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1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that on December 5, 2025 at 10:00AM or as soon  
3 thereafter as the matter may be heard, Defendants will and hereby do move this Court  
4 pursuant to Federal Rules of Civil Procedure 60(b)(4), 60(b)(5), and 60(b)(6) for an  
5 order terminating the permanent injunction entered in this action on September 30,  
6 1985 (Dkt. No. 226, reported at 619 F. Supp. 656) and the subsequent “Order Re  
7 Advisal” entered on May 14, 1986 (Dkt. No. 240).

8 **COMPLIANCE WITH LOCAL RULE 7-3**

9 This motion is made following a meet and confer between counsel pursuant  
10 to L.R. 7-3, which took place on November 5, 2025. On October 28, 2025, counsel  
11 for Defendants reached out to all counsel previously listed on this Court’s case  
12 documents to schedule a meet and confer consistent with the Court’s L.R. 7-3.  
13 Plaintiffs’ counsel were not able to meet on either October 31 or November 3, as  
14 proposed by Defendants, and thus the conference was ultimately scheduled for  
15 November 5, 2025. At that meet and confer, Defendants expressed their intent to file  
16 the instant motion seeking termination of the previously entered permanent  
17 injunction based on intervening changes of law and fact. Plaintiffs did not offer a  
18 substantive response to the issues raised by Defendants at that time, or subsequently,  
19 when counsel for Defendants followed-up regarding their position. Instead, in an  
20 email sent on November 10, 2025, Plaintiffs requested Defendants add the following  
21 text with respect to their position on Defendants’ filing of this underlying motion:  
22 “Plaintiffs were only informed on November 5[, 2025] of the government’s intent to  
23 extinguish the injunction entered in *Perez-Funez* four decades ago. This is the first  
24 time we heard that the government believed such action was appropriate other than  
25 the request for a Meet and Confer on that date. We requested a follow up Meet and  
26 Confer for next Wednesday, [November 19, 2025] but that was denied. As such, we  
27 oppose the filing of a Rule 60B motion.”

1 **MOTION TO TERMINATE PERMANENT INJUNCTION AND ADVISAL**  
2 **ORDER**

3 Defendants move to terminate this Court’s injunction and this Court’s later  
4 Order Re Advisal under Federal Rules of Civil Procedure 60(b)(4), (b)(5), and  
5 (b)(6). In light of the significant changes in circumstances since this court entered  
6 the injunction 40 years ago, including promulgation of substantial changes to the  
7 nation’s immigration laws, and Supreme Court precedent, further continuation of the  
8 injunction and its specific advisal language is no longer equitable or in the public  
9 interest. The injunction’s class-wide relief is also directly contrary to  
10 8 U.S.C. § 1252(f)(1), as well as the Supreme Court’s decision in *Garland v. Aleman*  
11 *Gonzalez*, 596 U.S. 543 (2022). Pursuant to Federal Rules of Civil Procedure  
12 60(b)(4), (b)(5) and (b)(6), Defendants thus move to dissolve the Court’s injunction  
13 and this Court’s later advisal order.

14 This motion is based upon the above Notice, the accompanying Memorandum  
15 of Points and Authorities, all pleadings and papers on file in this action, and such  
16 other matters as may be presented to this court at the time of the hearing on the  
17 motion. Pursuant to Local Rule 7-15, Defendants do not waive oral argument.

1 DATED: November 12, 2025

2 Respectfully submitted,  
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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           Defendants respectfully move this Court pursuant to Federal Rules of Civil  
3 Procedure 60(b)(4), 60(b)(5), and 60(b)(6) for an order terminating the permanent  
4 injunction entered in this action on September 30, 1985 (Dkt. No. 226, reported at  
5 619 F. Supp. 656) and dissolution of the Court’s later Order Re Advisal (Dkt. No.  
6 240).

7                                   **INTRODUCTION**

8           Forty years ago, this Court issued a permanent injunction based on its finding  
9 that the Immigration and Naturalization Service’s (INS) then-existing procedures for  
10 offering voluntary departure to unaccompanied minors violated the Fifth  
11 Amendment’s Due Process Clause. *Perez-Funez v. INS*, 619 F. Supp. 656 (C.D. Cal.  
12 1985). The Court found the process “inherently coercive” and concluded that  
13 unaccompanied minors could not provide a knowing and intelligent waiver of their  
14 rights. *Id.* at 662. To remedy this, the Court fashioned its own prophylactic  
15 procedural safeguards, culminating in the 1986 “Order Re Advisal” (Dkt. No. 240)  
16 that mandated that unaccompanied minors be presented with a specific, court-  
17 approved advisal (now Form I-770) before being given the opportunity to voluntarily  
18 return to their country of origin, and that the unaccompanied minor also be given  
19 certain access to telephones to contact a parent, relative, or lawyer.

20           Federal courts issuing injunctive relief in institutional reform cases have a  
21 duty “to ensure that ‘responsibility for discharging the [government’s] obligations is  
22 returned promptly to the [government] and its officials’ when the circumstances  
23 warrant.” *Horne v. Flores*, 557 U.S. 433, 450 (2009). “[T]he longer an injunction or  
24 consent decree stays in place, the greater the risk that it will improperly interfere  
25 with [government’s] democratic processes.” *Id.* at 453. Indeed, prolonged  
26 enforcement of injunctions “may ‘improperly deprive future officials of their  
27 designated legislative and executive powers.’” *Id.* at 450 (citation omitted). The  
28

1 Supreme Court has thus admonished lower courts considering Rule 60 motions to  
2 ascertain whether ongoing enforcement of the original order “[i]s supported by an  
3 ongoing violation of federal law” and not to focus on compliance with “the original  
4 order.” *Id.* at 454.

5 These principles apply with even greater force to the federal government,  
6 especially to its enforcement of immigration laws: the Judiciary must not intrude  
7 into the authority of the Executive in one of its core foreign relations functions with  
8 indefinite oversight and micromanagement. *See Arlington Heights v. Metro. Hous.*  
9 *Dev. Corp.*, 429 U.S. 252, 268 n.18 (1977); *see also Harisiades v. Shaughnessy*, 342  
10 U.S. 580, 588–89 (1952).

11 Here, applying those standards, relief is warranted under Federal Rule of Civil  
12 Procedure 60(b) on three independent grounds. To start, the Supreme Court  
13 in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), clarified that 8 U.S.C.  
14 § 1252(f)(1) divests district courts of jurisdiction to enter a class-wide injunction  
15 restraining certain aspects of the Executive Branch’s operation of certain provisions  
16 of the Immigration and Nationality Act (INA). The *Perez-Funez* injunction is  
17 precisely such an order, as it dictates the specific procedures Defendants must  
18 follow—procedures found nowhere in the INA—before they may “carry out” the  
19 voluntary departure statute. That alone requires the Court to dissolve the class-wide  
20 injunction.

21 Second, prospective application is inequitable because there has been a  
22 “significant change ... in law.” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367,  
23 384 (1992). In 1996, Congress passed the Illegal Immigration Reform and  
24 Immigrant Responsibility Act, PL 104-208 Div. C, 110 Stat. 3009 (1996)  
25 (“IIRIRA”), which limited judicial review and eliminated the distinction between  
26 “exclusion” and “deportation” proceedings. 8 U.S.C. §§ 1229a, 1252. In 2008,  
27 Congress passed the William Wilberforce Trafficking Victims Protection  
28

1 Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, which created a new,  
2 detailed, and binding statutory framework for processing unaccompanied alien  
3 children (UAC). This framework, codified at 8 U.S.C. § 1232, supersedes this  
4 Court’s 1985 due process analysis. The TVPRA creates a bifurcated system—one  
5 for certain UAC from contiguous countries (Mexico and Canada) and one for all  
6 other UAC—that closes the gaps motivating this court’s injunction in the first place.

7 Third, this injunction is a prime example of the institutional reform decrees  
8 the Supreme Court has repeatedly warned against. It represents a “substantial  
9 intrusion” by the Judiciary into the core Executive function of immigration  
10 enforcement. *See Arlington Heights*, 429 U.S. at 268, n.18. For forty years, this  
11 injunction has “improperly deprive[d] future officials of their designated legislative  
12 and executive powers” to adapt immigration policy to “changing political and  
13 economic circumstances.” *Id.* at 449; *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

14 The legal and factual landscape governing asylum and related protections has  
15 also changed dramatically over the proceeding four decades. The injunction now  
16 operates in a fundamentally different system—one that Congress and the Executive  
17 Branch have reshaped through successive reforms, culminating in the legislation  
18 commonly referred to as the “One Big Beautiful Bill.”

## 19 BACKGROUND

### 20 A. The Court’s 1985 Decision and 1986 Implementing Order

21 In 1981, Plaintiffs, predominantly Salvadoran teens, sought nationwide  
22 injunctive relief on behalf of a class of unaccompanied alien minors alleging that the  
23 INS’s implementation of the then-governing voluntary departure statute, 8 U.S.C.  
24 § 1254, *repealed*, Pub. L. 104-208, Div. C, Title III, § 308(b)(7), Sept. 30, 1996, 110  
25 Stat. 3009-615, violated their right to due process of law. Plaintiffs claimed that  
26 unaccompanied minors apprehended during border encounters and elsewhere were,  
27 at best, provided no explanation of their rights and the voluntary departure  
28

1 procedure, or at worst, coerced into signing voluntary departure forms, thereby  
2 waiving their opportunity for a hearing before an immigration judge in deportation  
3 or exclusion proceedings. *Perez-Funez v. District Director*, 619 F. Supp. 656, 658  
4 (C.D. Cal. 1985).

5 After a trial on the merits, the Court found that INS's policy implementing  
6 voluntary departure procedures, which differed depending on the unaccompanied  
7 minor's age-range and whether the child's permanent residence was in a contiguous  
8 country, was undertaken in "good faith," and indeed, Plaintiffs' allegations of  
9 coercion were "unfounded." 619 F. Supp. at 661. The Court observed that the INS  
10 performs "a thankless task under adverse conditions, and by and large, performs it  
11 admirably." *Id.* Nevertheless, the Court also concluded that the unaccompanied  
12 minors uniformly expressed a "lack of understanding," even in situations "where  
13 they had read, or had read to them, the notices and advisals" regarding the selection  
14 of voluntary departure and waiver of the opportunity for a hearing in deportation  
15 proceedings. *Id.* The Court found that the unaccompanied minors "generally do not  
16 understand the concept of legal rights without explanation," especially when  
17 presented in a stressful environment, separated from their family and familiar  
18 culture; they are unable to make "a knowing and voluntary choice" and instead, "the  
19 natural tendency is to defer to the authority before them[.]" *Id.*

20 The Court found lesser risk of deprivation of rights through an unknowing  
21 waiver in sub-groups of the class consisting of children who permanently reside in  
22 Mexico or Canada, and in children younger than fourteen who are arrested in the  
23 interior of the country and/or are not residents of contiguous countries based on  
24 INS's policy of locating a relative or friend to act as a representative. 619 F. Supp.  
25 at 662. Nonetheless, the Court found the risk of erroneous deprivation "great,"  
26 especially with respect to "class members who are not arrested near the border or are  
27  
28

1 not permanent residents of Mexico or Canada, and concluded that then-current  
2 procedures “d[id] not address the problem adequately.” *Id.* at 663.

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

19       With regard to unaccompanied minors who are residents of Mexico and  
20 Canada, who have a “better understanding” of immigration laws and “for the most  
21 part, desire to return voluntarily,” the Court found that mandatory notification of the  
22 opportunity to make a call to a relative, close friend, or legal organization was  
23 sufficient to prevent the risk of unknowing waivers in the great majority of cases.  
24 619 F. Supp. at 666. Finally, the Court determined that updated, accurate lists of  
25 legal services were a “necessary concomitant of a telephone access program.” *Id.*

26       In light of the foregoing, the Court entered a permanent injunction mandating  
27 five different procedural changes. *First*, the injunction requires that the INS provide  
28

1 class members “a simplified rights advisal consistent with the current law of this  
2 circuit” along with “the free legal services list complied pursuant to 8 C.F.R.  
3 § 292a.1.” *Second*, with respect to class members apprehended in the immediate  
4 vicinity of the border and who are permanent residents of Mexico or Canada, the  
5 injunction requires that the INS inform the class member that they may make a  
6 telephone call to a parent, relative, friend, or organization on the legal services list.  
7 The class member must be so informed prior to presentation of the voluntary  
8 departure form. *Third*, with respect to all other class members, the injunction  
9 requires that the INS “shall provide access to telephones” and ensure that the class  
10 has in fact communicated with a parent, relative, friend, or organization on the legal  
11 services list prior to presentation of the voluntary departure form. *Fourth*, the  
12 injunction requires that the INS shall obtain signed acknowledgement on a separate  
13 copy of the simplified rights advisal form showing that the INS has provided all  
14 notices and required information. Finally, the injunction requires the INS to update  
15 and maintain the free legal services list. 619 F. Supp. at 670.

16 On May 16, 1986, the Court issued a further “Order re Advisal” mandating  
17 the specific contents of the simplified advisal of rights the INS was required to  
18 provide to unaccompanied minors. Dkt. No. 240. This Court-mandated advisal  
19 became Form I-770, which is still in use today. *See Attached Exhibit A*. Although  
20 the form has had several additions over the years (including by the Department of  
21 Homeland Security) in an attempt to remain compliant with current law, *see, e.g.*,  
22 63 F.R. 39759; 83 F.R. 45486, the Court’s original requirements have in large part  
23 remained set in stone even though they no longer reflect the current statutory scheme  
24 or areas of agency responsibilities.

## 25 **B. Intervening Statutory and Regulatory Developments**

26 Since the injunction was issued in this case forty years ago, there have been  
27 significant changes in immigration law bearing directly on UAC—the very group to  
28

1 which the injunction applies. These include the Immigration Act of 1990, Pub. L.  
2 No. 101-649 § 408, 104 Stat. 4978, and IIRIRA. A major objective of IIRIRA was  
3 to “protec[t] the Executive’s discretion” from undue interference by the courts;  
4 indeed, “that can fairly be said to be the theme of the legislation.” *Reno v. American-*  
5 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999). Among other things,  
6 IIRIRA eliminated the distinction between “exclusion” and “deportation”  
7 proceedings.

8 IIRIRA also introduced a statutory limit to the amount of time allowed for  
9 voluntary departure, authorizing a maximum of 120 days if voluntary departure is  
10 granted prior to or at the beginning of removal proceedings, and 60 days if voluntary  
11 departure is granted at the conclusion of removal proceedings. INA § 240B, 8 U.S.C.  
12 § 1229c.

13 Particularly relevant here, in 2002, Congress passed the Homeland Security  
14 Act (the “HSA”), Pub. L. No. 107-296, 116 Stat. 2135. Prior to the passage of the  
15 HSA, the INS had enforced federal immigration law, including as to minors. *See,*  
16 *e.g., Perez-Funez*, 619 F. Supp. 656, 658. But the HSA dismantled the INS and  
17 transferred some of its functions—specifically those “with respect to the care of  
18 unaccompanied alien children”—to the U.S Department of Health and Human  
19 Services (HHS). Homeland Security Act of 2002, Pub. L. No. 107-296, § 462(a),  
20 116 Stat. 2135, 2202; *see also City of Chicago v. Barr*, 961 F.3d 882, 888 n.1 (7th  
21 Cir. 2020). Unlike in 1985, HHS, Office of Refugee Resettlement (ORR) is now  
22 “responsible for” ensuring that the “interests” of UAC are considered in decisions  
23 about UAC’s “care and custody.” 6 U.S.C. § 279(b)(1)(B). ORR is also responsible  
24 for “reuniting unaccompanied alien children with a parent abroad in appropriate  
25 cases.” *Id.* § 279(b)(1)(H).

26 In 2008, Congress addressed the processing and care and custody of UAC by  
27 passing the TVPRA. *See* Pub. L. No. 110-457, 122 Stat. 5044. In order to “enhanc[e]

1 efforts to combat the trafficking of children,” *id.* § 235, Congress instructed the  
2 heads of several agencies to “develop policies and procedures” ensuring “that  
3 unaccompanied alien children” are “safely repatriated to their country of nationality  
4 or of last habitual residence,” 8 U.S.C. § 1232(a)(1).

5 Moreover, the TVPRA includes provisions for the “safe repatriation” of  
6 UAC. 8 U.S.C. § 1232(a)(5). The TVPRA provides that certain UAC from  
7 contiguous countries may be permitted to withdraw their application for admission  
8 pursuant to 8 U.S.C. § 1225(a)(4) and voluntarily return to their country of  
9 nationality or residence. 8 U.S.C. § 1232(a)(2)(A)-(B). When the Department of  
10 Homeland Security seeks to “remove[]” from the United States “[a]ny  
11 unaccompanied alien child” from a non-contiguous country (a country other than  
12 Canada and Mexico) or a UAC from a contiguous country not permitted to withdraw,  
13 the child must be “placed in removal proceedings under” 8 U.S.C. § 1229a. *See* 8  
14 U.S.C. § 1232(a)(5)(D)(i).<sup>1</sup> The TVPRA also makes UAC in section 1229a removal  
15 proceedings eligible for voluntary departure under 8 U.S.C. § 1229c “at no cost to  
16 the child.” *Id.* § 1232(a)(5)(D)(ii). That provision authorizes the Attorney General  
17 to “permit an alien voluntarily to depart the United States ... prior to the completion  
18 of [§ 1229a removal] proceedings.” *Id.* § 1229c(a)(1). In addition, the Attorney  
19 General may do the same if the alien meets certain eligibility criteria after removal  
20 proceedings conclude if “the immigration judge enters an order granting voluntary  
21 departure.” *Id.* § 1229c(b)(1). And the TVPRA directs that a UAC whom DHS seeks  
22 to remove must receive “access to counsel” to “the greatest extent practicable.” *See*  
23 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5). This directive calls for counsel “to represent”  
24

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25  
26 <sup>1</sup> The TVPRA excludes UAC from the expedited removal process. *Make the Rd.*  
27 *N.Y. v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020).  
28

1 the UAC “in legal proceedings” and, more broadly, to “protect them from  
2 mistreatment, exploitation, and trafficking.” *Id.* § 1232(c)(5).

3 Several regulations implement these statutory provisions. UAC must “be  
4 treated with dignity, respect, and special concern for their particular vulnerability.”  
5 45 C.F.R. § 410.1003(a). ORR also has specific “responsibilities” when it comes to  
6 providing “legal services for unaccompanied children.” 45 C.F.R. § 410.1309(a)(1).  
7 For instance, ORR must offer information about the “child’s right to a removal  
8 hearing before an immigration judge,” his “ability to apply for asylum,” and the  
9 option of “request[ing] voluntary departure in lieu of removal.” *Id.*  
10 § 410.1309(a)(2)(iv). UAC in ORR’s custody, moreover, must receive a  
11 “confidential legal consultation with a qualified attorney” to “determine possible  
12 forms of relief from removal.” *Id.* § 410.1309(a)(2)(v).

13 Most recently, the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat.  
14 72 (2025) (hereinafter, “OBBB”), enacted changes to the law that affect UAC. The  
15 OBBB expands DHS’s authority to permit UAC from any country, not just  
16 contiguous countries, to withdraw their application for admission pursuant to 8  
17 U.S.C. § 1225(a)(4) and provides funds to DHS for such withdrawals.  
18 OBBB § 100051(8)(B), (C).

### 19 STANDARD OF REVIEW

20 “Pursuant to Rule 60(b)(4), a litigant may attack a judgment as void due to  
21 lack of subject matter jurisdiction.” *Wages v. IRS*, 915 F.2d 1230, 1234 (9th Cir.  
22 1990).

23 Rule 60(b)(5) provides that a court “may relieve a party ... from a final  
24 judgment, order, or proceeding” when “the judgment has been satisfied, released, or  
25 discharged” or when “applying it prospectively is no longer equitable.” Fed. R. Civ.  
26 P. 60(b)(5). The Supreme Court has explained that the disjunctive language of Rule  
27  
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1 60(b)(5) clarifies that each of these grounds for relief is “independently sufficient.”  
2 *Horne*, 557 U.S. at 454.

3 In contrast, the “equitable” clause allows “a court to modify or vacate a  
4 judgment or order if a significant change either in factual conditions or in law renders  
5 continued enforcement detrimental to the public interest.” *Id.* at 447 (internal  
6 quotation marks omitted).

7 When determining whether to vacate an injunction, courts must consider  
8 “whether ongoing enforcement of the original order [is] supported by an ongoing  
9 violation of federal law.” *Id.* at 454. Further, if the government has implemented a  
10 “durable remedy,” judicial oversight should cease. *Id.* at 450. Rule 60(b)(5) also  
11 permits a court to modify a decree if the modification is “suitably tailored” to resolve  
12 problems created by changed circumstances. *Rufo v. Inmates of Suffolk Cnty. Jail*,  
13 502 U.S. 367, 383 (1992). Once a party carries its burden to show that changed  
14 circumstances warrant relief from an injunction, “a court abuses its discretion when  
15 it refuses to modify an injunction or consent decree in light of such changes.” *Horne*,  
16 557 U.S. at 447 (internal quotations and citation omitted).

17 Rule 60(b)(6) permits relief from judgment for “any other reason that justifies  
18 relief.” Fed. R. Civ. P. 60(b)(6). The rule permits the district court to vacate  
19 judgments ““whenever such action is appropriate to accomplish justice.”” *Henson v.*  
20 *Fid. Nat’l Fin., Inc.*, 943 F.3d 434, 443–44 (9th Cir. 2019) (quoting *United States v.*  
21 *Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982)). Relief under the rule is available only  
22 in “extraordinary circumstances.” *Buck v. Davis*, 580 U.S. 100, 123 (2017). But “[i]n  
23 determining whether extraordinary circumstances are present, a court may consider  
24 a wide range of factors,” such as ““the risk of injustice to the parties’ and ‘the risk  
25 of undermining the public’s confidence in the judicial process.”” *Id.* (quoting  
26 *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988)).

1 **ARGUMENT**

2 **I. Dissolution of the Class-Wide Injunction Is Required Under § 1252(f)**  
3 **and the Supreme Court’s Intervening Decision in *Aleman Gonzalez*.**

4 Rule 60(b) relief is warranted with respect to the Court’s injunction and  
5 mandated advisal because this Court lacks jurisdiction to enjoin Defendants under 8  
6 U.S.C. § 1252(f)(1). The Supreme Court’s decision in *Garland v. Aleman Gonzalez*,  
7 596 U.S. 543 (2022), has resolved any doubt that § 1252(f)(1) divests this Court of  
8 jurisdiction to restrain the operation of particular provisions in the INA governing a  
9 UAC’s voluntary return to their country of origin. Relief is thus warranted under  
10 Rule 60(b)(4) because the injunction is void for lack of jurisdiction, or at  
11 minimum under Rule 60(b)(5) due to a change in law. Indeed, “[a] court errs [under  
12 Rule 60(b)(5)] when it refuses to modify an injunction or consent decree in light of”  
13 “changes in either statutory or decisional law.” *Agostini v. Felton*, 521 U.S. 203, 215  
14 (1997).

15 8 U.S.C. § 1252(f)(1) states that “no court (other than the Supreme Court)  
16 shall have jurisdiction or authority to enjoin or restrain the operation” of certain  
17 provisions of the INA, “other than with respect to the application of such provisions  
18 to an *individual* alien.” In 2022, the Supreme Court held that “§ 1252(f)(1) generally  
19 prohibits lower courts from entering injunctions that order federal officials to take  
20 or to refrain from taking actions to enforce, implement, or otherwise carry out the  
21 specified statutory provisions.” *Aleman Gonzalez*, 596 U.S. at 550. The *Aleman*  
22 *Gonzalez* court went on, arguing that “injunctive relief on behalf of an entire class  
23 of aliens is not allowed because it is not limited to remedying the unlawful  
24 ‘application’ of the relevant statutes to ‘an individual alien.’” *Id.* at 551.

25 The *Perez-Funez* injunction is precisely the type of class-wide order that  
26 § 1252(f)(1) and *Aleman Gonzalez* forbid. It is a class-action injunction that  
27 “restrain[s] the operation” of the INA—specifically, the provisions relating to  
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1 voluntary departure (8 U.S.C. § 1229c) and the processing of aliens for withdrawal  
2 of their application for admission (8 U.S.C. § 1225(a)(4))—all parts of the INA to  
3 which § 1252(f)(1) applies. *See Galvez v. Jaddou*, 52 F.4th 821, 830 (9th Cir. 2022)  
4 (explaining that the covered provisions include 8 U.S.C. §§ 1221–1231 and 1252–  
5 1254a). It does so by imposing affirmative, extra-statutory procedural hurdles that  
6 Defendants must clear before they can “carry out” the voluntary departure provisions  
7 for any member of the plaintiff class. The 1986 Order Re Advisal, which mandates  
8 the precise language that must be used when informing UAC of their right to removal  
9 proceedings and a mandatory telephonic access policy, is a quintessential example  
10 of a court ordering federal officials to refrain from taking actions to carry out the  
11 INA as written.

12 Because the processing of UAC by Defendants occurs pursuant to provisions  
13 governed by § 1252(f)(1), *Aleman Gonzalez* makes plain that this Court lacks  
14 jurisdiction to maintain its permanent class-wide injunction. This Court did not have  
15 the benefit of the Supreme Court’s clarification on the scope of § 1252(f)(1) when it  
16 issued its injunction in 1985 and its advisal in 1986. But it must account for that  
17 development now, *see Agostini*, 521 U.S. at 215, especially because the changes  
18 implicate the court’s jurisdiction. Under *Aleman Gonzalez*’s construction of  
19 § 1252(f)(1), this Court must dissolve the class-wide injunction in this matter.<sup>2</sup> *See*  
20 Fed. R. Civ. P. 60(b)(4), 60(b)(5).

21 \_\_\_\_\_  
22 <sup>2</sup> Defendants acknowledge the statute’s exception for “the application of such  
23 provisions to an individual alien against whom proceedings . . . have been initiated.”  
24 8 U.S.C. § 1252(f)(1). While this provision would not, by its terms, bar relief  
25 originally granted to the *named plaintiffs* as “individual aliens,” any claim to  
26 maintain the injunction as to them is moot. The named plaintiffs were defined by  
27 their immigration status as unaccompanied minors at the time of the original  
28 complaint’s filing over four decades ago, but they are no longer unaccompanied  
minors today. Because the injunction and its advisal requirements apply exclusively

1       **II. Termination of the Injunction Is Warranted Because Prospective**  
2       **Application Is No Longer Equitable**

3       Even setting aside § 1252(f)(1), the injunction must be terminated under Rule  
4 60(b)(5) because “applying it prospectively is no longer equitable.” In the forty years  
5 since this Court’s 1985 injunction, the substantive merits have been displaced by  
6 Congress’s own comprehensive changes to the immigration laws affecting the  
7 minors at issue in the certified class—specifically, the TVPRA and OBBB—as well  
8 as regulatory changes that address the Court’s original concerns. As a result, the  
9 continued enforcement of the injunction would represent an intolerable and ongoing  
10 violation of the separation of powers, where a federal court is mandating additional,  
11 stale procedures that conflict with more recent statutory enactments. To be clear, the  
12 Government intends to continue to provide an advisal to UAC if the injunction is  
13 lifted, but the Government will adapt the form to incorporate these legal and factual  
14 developments.

15       **A. Maintaining the Injunction Is No Longer Equitable Because**  
16       **Significant Changes in Immigration Law and Regulation Have**  
17       **Materially Altered the Legal Landscape**

18       The immigration laws have changed profoundly since the order in this case  
19 was entered, especially regarding the rights and advisals for UAC, rendering  
20 continuation of the injunction inequitable. In 1985, this Court intervened to fill a  
21 perceived due process void in the processing of unaccompanied minors. Over the  
22 subsequent course of forty years, however, that void has otherwise been filled by  
23 various statutory and regulatory enactments which obviate whatever need there was  
24

25 \_\_\_\_\_  
26 to the processing of UACs, there is no remaining legal or factual basis to maintain  
27 the Court’s order, even as to the original individual parties.  
28

1 for the Court’s 1985 order while creating a dramatically different legal landscape  
2 where that order no longer accurately distills the rights and consequences at issue.

3 First, in 2008, Congress enacted the William Wilberforce Trafficking Victims  
4 Protection Reauthorization Act of 2008 (TVPRA), creating a detailed,  
5 comprehensive, and binding statutory scheme governing UAC. *See* 8 U.S.C. § 1232.  
6 For instance, the TVPRA addresses the circumstances under which UAC from non-  
7 contiguous countries may be permitted to return to their home country.

8 Under 8 U.S.C. § 1232(a)(2), UAC from contiguous countries (Mexico and  
9 Canada) *may* be permitted to withdraw their application for admission under 8  
10 U.S.C. § 1225(a)(4) and return to their country of origin, but only *after* they are  
11 screened by federal agents for trafficking concerns, to determine if they have a fear  
12 of return, and to assess whether the child is able to make an independent decision to  
13 withdraw their application for admission. 8 U.S.C. § 1232(a)(2)(A)(i)-(iii). The  
14 withdrawal process takes place prior to the filing of the Notice to Appear (NTA). By  
15 contrast, under 8 U.S.C. § 1232(b)(3), UAC from non-contiguous countries (*e.g.*, El  
16 Salvador), and UAC from contiguous countries who do not withdraw their  
17 application for admission, must be transferred to the custody of HHS within 72 hours  
18 of determining the child is a UAC, absent exceptional circumstances. UAC whom  
19 DHS seek to remove, are placed in removal proceedings under 8 U.S.C. § 1229a,  
20 and may request voluntary departure under 8 U.S.C. § 1229c. *See* 8 U.S.C. §  
21 1232(a)(5)(D)(i)-(ii). For those UAC who are transferred to HHS, the TVPRA also  
22 provides access to counsel to “the greatest extent possible,” for UAC in removal  
23 proceedings, *see* 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5), while aiming to protect UAC  
24 “from mistreatment, exploitation, and trafficking,” 8 U.S.C. § 1232(c)(5). The  
25 voluntary departure process takes place after the filing of the NTA.

26 Second, the Unaccompanied Children Program Foundational Rule, 45 C.F.R.  
27 § 410.1309, provides further protection to UAC while implementing key provisions  
28

1 of the TVPRA. UAC must receive certain information regarding rights to a hearing  
2 before an immigration judge, to apply for asylum, and to request voluntary departure  
3 in lieu of removal proceedings, as well as confidential consultations with a qualified  
4 attorney to discuss these and other issues. *See generally* 45 C.F.R. § 410.1309(a)(1),  
5 (2).

6 Finally, the OBBB, expanded the authority to permit certain UAC to withdraw  
7 their application for admission and return to their home country to UAC from *any*  
8 country, not just contiguous ones. *See* OBBB § 100051(8),  
9 8 U.S.C. § 1232(a)(2)(A)-(B). Under the OBBB, withdrawal is permissible where a  
10 UAC is not a victim of any form of severe trafficking in persons and otherwise lacks  
11 a fear of persecution in the country of nationality or last habitual residence. *See*  
12 OBBB § 100051(8).

13 Given these changes since 1985, the *Perez-Funez* permanent injunction is  
14 antiquated and no longer equitable under present circumstances. On one hand, it is  
15 no longer necessary given congressional and regulatory enactments designed to  
16 protect the interests of UAC, including through the TVPRA and the Foundational  
17 Rule. On the other, the injunction makes little equitable sense since the legal  
18 landscape in which it was entered has been displaced by the substantive provisions  
19 of the TVPRA and the OBBB.

20 In light of the key provisions of the TVPRA and the Foundational Rule, the  
21 injunction is therefore no longer necessary to safeguard the interests of UAC. The  
22 operative provisions of the TVPRA ensure that voluntary departure is considered  
23 and granted by an immigration judge in removal proceedings who can advise the  
24 UAC of the consequences of this form of relief. 8 U.S.C. § 1232(a)(5)(D)(i)-(ii).  
25 These statutorily and regulatorily provided safeguards more than resolve the  
26 concerns that animated the permanent injunction. *Compare* 8 U.S.C. § 1232, 45  
27 C.F.R. § 410.1309 (laying out these procedures and rights), *with* Dkt. No. 240 (Order  
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1 re Advisal) (providing nearly identical requirements); *Perez-Funez*, 619 F. Supp. at  
2 670 (same). There is thus no reason to keep the injunction in place.

3 Moreover, this Court’s injunction and the advisals it requires are no longer  
4 accurate given the changes to UAC processing made by both the TVPRA and the  
5 OBBB. Regarding UAC from non-contiguous counties, the very group represented  
6 by the original Salvadoran plaintiffs, the injunction requires advisals as to rights that  
7 are inconsistent with the current state of law. The 1985 injunction was designed to  
8 ensure a knowing waiver of a deportation hearing *before* voluntary departure. But  
9 under the TVPRA, as discussed above, voluntary departure available to UAC  
10 appearing before an immigration judge, and thus in an entirely different posture that  
11 eliminates the concerns motivating the injunction. *See* 8 U.S.C. § 1232(a)(5)(D).  
12 And contrary to the more limited options available to remove or repatriate UAC in  
13 1985, the TVPRA and OBBB provide the ability for UAC to withdraw their  
14 application for admission before being placed into removal proceedings. 8 U.S.C. §  
15 1232(a)(2)(A)-(B); OBBB § 100051(8). These authorities provide their own  
16 protections for UAC, and permit withdrawal of the UAC’s application for admission  
17 and repatriation only so long as certain conditions are met, including that the UAC  
18 is screened to determine that he is not a victim of specified trafficking, does not fear  
19 harm in his or her country of nationality, and is able to make a voluntary decision to  
20 withdraw his application for admission. The injunction thus forces Defendants to  
21 provide a complex advisal about a legal option that is now unavailable to UAC  
22 (voluntary departure outside of removal proceedings), while simultaneously  
23 omitting critical information about the *actual* procedural pathway for UAC.

24 In light of the TVPRA, the Court’s 40-year-old injunction improperly  
25 “substitute[s the court’s] ... policy judgments for those of the ... officials to whom  
26 such decisions are properly entrusted.” *Horne*, 557 U.S. at 455. Under *Horne*, the  
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1 TVPRA is an important change during the intervening years that fulfills the  
2 government’s obligations “by other means.” *Id.* at 439.

3 The equitable purpose of this court’s injunction was to ensure accurate and  
4 comprehensible notice to UAC before they accepted voluntary departure, not to  
5 effectively freeze court-imposed procedures despite subsequent changes to the  
6 governing immigration law—through Congress’s promulgation of the TVPRA and  
7 the OBBB, and HHS’s Foundational Rule. Continued enforcement of the framework  
8 established by the injunction, which now omits existing statutory rights and  
9 obligations and provides inaccurate information, is no longer equitable, *see Rufo*,  
10 502 U.S. at 384, and risks undermining the very fairness the Court sought to protect.  
11 Indeed, maintaining an advisal system premised on the outdated injunction risks  
12 denying minors the very understanding the injunction was intended to guarantee.

13  
14 **B. Maintaining the Injunction Is No Longer Equitable Because**  
15 **Subsequent Factual Developments Render the Injunction Severely**  
16 **Outdated**

17 This Court’s injunction rests on outdated assumptions about unaccompanied  
18 minors, border processing, and communication that no longer exist. The factual  
19 landscape that once justified the injunction has fundamentally changed, and  
20 continued adherence to it now frustrates, rather than advances, the goal of ensuring  
21 that children understand their rights.

22 The Form I-770 no longer serves as an effective or realistic method of advisal;  
23 its structure assumes that an apprehending officer can advise a child of their rights  
24 through a short, one-time conversation and that a notice will meaningfully convey  
25 those rights. It provides no interactivity, no opportunity to verify understanding, and  
26 no mechanism to account for language barriers or literacy limitations. Agencies now  
27 have the technological capacity to deliver information in multimedia formats,  
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1 through videos and digital materials provided in a child’s language of fluency. Yet  
2 the injunction rigidly ties the government to a single, outdated method: a form  
3 conceived when fax machines were novel inventions, international communication  
4 were slow and expensive, and the Internet did not even exist.

5 Moreover, the injunction was entered under the assumption that unaccompanied  
6 minors were apprehended in relatively small numbers, processed individually,  
7 provided a one-time advisal of rights, and required to make a decision about taking  
8 voluntary departure while in law enforcement custody. These assumptions are no  
9 longer the reality. Today UAC arrive in the United States in unprecedented volumes,  
10 moving rapidly between facilities, and transferred to child-friendly facilities in HHS  
11 custody with significant protections at the time they are placed into removal  
12 proceedings. The linear individualized model envisioned by the injunction is no  
13 longer the operational reality; and the form, as a result, cannot accommodate the  
14 complexities of modern intake operations.

15 What is more, the substantial changes in immigration law—outlined above—  
16 likewise compound the operational changes at issue here. IIRIRA introduced  
17 substantial changes to immigration law, including stricter admissibility standards,  
18 new bars to adjustment of status, and updated rules for unlawful presence.

19 The Homeland Security Act further transformed the immigration landscape  
20 by creating the DHS and transferring responsibilities from the former INS to DHS  
21 components such as CBP, USCIS, and ICE. The I-770 continues to reference  
22 obsolete agency structures and procedures, potentially confusing applicants and  
23 leading to administrative errors. Beyond naming conventions, the Act introduced  
24 new procedural mechanisms—centralized recordkeeping, interagency information  
25 sharing, and updated adjudication protocols—that are entirely absent from the form.  
26 Consequently, the I-770 cannot facilitate compliance with modern DHS procedures.

1 The TVPRA then significantly expanded protections for survivors of human  
2 trafficking, particularly minors, by establishing new procedural safeguards and  
3 specialized services.

4 And most recently, the OBBB enacted sweeping updates to filing procedures,  
5 and fee structures. It also introduced targeted provisions addressing vulnerable  
6 populations and special categories of applicants, reflecting contemporary legislative  
7 priorities.

8 Because the I-770 predates these reforms, it fails to account for these changes,  
9 leaving UAC applicants for admission without guidance on compliance with current  
10 procedural and substantive requirements. Taken together, these laws and  
11 administrative changes fundamentally alter the legal, factual, and procedural  
12 landscape surrounding the I-770. The form is therefore no longer a reliable  
13 instrument, underscoring the need for updated documentation that accurately reflects  
14 modern immigration law and practice.

15 **C. Maintaining the Injunction Is No Longer Equitable Because It**  
16 **Perpetually Entangles the Judiciary in Core Executive Functions.**

17  
18 This 40-year injunction is a “substantial intrusion” into the workings of the  
19 political branches. *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268,  
20 n.18 (1977). Institutional reform decrees raise “sensitive federalism  
21 concerns,” *Horne*, 557 U.S. at 448, and those concerns are heightened in the area of  
22 immigration where the federal government must be able to adapt to changing  
23 circumstances. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

24 “For more than a century,” the Supreme Court has held that immigration  
25 policy is a “fundamental sovereign attribute” of the Legislative and Executive  
26 Branches and “largely immune from judicial control.” *Trump v. Hawaii*, 585 U.S.  
27 667, 702 (2018) (quoting *Fiallo v. Bell*, 430 U.S. 787, 792 (1977)). The  
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1 “responsibility for regulating the relationship between the United States and our  
2 alien visitors has been committed to the political branches,” *Reno v. Flores*, 507 U.S.  
3 292, 305 (1993), because immigration policy involves “changing political and  
4 economic circumstances” and “may implicate ‘relations with foreign powers,’”  
5 judgments that “are frequently of a character more appropriate to either the  
6 Legislature or the Executive.” *Mathews*, 426 U.S. at 81; *Trump*, 585 U.S. at 702  
7 (citations omitted). For these reasons, “any policy toward aliens is vitally and  
8 intricately interwoven with contemporaneous policies in regard to the conduct of  
9 foreign relations.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

10 This injunction, however, “improperly deprive[s] future officials of their  
11 designated legislative and executive powers.” *Horne*, 557 U.S. at 450. It freezes a  
12 specific procedural element of immigration enforcement in 1986, a period quite  
13 unrecognizable from the circumstantial and legislative changes made in the forty  
14 years hence. Yet, this court’s injunction removes from the Executive Branch the  
15 power to respond to such factual and legal changes, and thus runs counter to bedrock  
16 separation of powers principles. The Supreme Court has warned that the “longer an  
17 injunction ... stays in place, the greater the risk that it will improperly interfere with  
18 a [government’s] democratic processes.” *Id.* at 453. After nearly four decades, that  
19 risk has been fully realized.

20 What’s more, the “public interest is a particularly significant reason for  
21 applying a flexible modification standard,” *Rufo*, 502 U.S. at 381, and the public  
22 interest is best served by this Court’s termination, or in the alternative, amendment  
23 to its injunction and advisal order. This case presents the “extraordinary  
24 circumstances” that justify relief under Rule 60(b)(6). See *Ackermann v. United*  
25 *States*, 340 U.S. 193, 198 (1959). The “incessant command of the court’s conscience  
26 that justice be done in light of all of the facts,” *Bankers Mortgage Co. v. United*  
27 *States*, 423 F.2d 73, 77 (5th Cir. 1970), requires this Court to recognize that its 1985  
28

1 order, while well-intentioned, is no longer equitable and stands as an obstacle to the  
2 current, democratically-enacted immigration framework. “Responsibility for  
3 discharging the government’s obligations must be returned promptly to  
4 the government and its officials.” *Horne*, 557 U.S. at 448.

5 The power to administer and enforce the immigration laws—including  
6 responding to changes in immigration trends and factual circumstances—rests in the  
7 Executive Branch and its agencies. The injunction, however, inhibits the Executive  
8 from exercising this authority. Current immigration policies to limit unlawful entry  
9 further justify termination of the injunction. Immigration policy by definition  
10 involves “changing political and economic circumstances,” making such them  
11 particularly appropriate for political maintenance and control. *Mathews*, 426 U.S. at  
12 81. A “significant change” in factual circumstances or law “renders the continued  
13 enforcement of the judgment detrimental to the public interest.” *Horne*, 557 U.S. at  
14 447 (quoting *Rufo*, 502 U.S. at 384). And such significant changes in circumstances  
15 are present here.

16 The Court should thus dissolve the injunction because it is the very type of  
17 institutional-reform injunction that the Supreme Court cautioned against: it  
18 interferes with the government’s exercise of constitutional powers to develop new  
19 policies to address the changes in immigration to the United States. At base, the  
20 injunction removes from the Executive the power to respond to new foreign-  
21 relations concerns and places that power in the hands of the Judiciary, contrary to  
22 bedrock separation of powers principles.

23 Consequently, in view of the changed circumstances, the Court should  
24 terminate the injunction.

25 **CONCLUSION**

26 For the foregoing reasons, Defendants request that this Court terminate the  
27 injunction as to the class.

1 DATED: November 12, 2025

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION PURSUANT TO LOCAL RULE 11-6.1.**

The undersigned, counsel of record for Defendants, certifies that this brief contains 6362 words, which:

  X   complies with the word limit of L.R. 11-6.1.

       complies with the word limit set by court order dated [date].

Dated: November 12, 2025

  s/ Zachary Cardin  

ZACHARY CARDIN

Trial Attorney

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