of Homeland Security*, 508 F.3d 1227 (9th Cir. 2007), as if those cases directly control the outcome here. Neither does.

In *Al Otro Lado*, the injunction at issue principally regulated eligibility for asylum under 8 U.S.C. § 1158, which is not covered by

section 1252(f)(1)'s remedial bar. 138 F.4th at 1126-27. While the asylum eligibility determination may be made in removal proceedings under 8 U.S.C. §§ 1225(b)(1) or 1229a, the court determined that the asylum eligibility scheme set out in section 1158 is distinct from determining whether removal will eventually occur pursuant to covered INA provisions. *Id.* The Court acknowledged that the asylum determination may change the outcome of removal proceedings. *Id.* at 1126. In such a situation, however, asylum eligibility determinations can reasonably be characterized as “one step removed” from covered INA provisions for removal proceedings, therefore affecting the covered INA provisions only indirectly. *Id.* at 1125.

Gonzales is likewise distinguishable. That case involved a scenario in which reinstatement proceedings were implicated if the adjustment proceedings were unsuccessful, thus rendering the operation of covered provisions contingent upon the outcome of a separate adjudication. *Gonzales*, 508 F.3d at 1233. In both cases, the injunction directly regulated a separate statutory entitlement. Any effect on the covered removal provisions arose only because the resolution of that independent question later had some bearing on removal.

Here, unlike the statutes at issue in *Al Otro Lado* and *Gonzales*, the TVPRA does not create an independent mechanism for the return of unaccompanied alien children. As discussed, 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); *supra* p.7. Furthermore, the injunction here provides for certain steps that the Government must follow when processing and returning unaccompanied alien children pursuant to the INA's withdrawal and voluntary departure procedures. *Supra* pp.4-5; Opening Br. 9-11, 26-29. The injunction therefore bears *directly* on how the Government exercises its existing return authority under INA-covered provisions. That is a far cry from a “one-step removed” effect on the covered provisions as Plaintiffs argue. Answering Br. 34. Accordingly, unlike the independent statutory provisions at issue in *Al Otro Lado* and *Gonzales*, the TVPRA cannot be meaningfully separated from the covered INA provisions.

One final note: Plaintiffs (at 37-38) appear to state that this Court in *Al Otro Lado* already concluded that where a non-covered provision (the asylum statute) internally “cross-references Section 1252(f)(1)-covered INA sections,” that takes an injunction operating on the non-covered provision out of section 1252(f)(1)’s remedial bar. That is not at all what this Court said in *Al Otro Lado*. There, this Court made clear section 1252(f)(1)’s remedial bar does not apply where the “text of” *covered* provisions—namely expedited removal proceedings under § 1225 and Section 240 removal proceedings under § 1229a—merely incorporates determinations made “under section 1158,” a non-covered provision. *See Al Otro Lado*, 138 F.4th at 1126-27 (citing 8 U.S.C. §§ 1225(a)(2), (b)(1)(A)(i)-(ii), (b)(1)(B)(v), (b)(1)(C), 1229a (c)(4)(A), (c)(7)(C)(ii)). Here, by contrast, the text of the TVPRA—a *non-covered* provision—explicitly incorporates *covered* provisions. That is, the precise opposite of the situation this Court addressed in *Al Otro Lado*—a legally significant distinction given that section 1252(f)(1) prohibits class-wide injunctions that “enjoin or restrain the operation of [covered] provisions.” 8 U.S.C. § 1252(f)(1). At the very least, “the same reasoning” in *Al Otro Lado* does not apply here. *Contra* Answering Br. 38.

2. Ultimately, the Supreme Court’s consideration of section 1252(f)(1)’s application in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), is controlling here.

There, the Supreme Court applied the statute to prohibit injunctions requiring the government to provide bond hearings to a class of aliens. The Supreme Court first recognized that the “operation of” (a thing) means the functioning of or working of (that thing).” *Id.* at 549. It then further noted that:

The way in which laws ordinarily ‘work’ or ‘function’ is through the actions of officials or other persons who implement them. This is certainly true of the statutes to which section 1252(f)(1) refers—*i.e.*, the provisions of part IV of subchapter II of the [INA]. Those provisions charge the Federal Government with the implementation and enforcement of the immigration laws governing the inspection, apprehension, examination, and removal of aliens.

Id. at 549-50 (citing 8 U.S.C. §§ 1221-1232). The Court thus concluded that section 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.” *Id.* at 550. The Court reasoned that such an injunction improperly “require[d] officials to take actions that (in the Government’s view) are not required” by the detention provision “and to

refrain from actions that (again in the Government’s view) are allowed by” that provision. *Id.* at 544. This Court subsequently noted in *Al Otro Lado* 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.” *Al Otro Lado*, 138 F.4th at 1125.

The district court’s injunction here is precisely the type of class-wide order that section 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 surmount 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 therefore directly implicates and restrains the operation of the covered INA provisions.

While acknowledging *Aleman Gonzalez*’s “clear lesson” as to what section 1252(f)(1) prohibits, this Court also recognized in the context of the collateral effects doctrine that a “more difficult question” arises with respect to the scope of section 1252(f)(1)’s injunctive relief prohibitions. *Al Otro Lado*, 138 F.4th at 1125. Plaintiffs nevertheless treat this Court’s collateral effects doctrine as superior to both the Supreme Court’s clear delineation of what section 1252(f)(1) prohibits and to the plain language of section 1252(f)(1).

Plaintiffs have created a sweeping rule out of this Court’s collateral effects doctrine that lacks any limiting principle. On Plaintiffs’ theory, so long as they—or any similarly situated party in the future—point to any statute outside of §§ 1221-1231, the injunction is permissible. That cannot be what Congress intended when it enacted section 1252(f)(1). Such a construction would allow plaintiffs to escape the reach of section 1252(f)(1) by simply disguising every challenge as one arising under the TVPRA or other non-covered statutes regardless of whether the requested relief dictates how the DHS exercises its authority under 8 U.S.C. §§ 1221-1231. In any event, such an expansive view of the doctrine flies in the face of the Supreme Court’s recognition that section 1252(f)(1)

“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.

3. Plaintiffs (at 36) further contend that the *Perez-Funez* injunction’s effects are collateral based on “[a] straightforward, practical thought experiment.” But that “thought experiment” merely repeats Plaintiffs’ erroneous understanding of section 1252(f)(1).

Plaintiffs (at 36-37) assert that absent the injunction’s existence, “it would be error for the Government to turn first to any section within 8 U.S.C. §§ 1221-1231 when encountering, processing, or removing an unaccompanied child.” Rather, Plaintiffs assert that the Government must first turn to the TVPRA and as a result, any impact on covered provisions must be “collateral.” The problem for Plaintiffs is that when the Government turns to the TVPRA, the TVPRA in turn tells the Government to employ covered provisions to process unaccompanied alien children.

For example, the TVPRA states that under certain circumstances, an immigration officer may “permit [an unaccompanied alien] child to

withdraw the child’s application for admission *pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4))*—a provision covered by § 1252(f)(1)’s remedial bar. *See* 8 U.S.C. § 1232(a)(2)(B)(i). The TVPRA also states that in certain circumstances, unaccompanied alien children are “eligible for relief under section 240B of such Act (8 U.S.C. 1229c),” namely voluntary departure—another provision covered by § 1252(f)(1)’s remedial bar. *See* 8 U.S.C. § 1232(a)(5)(D)(ii). Any attempt to apply the voluntary departure procedures of 8 U.S.C. § 1229c or allow unaccompanied alien children to withdraw their applications for admission pursuant to 8 U.S.C. § 1225(a)(4)—both covered provisions—requires the Government to comply with the *Perez-Funez* injunction before doing so.

C. Plaintiffs’ Remaining Arguments Fail to Support the District Court’s Erroneous Reasoning.

Plaintiffs offer several other arguments in an attempt to rehabilitate the district court’s reasoning. To the extent these are different arguments at all, none succeeds.

1. Plaintiffs fault the Government for apparently claiming 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 [s]ection 1252(f)(1).” Answering Br. 39 (quoting Opening Br. 34-35).² That misstates the Government’s argument. As the Government stated in its opening brief, *Al Otro Lado* expressly acknowledged 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. Because the *Perez-Funez* injunction is “entirely affirmative” and requires the provision of “the highly prescriptive Form I-770 and mandate[s] telephone access before offering voluntary departure or withdrawal,” the Government argued that section 1252(f)(1) clearly prohibits the injunction. Opening Br. 35. The Government never said that the Supreme Court’s decision in *Aleman Gonzalez* nor this Court’s decision in *Al Otro Lado* drew a line between affirmative and negative injunctive relief such that section 1252(f)(1) prohibits the former but not the latter. *Contra* Answering Br. 39-41. And *Al Otro Lado* itself merely states that affirmative injunctive relief is

² Plaintiffs (at 40) disagree that the *Perez-Funez* injunction includes only affirmative relief but correctly acknowledge that the affirmative-negative relief distinction is not the test for the application of section 1252(f)(1)’s remedial bar.

clearly barred; “[w]hat else § 1252(f)(1) may prohibit,” this Court stated, “is a more difficult question.” 138 F.4th at 1125.

2. Plaintiffs (at 44-48) further complain that the Government ignores section 1252(f)(1)’s “text” and “statutory context.” Yet it is Plaintiffs who ignore the text and statutory context of section 1252(f)(1), as demonstrated by their (and the district court’s) erroneous reasoning that the *Perez-Funez* injunction somehow directly implicates only the TVPRA despite the TVPRA expressly incorporating covered provisions. *Supra* p.7.

3. Plaintiffs (at 49) next argue that their reading of section 1252(f)(1) is supported by “bedrock rules of statutory construction.” The rules of construction Plaintiffs cite do not suggest a different result than the Government urges here.

First, Plaintiffs bizarrely contend that their reading of section 1252(f)(1) is supported by the presumption preserving courts’ traditional equitable authority absent clear indication by Congress. Yet in section 1252(f)(1), Congress made it abundantly clear that it was displacing court’s traditional equitable authority. It stated that “no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or

restrain the operation of” specified INA provisions except for individual aliens. 8 U.S.C. § 1252(f)(1). The statute thus expressly limits courts’ traditional equitable authority, withdrawing jurisdiction or authority for courts to “enjoin or restrain” the operation of certain INA provisions. Moreover, finding the presumption un rebutted here would render section 1252(f)(1) a nullity. Every injunction restraining the implementation of covered provisions could be characterized as an exercise of a court’s traditional equitable powers. In enacting section 1252(f)(1), Congress sought precisely to withdraw that authority in the immigration context.

Second, Plaintiffs (at 50) oddly argue that there would be a “serious constitutional question” if this Court adopted the Government’s reading of section 1252(f)(1) because it would “deny any judicial forum for a colorable constitutional claim.” *Webster v. Doe*, 486 U.S. 592, 603 (1988) (internal quotations omitted). Yet, as Plaintiffs (at 50) readily admit, “[s]ection 1252(f)(1) permits individual ... injunctions.” Thus, section 1252(f)(1)’s application does nothing to deny a judicial forum to colorable constitutional claims; it merely restricts lower courts’ authority to provide relief to non-named plaintiffs, and continues to allow class-wide injunctions by the “Supreme Court.” *See* 8 U.S.C. § 1252(f)(1). There is no

constitutional question with the Government's reading of section 1252(f)(1).

Third, Plaintiffs' invocation of the Government's alleged abuses does not move the needle either. As the Supreme Court stated recently with regard to another INA provision limiting judicial review, "Congress would have ample means to stop that abuse, including, for example, through the annual appropriations process." *Mullin v. Doe*, 609 U.S. ___, 2026 WL 1825840, at *10 (June 25, 2026).³

II. The District Court's Expansion of the Injunction Rests on Legal Error.

Plaintiffs do not dispute that if this Court agrees with the Government that the *Perez-Funez* injunction is subject to 8 U.S.C. § 1252(f)(1)'s remedial bar, the district court's order expanding the

³ Plaintiffs (at 52 n.7) include a long footnote requesting that if this Court "determine[s] that [s]ection 1252(f)(1) requires the injunction's vacatur," that the "mandate be sufficiently stayed to allow them to seek appropriate modification of previously entered declaratory relief in the district court." That misunderstands the relief the Government has requested in this appeal. The Government has asked that this Court "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." Should Plaintiffs seek to preserve a request for modified declaratory relief, Plaintiffs should present that request to the district court on remand.

injunction must also be vacated. That order is based on the district court's erroneous decision to leave the injunction in place based on its interpretation of section 1252(f)(1). Opening Br. 37-38. If this Court determines that the *Perez-Funez* injunction is not subject to section 1252(f)(1)'s remedial bar, however, the Court should still vacate the district court's order expanding the injunction because it rests on legal error and thus constitutes an abuse of discretion. Opening Br. 38-42.

1. The district court should have asked whether the use of the supplemental Pathway Advisal, considered together with the *Perez-Funez* injunction's requirements and modern statutory and regulatory protections, actually deprived unaccompanied alien children of their due-process rights under current law. Opening Br. 38-41.

Plaintiffs (at 53-55, 57-58) assume that whether the district court was required to conduct a new due process analysis under current law depends on whether the injunction should be modified or not. Not so. Even if the district court somehow correctly concluded that section 1252(f)(1)'s remedial bar does not apply to the *Perez-Funez* injunction, the district court committed legal error by treating the Government's use

of new advisal as violative of the injunction without conducting any analysis as to whether the advisal violates the Due Process Clause.

Plaintiffs miss the point. The Government does not dispute that under current Ninth Circuit law, a court interpreting an existing injunction may consider its text and sometimes its “spirit.” The error in the district court’s reasoning lies one step earlier. Before expanding a forty-year-old injunction to prohibit new Government conduct, the district court was required to determine whether that new conduct independently violated constitutional principles underlying the injunction in light of today’s statutory and legal landscape. Instead, the court treated consistency with the injunction itself—its letter and even its “spirit”—as the dispositive inquiry. *See, e.g.*, ER-90-94. Whether the new advisal conflicts with the injunction’s letter or spirit does not answer whether due process, as informed by current law and circumstances, required prohibiting the new advisal in the first place.

After all, the new advisal was not before the district court in the 1980’s. The district court below necessarily made a new determination that this previously unseen advisal fell within the injunction’s prohibition. Once the court made that determination and prospectively

barred use of the new advisal, it exercised new equitable authority. The relevant question is not simply whether the new advisals violated the *Perez-Funez* injunction, but whether Federal Rule of Civil Procedure 60(b)(5) and current due-process principles authorized the court to impose that new prospective equitable restraint. Plaintiffs' reliance on the injunction's "letter and spirit" skipped consideration of the Due Process Clause's requirements altogether.

2. Plaintiffs (at 55-57) rely heavily on Ninth Circuit cases like *Epic Games, Inc. v. Apple, Inc.*, 161 F.4th 1162 (9th Cir. 2025),⁴ which addresses whether conduct violates an existing injunction for purposes of enforcement or contempt. Those cases do not authorize expanding an injunction to prohibit entirely new conduct. Nor do they eliminate the

⁴ The Supreme Court granted certiorari in part in that case on June 30, 2026. *See Apple Inc. v. Epic Games, Inc.*, ___ S. Ct. ___, 2026 WL 1871316, at *1 (June 30, 2026) (Mem.). Specifically, the Supreme Court granted certiorari on Question 1 in the Petition, which asks:

Whether a court may hold a party in civil contempt based on a violation of an injunction's "spirit" where the injunction is silent as to the conduct upon which contempt is based, as the Ninth Circuit holds; or, instead, whether a court must ground a finding of civil contempt on the violation of an order that clearly and unambiguously proscribes the precise conduct at issue, as other circuits hold.

need to establish an underlying legal violation before enlarging prospective relief. *Epic Games* concerns interpreting an injunction's scope after liability has already been established—not deciding whether entirely new Government conduct is unconstitutional under the Fifth Amendment.

The district court effectively treated the *Perez-Funez* injunction as an independent source of substantive law rather than a remedy for a particular constitutional violation. That analytical error allowed the court to prohibit entirely new conduct based solely on the court's view that the new conduct conflicted with the injunction's "text" and "spirit," without first doing any analysis to determine whether the supplemental advisal actually violated due process under current law. By bypassing the constitutional inquiry, the district court effectively entered a new prospective injunction regulating immigration procedures without satisfying the ordinary requirements for equitable relief. That error is compounded because the expanded injunction imposes new restrictions on the Government's administration of voluntary departure and withdrawal under 8 U.S.C. §§ 1229c and 1225(a)(4), raising the very concerns addressed by section 1252(f)(1) and *Aleman Gonzalez*.

While Plaintiffs (at 56-57) are correct that the district court invoked both the text and spirit of the injunction in concluding that it needed modification to prohibit the new advisal, nothing in the text of the injunction actually prohibits the use of new advisal in addition to the advisal required by the injunction. The only “text” the district court cited is that the injunction prohibited “tak[ing]” any “steps go persuade or dissuade” the class of unaccompanied alien children when informing them about the old voluntary-departure procedure. *See* ER-91-93. That merely reinforces the Government’s point that the district court’s expansion of the injunction effectively transforms the injunction into an open-ended, court-supervised regime untethered from the Due Process Clause’s particular requirements. *See* Opening Br. 41-42. Any time the district court determines that a particular procedure adopted by DHS somehow improperly crosses the line into persuasion of unaccompanied alien children—in the district court’s view—the Government will be said to have violated the injunction under the pain of contempt. That is simply not the law.

CONCLUSION

Because the district court misapprehended the law, 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 interpretation of 8 U.S.C. § 1252(f)(1). This Court should also vacate the district court's order expanding the *Perez-Funez* injunction.

July 6, 2026

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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