

1 BRETT A. SHUMATE
 Assistant Attorney General
 2 YAAKOV M. ROTH
 Principal Deputy Assistant Attorney General
 3 DREW C. ENSIGN
 Deputy Assistant Attorney General
 4 Civil Division
 WILLIAM C. SILVIS
 Assistant Director
 5 JOSHUA C. MCCROSKEY
 Trial Attorney
 6 CHRISTINA PARASCANDOLA
 MICHAEL CELONE
 7 LINDSAY VICK
 KATELYN MASETTA-ALVAREZ
 8 Senior Litigation Counsel
 9 United States Department of Justice
 Office of Immigration Litigation – General Litigation and Appeals Section
 10 P.O. Box 878, Ben Franklin Station
 Washington, DC 20044
 11 202-514-0120
 Katelyn.Masetta.Alvarez@usdoj.gov
 12 Attorneys for Defendants
 13
 14

15 **UNITED STATES DISTRICT COURT**
 16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17	JENNY LISETTE FLORES, <i>et al.</i>,	) Case No. CV 85-4544
18	Plaintiffs,)
19	v.	) DEFENDANTS’ REPLY IN SUPPORT
20	PAMELA BONDI, Attorney General	) OF MOTION TO TERMINATE
21	of the United States, <i>et al.</i>,	) SETTLEMENT AGREEMENT AND
22	Defendants.	) TO DISSOLVE INJUNCTION OF
23		) AGENCY REGULATIONS
		) Hearing Date: August 8, 2025, 10:00 AM
		) Place: Courtroom 8C, First Street
		) Courthouse
		) Honorable Dolly M. Gee, District Judge

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

INTRODUCTION.....1

ARGUMENT.....3

A. Plaintiffs fail to refute that 8 U.S.C. § 1252(f)(1) removes this Court’s authority enforce the FSA......3

 1. *Aleman Gonzalez clarified that this Court lacks authority to enforce the FSA because it restricts DHS’s ability to “carry out” the immigration-detention statutes.*.....3

 2. *The law-of-the-case doctrine does not apply because Aleman Gonzalez presents a change in law.*5

 3. *DHS has not forfeited or waived its argument.*.....7

 4. *Rule 60(c) does not limit the time for DHS to bring its Motion to Terminate.*8

 5. *Section 1252(f)(1) presents a jurisdictional issue.*10

B. Plaintiffs’ complaints about the policies and conditions at ORR, CBP, and ICE facilities are insufficient to refute that the agencies have substantially satisfied the FSA.11

C. Plaintiffs fail to acknowledge that the FSA is an institutional-reform decree that warrants termination if the Court determines that the FSA is no longer necessary to ensure compliance with federal law......16

D. In opposing Defendants’ separation-of-powers and APA arguments, Plaintiffs demonstrate that the FSA improperly binds federal officials to the policies of their predecessors.20

E. Wholesale termination is a suitably tailored remedy, but, in the alternative, Defendants seek partial termination of the FSA......23

CONCLUSION.....26

TABLE OF AUTHORITIES

Page(s)

Cases

Agostini v. Felton,
521 U.S. 203 (1997) 7, 11

Ali v. Barr,
464 F. Supp. 3d 549 (S.D.N.Y. 2020)5

Arizona v. California,
460 U.S. 605 (1983)7

Biden v. Texas,
597 U.S. 785 (2022) 2, 10

Conservation Nw. v. Sherman,
715 F.3d 1181 (9th Cir. 2013)22

DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.,
489 U.S. 189 (1989)21

Evans v. City of Chicago,
10 F.3d 474 (7th Cir. 1993)21

Farmer v. Brennan,
511 U.S. 825 (1994)21

Flores v. Barr,
407 F. Supp. 3d 909 (C.D. Cal. 2019)22

Flores v. Lynch,
212 F. Supp. 3d 907 (C.D. Cal. 2015)6

Flores v. Sessions,
394 F. Supp. 3d 1041 (C.D. Cal. 2017)6

Freeman v. Pitts,
503 U.S. 467 (1992)25

Garland v. Aleman Gonzalez,
596 U.S. 543 (2022) passim

Henderson v. Shinseki,
562 U.S. 428 (2011)10

Horne v. Flores,
557 U.S. 433 (2009) passim

In re E.R. Fegert, Inc.,
887 F.2d 955 (9th Cir. 1989)24

Jennings v. Rodriguez,
583 U.S. 281 (2018)18

1 *Lab./Cmty. Strategy Ctr. v. Los Angeles Cty. Metropolitan Transp. Auth.*,
564 F.3d 1115 (9th Cir. 2011).....12

2 *Magtanong v. Gonzales*,
494 F.3d 1190 (9th Cir. 2007).....11

3 *Meadows v. Dominican Republic*,
817 F.2d 517 (9th Cir. 1987).....9

4 *Metcalf v. Daley*,
214 F.3d 1135 (9th Cir. 2000).....23

5 *Miller v. United States*,
140 F. Supp. 789 (Ct. Cl. 1956)21

6 *Pa. Bureau of Correction v. U.S. Marshals Serv.*,
474 U.S. 34 (1985)5

7 *Perez v. Mortgage Bankers Ass’n*,
575 U.S. 92 (2015) 13, 14, 15

8 *Reno v. Flores*,
507 U.S. 292 (1993)21

9 *Rufo v. Inmates of Suffolk Cnty. Jail*,
502 U.S. 367 (1992) 8, 23

10 *Ruhrgas AG v. Marathon Oil Co.*,
526 U.S. 574 (1999)10

11 *Thomas v. Bible*,
983 F.2d 152 (9th Cir. 1993).....6

12 *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica*,
614 F.2d 1247 (9th Cir. 1980).....9

13 *United States ex rel. Wilson v. Walker*,
109 U.S. 258 (1883)5

14 *United States v. Cuddy*,
147 F.3d 1111 (9th Cir. 1998).....5

15

16

17 **Statutes**

18 5 U.S.C. § 553(c)22

19 5 U.S.C. §§ 553(b)13

20 8 U.S.C. § 1225(b)(3).....18

21 8 U.S.C. § 1252(f)(1) 3, 10

22 8 U.S.C. §§ 1225(b)17

23 Laken Riley Act, Pub. L. No. 119-21 (2025)18

Other Authorities

Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025).....17

Fed. Prac. & Proc. § 2862 (3d ed. 2025)9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

INTRODUCTION

Under Plaintiffs’ instant arguments, the Government is forever bound to a 1997 consent decree—regardless of changes in public policy, administration, or the law. According to Plaintiffs, because a previous administration declined to seek further review of this Court’s and the Ninth Circuit’s decisions enjoining Defendants’ regulations, the current (and every future) Administration’s hands are forever tied, and Defendants must either fully incorporate the 1997 *Flores* Settlement Agreement (FSA) into their regulations without any adjustment to reflect legitimate and lawful policy judgments, or remain bound to the FSA and this Court’s perpetual, nationwide oversight. That simply is not the law, as the Supreme Court has squarely held.

Plaintiffs’ arguments “turn[] the risks of institutional-reform litigation into reality.” *Horne v. Flores*, 557 U.S. 433, 453 (2009). They gloss over the Supreme Court’s holding in *Horne* that longstanding, institutional-reform decrees, such as this one, improperly interfere with the democratic process by confining democratically elected leaders to policy decisions made by previous administrations. *Id.* at 433. But this Court is bound by *Horne*, as no one disputes that the FSA has been treated as an institutional-reform decree. Thus, this Court must apply a “flexible approach” in determining whether it should terminate the FSA, regardless of whether Defendants have fully adopted the 28-year-old FSA as their own policy through rulemaking, and regardless of whether this Court and Plaintiffs approve of the current Administration’s policy priorities. *Id.* Because Defendants’ policies and regulations

1 are consistent with federal law, “continued enforcement of the order is not only
2 unnecessary, but improper.” *Id.* at 450.

3 Not only do Plaintiffs ignore the separation-of-powers concerns underlying
4 *Horne*, but they flout the Supreme Court’s decision in *Garland v. Aleman Gonzalez*,
5 596 U.S. 543 (2022). That precedent removed any doubt that this Court lacks
6 jurisdiction to enforce the FSA as to minors accompanied by their parent or legal
7 guardian. Plaintiffs argue that Defendants are barred from relying on *Aleman*
8 *Gonzalez* because Defendants have forfeited their arguments. Plaintiffs’ arguments
9 boil down to a Hail Mary attempt to avoid the fate of the FSA, and none of them
10 hold water because Section 1252(f)(1) speaks to a court’s “jurisdiction” to award
11 particular relief (*Biden v. Texas*, 597 U.S. 785, 801 (2022)), which is not subject to
12 forfeiture. In any event, because this is institutional-reform litigation, a decree that
13 ignores a plain congressional limit on this Court’s jurisdiction or authority cannot
14 continue. *Horne*, 557 U.S. at 453.

15 Plaintiffs also fail to meaningfully refute that the FSA’s sunset clause violates
16 the Administrative Procedure Act (APA). They have not explained how a judicial
17 decree mandating a predetermined result in rulemaking complies with the APA’s
18 requirement that agencies consider and respond to the public’s comments before
19 finalizing a rule. As the sunset clause does not allow the agencies to meaningfully
20 consider changes in the legal landscape or the public’s concerns in finalizing a rule,
21 it runs afoul to statutory rulemaking procedures and is unenforceable. Indeed, the
22 DHS and HHS regulations and policy updates are consistent with federal law, and
23

1 the few differences between the DHS regulations and the FSA are reasonable
2 responses to changed circumstances that have occurred in the past 28 years.

3 Because Plaintiffs do not meaningfully respond to the substance of
4 Defendants' arguments or acknowledge the changes in law, facts, and policy insights
5 that have occurred during the 28-year reign of the FSA, the Court should dissolve
6 the injunction as to the 2019 DHS Rule and terminate the FSA entirely.

7 **ARGUMENT**

8 **A. Plaintiffs fail to refute that 8 U.S.C. § 1252(f)(1) removes this Court's**
9 **authority enforce the FSA.**

10 *1. Aleman Gonzalez clarified that this Court lacks authority to enforce the*
11 *FSA because it restricts DHS's ability to "carry out" the immigration-*
12 *detention statutes.*

13 As explained in Defendants' Motion, *Aleman Gonzalez* resolved any doubt
14 that Section 1252(f)(1) divests this Court of jurisdiction to enforce the FSA because
15 the FSA's provisions restrain the operation of immigration detention. Defs.' Mot.,
16 ECF No. 1567 ("Defs.' Mot."), 32–34. Plaintiffs nonetheless argue that § 1252(f)(1)
17 does not preclude class-wide relief addressing conditions of detention and, thus,
18 § 1252(f)(1) does not preclude this Court from enforcing the FSA as a whole. Pls.'
19 Opp'n, ECF No. 1584 ("Pls.' Opp'n"), 5. Not so. The statute that authorizes
20 detention gives rise to every decision DHS makes with respect to that detention,
21 including the conditions thereof. As the Supreme Court clarified, § 1252(f)(1) strips
22 lower courts of authority to restrict "the way [the detention provisions in §§ 1221–
23 1231 are] being carried out." *Aleman Gonzalez*, 596 U.S. at 550. Tellingly, in
Aleman Gonzalez, the Supreme Court held that court orders requiring bond hearings

1 for individuals detained under § 1231(a)(6) violated § 1252(f)(1), even though
2 § 1231(a)(6) permits such bond hearings. *Id.* at 551. Because the district courts’
3 bond-hearing orders “require officials to take actions that (in the Government’s
4 view) are not required by § 1231(a)(6) and to refrain from actions that (again in the
5 Government’s view) are allowed by § 1231(a)(6),” the orders restrained the
6 operation of § 1231(a)(6). *Id.* This same limit on relief controls here.

7 Moreover, Plaintiffs’ incorrect interpretation could not save the FSA
8 provisions governing release. Because the FSA requires DHS to release individuals
9 in its administration of the covered provisions—including individuals whom it is
10 statutorily precluded from releasing—the FSA necessarily restrains how DHS
11 “carries out” the detention provisions in §§ 1225, 1226, and 1231. Thus, the Court
12 lacks authority to enforce the FSA’s provisions related to expeditious release (para.
13 14). In addition, this Court lacks authority to enforce the other FSA provisions that
14 restrict DHS’s ability to carry out immigration detention, including the right to a
15 bond hearing (paras. 12A and 24), the type of detention facility or program (paras.
16 12, 19–23, 27), as well as any corresponding terms in the FSA exhibits. Now that
17 *Aleman Gonzalez* has held that the Court lacks the power to enforce most of the
18 FSA’s provisions as to class members accompanied by their parents or legal
19 guardians, termination of the FSA as to DHS under Rules 60(b)(4) and 60(b)(5) is
20 required.

21 Plaintiffs also argue that the FSA, not the Court, enjoins the operation of the
22 detention statutes, and therefore the Court’s enforcement of the FSA is not subject
23 to § 1252(f)(1). Pls.’ Opp’n, 18. But Plaintiffs’ argument fails to recognize that the

1 FSA is a consent decree—a judicial order—under which the Court retains the
2 authority to enforce its provisions. The decree itself is inconsistent with Section
3 1252(f)(1) and, absent the authority to enforce the FSA’s provisions, the consent
4 decree is void. *United States ex rel. Wilson v. Walker*, 109 U.S. 258, 266 (1883)
5 (judgment was void where the district court had subject-matter jurisdiction but
6 lacked the power to enter the decree and the relief requested); *Aleman Gonzalez*, 596
7 U.S. at 548 (“We hold that the District Courts exceeded their jurisdiction in awarding
8 [class-wide injunctive] relief.”).¹

9 2. *The law-of-the-case doctrine does not apply because Aleman Gonzalez*
10 *presents a change in law.*

11 Plaintiffs argue that the law-of-the-case doctrine bars DHS’s § 1252(f)(1)
12 argument given one of this Court’s prior rulings issued in 2017. Pls.’ Opp’n, 15.
13 When a “change in law” occurs, however, the law-of-the-case doctrine does not
14 apply. *United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998). Defendants’
15 previous motion—and the Court’s 2017 decision—did not have the benefit of
16 *Aleman Gonzalez*. Because the Court never decided whether it has authority to

17
18 ¹ Plaintiffs state that DHS does not explain how § 1252(f)(1) strips this Court’s
19 authority to enforce the FSA under the All Writs Act. Pls.’ Opp’n, 19 n.7. The Court
20 should look no further than the prefatory clause in § 1252(f)(1), which prohibits
21 class-wide relief “[r]egardless of the nature of the action or claim or of the identity
22 of the party[.]” Further, because the All Writs Act is a “residual source of authority
23 to issue writs that are not otherwise covered by statute,” if a statute—such as
§ 1252(f)(1)—“addresses the particular issue at hand, it is that authority, and not the
All Writs Act, that is controlling.” *Pa. Bureau of Correction v. U.S. Marshals Serv.*,
474 U.S. 34, 43 (1985); *see also Ali v. Barr*, 464 F. Supp. 3d 549, 560 n.9 (S.D.N.Y.
2020) (finding that the All Writs Act did not confer jurisdiction where Section
1252(f)(1) divested the court of jurisdiction to issue the injunction sought).

1 restrict DHS’s ability to detain class members through the lens of *Aleman Gonzalez*,
2 the law-of-the-case doctrine does not apply.

3 Well before *Aleman Gonzalez*, this Court briefly addressed Section
4 1252(f)(1), holding that it did not preclude the Court from imposing a class-wide-
5 release requirement so long as the government decided how to apply it in individual
6 cases. *Flores v. Sessions*, 394 F. Supp. 3d 1041, 1066–67 (C.D. Cal. 2017). But that
7 decision predates *Aleman Gonzalez* and cannot be reconciled with it. It also did not
8 decide the issue presented here “either expressly or by necessary implication in [the]
9 previous disposition.” *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993) (citation
10 omitted). This Court did not grapple with whether imposing a class-wide-release
11 obligation—even if applied in individual cases—restrains DHS’s ability to “carry
12 out” the detention authorities in 8 U.S.C. §§ 1221–1231. It does.

13 *Aleman Gonzalez* has since clarified that § 1252(f)(1) strips district courts of
14 authority not only to restrict immigration detention, but DHS’s ability to “carry out”
15 the immigration-detention provisions. 596 U.S. at 548–50. This Court’s 2017 ruling
16 applies its construction of how parole is used in expedited-removal proceedings for
17 an entire class, and thereby requires DHS to “make individualized determinations”
18 regarding the release of class members detained under §§ 1225, 1226, or 1231. This
19 Court’s enforcement of this holding thus restricts DHS’s ability to carry out the
20 detention statutes. For the same reason, the Court’s order requiring DHS to generally
21 release class members who are detained under § 1225(b)(1) within approximately
22 20 days (*see Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015)) also
23 violates § 1252(f)(1).

1 In addition, the law-of-the-case doctrine does not apply because the Court’s
2 previous decisions were “clearly erroneous” considering *Aleman Gonzalez* and
3 would “work a manifest injustice.” *Arizona v. California*, 460 U.S. 605, 618 n.8
4 (1983). When a case “would be decided differently” under *current* Supreme Court
5 precedent, “adherence to [the previous] decision would undoubtedly work a
6 ‘manifest injustice,’ such that the law of the case doctrine does not apply.” *Agostini*
7 *v. Felton*, 521 U.S. 203, 236 (1997) (citation omitted).

8 As explained *supra*, *Aleman Gonzalez* removed any doubt that § 1252(f)(1)
9 strips district courts of authority to enjoin or restrict the government’s ability to carry
10 out the immigration-detention provisions in §§ 1225–1231. Indeed, the Supreme
11 Court determined that § 1252(f)(1) prohibited district courts from requiring bond
12 hearings—*i.e.*, an individualized determination of whether to release an alien—for
13 aliens detained under § 1231(a)(6), which permits (but does not require) detention.
14 That is almost exactly what this Court required in 2017. Under this precedent, this
15 Court’s ability to enforce the FSA’s “expeditious release” provision, including
16 requiring individualized-parole determinations and a general presumption of release
17 after 20 days, would be decided differently. Because this Court’s enforcement of the
18 expeditious-release provisions is utterly incompatible with *Aleman Gonzalez*,
19 adhering to the Court’s previous decisions would result in manifest injustice, and the
20 law-of-the-case doctrine is inapplicable. *Agostini*, 521 U.S. at 236.

21 3. *DHS has not forfeited or waived its argument.*

22 In another attempt to dodge *Aleman Gonzalez*, Plaintiffs argue that DHS
23 forfeited its § 1252(f)(1) arguments because DHS did not make this argument on

1 appeal. Pls.’ Opp’n, 16. Plaintiffs’ argument disregards the intervening change in
2 law reflected in *Aleman Gonzalez*, as well as *Horne*. In *Horne*, the court of appeals
3 held that the defendants (under a previous administration) forfeited their arguments
4 about changed circumstances because they failed to appeal. *Horne*, 557 U.S. at 452.
5 But the Supreme Court rejected that premise, explaining that the appellate court’s
6 focus on the defendants’ failure to appeal “insulated the policies embedded” in the
7 district court’s order, because those policies “were supported by the very officials
8 who could have appealed them . . . and, as a result, were never subject to true
9 challenge.” *Id.* at 453. Therefore, “[i]nstead of focusing on the failure to appeal,”
10 courts must conduct “the type of Rule 60(b)(5) inquiry prescribed in [*Rufo v. Inmates*
11 *of Suffolk Cnty. Jail*, 502 U.S. 367 (1992)],” which “makes no reference to the
12 presence or absence of a timely appeal.” *Id.* Indeed, the entire point of Rule 60(b) is
13 to review the equities moving forward given the passage of time since an original
14 consent to the court-ordered relief.

15 Further, Plaintiffs’ forfeiture argument fails to acknowledge that *Aleman*
16 *Gonzalez* was not yet decided when the Government appealed from this Court’s
17 order denying Defendants’ motion to terminate in 2019. “Failure” to cite controlling
18 but not-yet-in-existence Supreme Court authority is not a waiver.

19 4. *Rule 60(c) does not limit the time for DHS to bring its Motion to Terminate.*

20 Next, Plaintiffs argue that DHS has not moved for relief within a “reasonable
21 time” under Rule 60(c) either because three years have elapsed since *Aleman*
22 *Gonzalez* was issued or because Section 1252 was enacted in 1996. Pls.’ Opp’n, 17.
23 Plaintiffs misunderstand the relief that DHS seeks. DHS moved for relief in part

1 under Rule 60(b)(4) because this Court lacks authority to enforce the FSA’s
2 provisions under § 1252(f)(1), and the FSA is therefore void. Defs.’ Mot., 32. “There
3 is no time limit on a Rule 60(b)(4) motion to set aside a judgment as void.” *Meadows*
4 *v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987); Wright & Miller, Fed.
5 Prac. & Proc. § 2862 (3d ed. 2025) (explaining that “the requirement that [Rule 60(b)
6 motions] be made within a ‘reasonable time’ . . . cannot be enforced with regard to”
7 void judgments). Indeed, courts lack discretion to decline to vacate a void judgment.
8 *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica*, 614
9 F.2d 1247, 1256 (9th Cir. 1980). Thus, the “reasonable time” limitation in Rule 60(c)
10 does not apply, and this Court lacks discretion to decline to vacate the FSA as to
11 DHS, or at least the portions that are unenforceable under § 1252(f)(1).

12 Further, DHS’s request for termination under Rule 60(b)(5) is timely under
13 the circumstances, and *Horne* and *Rufo* stress that the passage of time militates in
14 favor of lifting long-term consent decrees, not imposing an artificial-limitations
15 period that would further ossify the agreement into perpetual judicial oversight.
16 Indeed, the litigation decisions of one administration should not bind subsequent
17 ones. *Horne*, 557 U.S. at 453. Given the “features of institutional reform litigation,
18 federal courts must take a ‘flexible approach’ to Rule 60(b)(5) motions brought in
19 this context” and promptly return the responsibility of discharging the Executive
20 Branch’s obligations “when circumstances warrant.” *Id.* at 450 (citation omitted).

21 This Court must therefore take a flexible approach in determining whether
22 DHS has moved for relief under Rule 60(b)(5) within a reasonable time. The current
23 Administration moved for termination four months after being sworn in, which is a

1 reasonable time. That the previous Administration did not challenge this Court’s
2 jurisdiction under *Aleman Gonzalez* should not bind this Administration. Holding
3 otherwise would improperly “bind” the current officials “to the policy preferences
4 of their predecessors.” *Id.* at 449.

5 5. *Section 1252(f)(1) presents a jurisdictional issue.*

6 Next, Plaintiffs argue that § 1252(f)(1) is not a limit on subject-matter
7 jurisdiction but a limitation on relief. Pls.’ Opp’n, 22. The parties need not quibble
8 about jurisdiction here.

9 Congress clearly stated that the prohibition on relief under § 1252(f)(1) is
10 jurisdictional: “no court (other than the Supreme Court) shall have *jurisdiction* or
11 authority to enjoin or restrain the operation” of §§ 1221–1231. 8 U.S.C. § 1252(f)(1).
12 “Section 1252(f)(1) no doubt deprives the lower courts of ‘jurisdiction’ to grant
13 classwide injunctive relief.” *Biden v. Texas*, 597 U.S. at 801. Because Congress
14 limited the Court’s “jurisdiction or authority” to issue the classwide relief that the
15 FSA demands, this Court must reassess its jurisdiction to enforce the FSA, regardless
16 of when § 1252(f)(1) was enacted or whether the parties originally believed that the
17 Court had jurisdiction. *Henderson v. Shinseki*, 562 U.S. 428, 434–35 (2011).

18 The cases cited by Plaintiffs in support of their assertion that § 1252(f)(1) is
19 simply a limitation on relief and not a jurisdictional limitation (Pls.’ Opp’n, 13) are
20 inapposite. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583–84 (1999),
21 discusses personal jurisdiction over parties, which a party may waive through
22 consent to the court’s exercise of authority. Section 1252(f)(1) does not govern
23 personal jurisdiction over parties; it limits a court’s jurisdiction to issue certain

1 classwide relief. The other cases cited by Plaintiffs discuss waiving objections to a
2 court’s authority to issue injunctive relief where a complaint essentially sought
3 money damages. Conversely, Section 1252(f)(1) is an explicit, jurisdiction-stripping
4 statute that cannot be waived. *Magtanong v. Gonzales*, 494 F.3d 1190, 1191 (9th
5 Cir. 2007) (“A mandatory and jurisdictional rule cannot be forfeited or waived, and
6 courts lack the authority to create equitable exceptions to such a rule.”).

7 At the very least, *Aleman Gonzalez* “undermine[s] the assumptions upon
8 which” this Court relied in issuing classwide relief restricting the operation of the
9 immigration-detention statutes. *Agostini*, 521 U.S. at 222. Because *Aleman Gonzalez*
10 undermines the presumption that the parties and Court relied on when entering the
11 FSA, relief under Rule 60(b)(5) is appropriate.²

12 **B. Plaintiffs’ complaints about the policies and conditions at ORR, CBP,
13 and ICE facilities are insufficient to refute that the agencies have
14 substantially satisfied the FSA.**

15 Plaintiffs’ opposition rests on a view of the “substantial compliance” standard
16 (Pls.’ Opp’n, 24–25) that is excessively narrow and defies controlling precedent. As
17 an initial matter, the key point is that, after so many years, the inappropriateness of
18 subjecting a major portion of the immigration system to the management of a single
19 federal court is the fundamental reason the FSA must be terminated. Even reviewing
20 the governing rules in the context of “substantial compliance,” that standard
21 considers a party’s compliance with the agreement “as a whole” rather than fixating

22 ² Plaintiffs claim that Defendants concede that “1252(f)(1) does not bar the Settlement’s protecting
23 children not placed in expedited removal proceedings.” Pls.’ Opp’n, 23. That is incorrect. *See*
24 Defs.’ Mot. 32-33 (explaining that Section 1252(f)(1) covers detention under §§ 1225, 1226, and
25 1231).

1 on singular provisions. *Lab./Cmty. Strategy Ctr. v. Los Angeles Cty. Metropolitan*
2 *Transp. Auth.*, 564 F.3d 1115, 1121 (9th Cir. 2011). Unlike “full” compliance,
3 substantial compliance is a “less precise standard that cannot be satisfied by
4 reference to one particular figure, while ignoring alternative information.” *Id.* Under
5 this standard, Defendants have substantially satisfied the provisions of the FSA. *See*
6 *Defs.’ Mot.*, 35–40.

7 Plaintiffs nonetheless argue that CBP has not substantially complied with the
8 FSA by pointing to findings by this Court from 5–10 years ago. *Pls.’ Opp’n*, 29–30.
9 But CBP regulations fully implement the FSA, as the Ninth Circuit determined. *See*
10 *Defs.’ Mot.*, 40. Plaintiffs cite a handful of class members’ allegations about
11 improper conduct that are unsubstantiated, ECF No. 1606-1, ¶¶ 9-10, and
12 inconsistent with the Juvenile Care Monitor’s (JCM) findings that CBP officers and
13 agents treat class members professionally and that class members and their parents
14 generally feel safe. *See* ECF No. 1578 at 15. The allegations cited in Plaintiffs’
15 opposition also contradict the JCM’s consistent finding that CBP facilities are clean
16 (*id.* at 11) and that CBP has substantially complied with the 2022 Settlement, ECF
17 No. 1254, (*id.* at 5, 15, 16, 18), which contains terms exceeding what the FSA
18 requires. Plaintiffs’ evidence does not overcome the evidence in the Modlin
19 Declaration, ECF No. 1567-2, or in the declarations of Benjamin Hollinder, ECF
20 No. 1606-1, Luis Mejia, ECF No. 1606-2, and Margaret Brewinski Isaacs, ECF No.
21 1606-5, all of which show that CBP substantially complies with the FSA.

22 As to ICE, Plaintiffs point to judicial findings that are over five years old and
23 based on the exigencies of the height of the COVID-19 pandemic. *Pls.’ Opp’n*, 31–

1 32. These stale findings do not reflect the conditions at family residential centers
2 (FRCs) today. Plaintiffs also apparently argue that ICE’s education, visitation, and
3 recreation policies violate the FSA. *Id.* at 32. But Plaintiffs fail to acknowledge that
4 class members are generally at FRCs for 20 days or less. The education, recreational
5 opportunities, and visitation that ICE provides at FRCs are consistent with the short
6 durations of stays. And detailed ICE regulations govern those requirements, exactly
7 as called for by the FSA.

8 As to ORR, Plaintiffs argue that ORR’s policy updates do not constitute
9 substantial compliance with the FSA because they are not regulations. *See Pls.’*
10 *Opp’n* at 16. But Defendants have published interpretive rules, as provided under
11 the APA, in updating its Policy Guide. *See Defs.’ Mot.*, 25 (“HHS’s policy guidance
12 establishes that it is implementing the Foundational Rule in accordance with this
13 Court’s concerns . . . [in its] June 28, 2024 order.”).

14 Interpretive rules are “rules or statements issued by an agency to advise the
15 public of the agency’s construction of the statutes and rules which it administers.”
16 U.S. Dep’t of Justice, Attorney General’s Manual on the Administrative Procedure
17 Act 30 n.3 (1947); *see also* 5 U.S.C. §§ 553(b), (d)(2). Although interpretive rules
18 lack the “force of law,” that does not remove them from the APA definition of “rule.”
19 *See Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 96 (2015) (“Not all ‘rules’ must
20 be issued through the notice-and-comment process.”).

21 In its June 28, 2024 order, this Court explained what is required to fully
22 terminate the FSA as to HHS under Paragraph 40. ORR has now implemented those
23 requirements through its Policy Guide updates. With respect to placements in

1 heightened-supervision facilities, ORR amended its policies to remove petty and
2 isolated offenses serving as a basis for step up to a heightened-supervision facility.
3 *See* Policy Guide § 1.2.4. ORR also removed text that permitted ORR to consider
4 whether a child is “ready for step down from a secure facility” in determining
5 whether to place a child in a heightened-supervision facility, which Plaintiffs do not
6 dispute. *See generally* Pls.’ Opp’n.

7 With respect to out-of-network placements, ORR updated its Policy Guide to
8 provide that “children placed in an out-of-network facility will generally receive or
9 have arranged the services established under Section 3.3 Care Provider Required
10 Services.” Policy Guide § 1.4.6. The same section acknowledges that sometimes a
11 “particular service is not practicable but placement in a specialized facility is still in
12 an individual child’s best interest.” In those cases, ORR consults with “independent
13 experts, including health care providers, to determine the extent to which the
14 minimum services may be provided for or arranged,” and documents “the actions
15 taken with respect to required services[.]” Further, ORR does not place UAC at an
16 out-of-network facility if “a service which is required for the child’s best interests”
17 cannot be provided at the facility. *Id.* ORR’s policy updates as to out-of-network
18 placements thus reasonably implement this Court’s prior order, accounting for
19 operational realities when making such placements in the child’s best interest.

20 Although the policy guidance does not adopt verbatim the terms of the FSA—
21 nor could it, as the FSA does not discuss heightened-supervision or out-of-network
22 facilities—the pertinent question is whether ORR’s guidance “substantially
23 complies” with the remaining terms of the FSA. It plainly does. As explained *supra*,

1 ORR has clarified that, under the Foundational Rule, it does not permit consideration
2 of “petty” or certain non-violent “isolated” offenses alone when determining
3 whether a heightened-supervision facility is appropriate. *See* ECF 1567-8. Instead,
4 ORR looks at the nature of the offense to determine whether there is a behavioral
5 concern requiring close monitoring. This is consistent with the FSA; the FSA is
6 silent about requirements for “medium” secure facilities, which is the equivalent of
7 “heightened-supervision” facilities. ORR must have some discretion when
8 determining where to place vulnerable minors who may need additional supervision
9 due to, for example, concerns about suicide or escape attempts.

10 Plaintiffs next assert that out-of-network facilities are more restrictive and
11 punitive than ORR facilities based on their assessment of one facility, Murphy
12 Harpst, that they visited over six months ago. Pls.’ Opp’n, 26–27. While Plaintiffs
13 submitted three declarations from class members alleging the use of seclusion as a
14 behavior-management tool and lack of recreation, the allegations are untrue. *See*
15 *generally* Decl. of Toby Biswas, Ex. A. Murphy Harpst does not practice seclusion.
16 *Id.*, ¶ 11. Rather, it provides “sensory/quiet rooms,” which help youth regulate their
17 emotions and “cool off.” *Id.*, ¶¶ 13-16. At no point are UACs in a sensory/quiet room
18 instructed not to leave nor are they physically prevented from leaving. *Id.* ¶ 17.

19 As to recreation, Murphy Harpst offers numerous recreational activities, and
20 ORR’s records show that declarants were provided ample recreation opportunities.
21 *Id.* ¶¶ 22–26.

22 Plaintiffs also discuss UAC’s length of stay in ORR custody, but the Court no
23 longer has jurisdiction to review this issue as it relates to minors in ORR facilities.

1 In fact, a newly filed case is challenging these ORR policies that have allegedly
2 contributed to a delay in releasing class members. *See Angelica S. v. HHS*, No. 1:25-
3 cv-1405 (D.D.C.), ECF No. 1. That matter is being litigated in a different court, and
4 *Flores* counsel’s attempt to bring up the alleged delays here is inappropriate.

5 **C. Plaintiffs fail to acknowledge that the FSA is an institutional-reform**
6 **decree that warrants termination if the Court determines that the FSA is**
7 **no longer necessary to ensure compliance with federal law.**

8 Plaintiffs argue that Defendants are attempting to “relitigate” issues that the
9 Court has already decided. Pls.’ Opp’n, 37. That contention misapprehends the
10 standard for terminating institutional-reform decrees.

11 The FSA is no ordinary consent decree. Rather, it is an institutional-reform
12 decree that permits intrusive judicial oversight over nationwide-immigration policy.
13 Special considerations apply in such cases. Because of the “features of institutional
14 reform decrees,” courts must take a “‘flexible approach’ to Rule 60(b)(5) motions
15 addressing such decrees.” *Horne*, 557 U.S. at 450 (citation omitted). Such decrees
16 “often remain in force for many years, and the passage of time frequently brings
17 about changed circumstances—changes in the nature of the underlying problem,
18 changes in governing law or its interpretation by the courts, and new policy
19 insights—that warrant reexamination of the original judgment.” *Id.* at 447–48. “If a
20 federal consent decree is not limited to reasonable and necessary implementations
21 of federal law, it may improperly deprive future officials of their designated
22 legislative and executive powers.” *Id.* at 450 (cleaned up). Thus, contrary to
23 Plaintiffs’ assertion, this Court must consider the change in Administration and its

1 policy insights, as well as whether the FSA remains necessary to implement federal
2 law. *Id.* All these considerations support wholesale termination of the FSA.

3 Plaintiffs strikingly do not even *attempt* to prove that “ongoing enforcement”
4 of the FSA is “supported by an ongoing violation of federal law.” *Horne*, 557 U.S.
5 at 454. Plaintiffs do not contest that Defendants have implemented a “durable
6 remedy” to ensure compliance with federal law. *Id.* at 450. Instead, Plaintiffs assert
7 that all that matters is compliance with “*the Settlement.*” Pls.’ Opp’n, 29. That is
8 wrong under *Horne*. Plaintiffs argue that *Horne* is inapposite because it involved a
9 litigated injunction, not a consent decree. This purported distinction ignores the facts
10 and the Supreme Court’s reasoning about the risks of institutional-reform decrees.
11 The policies mandated by the injunction in *Horne* “were supported by the very
12 officials who could have appealed them” and were thus “never subject to true
13 challenge,” just like a consent decree. *Id.* at 453. The Supreme Court made plain that
14 its holding applies to all institutional-reform decrees, whether consent decrees or
15 not. *Id.* at 447–50, 453–55.

16 Other factual and legal changes also justify terminating the FSA. This
17 Administration has determined that the best policy for maintaining border security
18 is to detain any aliens who lack authorization to enter or remain in the United States
19 pending the outcome of their removal proceedings. *See* ECF No. 1567-12, ¶ 19; *see*
20 *also* Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025). Class members
21 who lack lawful-immigration status are therefore subject to detention pending their
22 removal proceedings. Exec. Order No. 14,160, § 10; *see also* 8 U.S.C. §§ 1225(b),
23

1 1226(c); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). This policy conflicts with
2 the FSA’s expeditious-release provisions but is consistent with federal law.

3 Another important and intervening change in law is the enactment of the
4 Laken Riley Act. Although Plaintiffs deny its relevance, Pls.’ Opp’n, 37, the Act
5 expands the category of mandatory detention for alien minors and their family
6 members. If DHS releases an alien minor and their family members who are subject
7 to immigration detention and the minor or one of their family members commits a
8 crime, the State where the crime occurred may sue DHS for releasing the alien(s)
9 from custody. *See* Defs.’ Mot., 24–25; *see also* 8 U.S.C. § 1225(b)(3). The Act does
10 not carve out an exception for minors or juvenile delinquencies; rather, the only
11 requirements under the Act are: (1) that the alien was released from immigration
12 detention; and (2) that the alien harms a state or a state’s resident. 8 U.S.C.
13 § 1225(b)(3). Thus, Plaintiffs’ assertion that the Laken Riley Act does not apply here
14 because it does not “target” minors is incorrect, as the Act does not distinguish
15 between minors and adults.

16 In addition to the Laken Riley Act, on July 4, 2024, President Trump signed
17 the “One Big Beautiful Bill Act” into law, which states that family units (FAMUs)
18 may be held in FRCs throughout their removal proceedings. *See* Pub. L. No. 119-
19 21, § 90003 (2025). It defined “Family Residential Center” as a “facility used by
20 [DHS] to detain family units of aliens (including alien children who are not [UAC]
21 who are encountered or apprehended by [DHS].” *Id.* This change in law is a
22 significant changed circumstance that supports termination of the FSA as to DHS,
23 as it shows that Congress approves of ICE’s use of FRCs to house class members,

1 and that Congress has granted DHS full discretion in determining whether to detain
2 a class member throughout their removal proceedings. Thus, ICE’s use of FRCs is
3 not contrary to federal law—it is consistent with federal law. The FSA, on the other
4 hand, is contrary to current law and must be terminated as to DHS.

5 Plaintiffs further argue that the Court should not consider the increase in
6 border encounters as evidence of changed circumstances because this Court has
7 previously found that border surges do not warrant modification of the FSA. Pls.’
8 Opp’n, 38. However, as Defendants explained in their Motion, border encounters
9 were “unprecedented” during FY 2024, ultimately resulting in many individuals
10 being released into the interior without proper vetting and many FAMUs
11 absconding. *See* Defs.’ Mot., 60; *see also* Helland Decl., ECF No. 1567-12 at 5.
12 Also, given the passage of time and pattern of unpredictable border surges, this Court
13 must reassess whether the FSA infringes on the Executive’s ability to address such
14 surges. *Horne*, 557 U.S. at 453 (“[T]he longer an injunction or consent decree stays
15 in place, the greater the risk that it will improperly interfere with a State’s democratic
16 processes.”).

17 Plaintiffs also assert that a policy to discourage unlawful entry into the United
18 States “would not justify detaining children to deter others.” Pls.’ Opp’n, 39. They
19 have it backwards. Congress has authorized, and sometimes requires, DHS to detain
20 aliens who enter or remain in the United States without authorization. The policy of
21 Defendants is to follow the law and comply with Congress’s orders.

1 **D. In opposing Defendants’ separation-of-powers and APA arguments,**
2 **Plaintiffs demonstrate that the FSA improperly binds federal officials to**
3 **the policies of their predecessors.**

4 Plaintiffs again fail to address *Horne* in arguing that Defendants have not
5 shown that the continued enforcement of the FSA improperly infringes on the
6 Executive’s authority over immigration policy. Instead, Plaintiffs advocate for the
7 very outcome that the Supreme Court warned against in *Horne*: no matter the
8 passage of time, changes in administrations, or changes in political preferences,
9 future officials will be perpetually constrained to antiquated agreements that far
10 exceed what federal law requires. 557 U.S. at 450. In Plaintiffs’ view, Defendants
11 must either remain bound by the FSA or must bind themselves to the FSA’s 28-year-
12 old provisions by adopting them verbatim into a regulation. Pls.’ Opp’n, 41 (“Any
13 of these prior administrations could have exited the Settlement simply by
14 promulgating rules that are consistent with it. If Defendants wish to exit the FSA,
15 that path remains open to them, too.”). Such a scenario “bind[s] state and local
16 officials to the policy preferences of their predecessors,” thus “improperly
17 depriv[ing] future officials of their designated legislative and executive powers.”
Horne, 557 U.S. at 449 (citation and quotations omitted).

18 Plaintiffs principally assert that the FSA does not violate the separation of
19 powers or the APA because Executive officials in 1997 agreed to the FSA. Pls.’
20 Opp’n, 40. But Plaintiffs do not refute Defendants’ argument that “this Court’s
21 interpretation and enforcement of the FSA have significantly expanded it beyond
22 lawful bounds.” Defs.’ Mot., 45. Plaintiffs also do not address the case law that
23 Defendants cited to show that “[c]onsent alone is insufficient to support a

1 commitment by a public official that ties the hands of his successor.” *Id.* at 50
2 (quoting *Evans v. City of Chicago*, 10 F.3d 474, 478 (7th Cir. 1993) (en banc)
3 (plurality opinion)). Instead, Plaintiffs rely on out-of-context quotations from
4 inapposite cases. Pls.’ Opp’n, 40. This Court, however, has not spent the last 28
5 years resolving disputes about something as mundane as the sale of “surplus
6 Government aircraft.” *Miller v. United States*, 140 F. Supp. 789, 790 (Ct. Cl. 1956)
7 (quoted by Plaintiffs). Rather, the Court has intensively overseen immigration
8 policy, a matter uniquely “committed to the political branches of the Federal
9 Government.” *Reno v. Flores*, 507 U.S. 292, 305 (1993) (citation omitted).

10 Plaintiffs further assert that the FSA does not violate the Executive’s authority
11 over immigration policy because it “simply requires Defendants to treat children
12 humanely while they are in [the government’s] custody.” Pls.’ Opp’n, 40. Plaintiffs
13 conflate the constitutional requirements for conditions of confinement with the
14 FSA’s requirements. As Plaintiffs concede, the FSA provides more than what federal
15 law requires. Pls.’ Opp’n, 29. The FSA is not the constitutional floor for conditions
16 of confinement; rather, it is “policy” that was determined to be reasonable and
17 manageable in 1997. ECF 1567-15 (FSA), ¶ 9. Regardless of whether the FSA
18 remains in place, the Constitution will still require that the Government treat class
19 members humanely while they are in its custody, and class members can always seek
20 judicial relief if the custodial conditions do not satisfy Due Process. *DeShaney v.*
21 *Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989); *Farmer v.*
22 *Brennan*, 511 U.S. 825, 832 (1994). The question is thus whether the FSA—which
23 unambiguously goes *beyond* the constitutional floor—must remain in place

1 perpetually (either as a consent decree or in new regulations). Rule 60 and binding
2 Supreme Court precedents make plain that it need not—and cannot.

3 Next, in response to Defendants’ argument that the FSA’s termination
4 provisions violate the APA, Plaintiffs argue Defendants are precluded from making
5 this argument because this Court has already rejected it. Pls.’ Opp’n, 41–42. But
6 Plaintiffs fail to point to any express conclusion by this Court that the FSA’s
7 termination provisions do not violate the APA. While this Court previously rejected
8 Defendants’ argument that “enforcing” the FSA impermissibly “create[s] additional
9 procedures for [APA] rulemaking,” *Flores v. Barr*, 407 F. Supp. 3d 909, 925 (C.D.
10 Cal. 2019), that is not Defendants’ instant argument. Rather, the Court must decide
11 whether the FSA’s termination procedure itself—to the extent it requires a
12 predetermined result—violates the APA’s rulemaking procedures. It does.

13 In fact, this Court’s conclusion that the regulations “must also satisfy
14 Paragraphs 9 and 40” of the FSA in addition to the APA rulemaking procedures (*id.*
15 at 924) reinforces Defendants’ argument that the FSA mandates a predetermined
16 result in rulemaking. Where a consent decree promulgates “a new substantive rule,
17 or where the changes wrought by the decree are *permanent* rather than temporary,
18 the decree may run afoul of statutory rulemaking procedures even though it is in
19 form a ‘judicial act.’” *Conservation Nw. v. Sherman*, 715 F.3d 1181, 1187 (9th Cir.
20 2013) (citation omitted). Because the APA generally requires agencies to consider
21 the public’s comments on a proposed regulation and make changes as necessary,
22 such a predetermined result violates the APA. 5 U.S.C. § 553(c) (“After notice
23 required by this section, the agency *shall* give interested persons an *opportunity to*

1 *participate in the rule making After consideration* of the relevant matter
2 presented, the agency shall incorporate in the rules adopted a concise general
3 statement of their basis and purpose.”) (emphasis added); *Cf. Metcalf v. Daley*, 214
4 F.3d 1135, 1145 (9th Cir. 2000) (“We hold that by making such a firm commitment
5 before preparing an [environmental assessment], the Federal Defendants failed to
6 take a ‘hard look’ at the environmental consequences of their actions.”). Because the
7 FSA removes the agencies’ ability to meaningfully consider the public’s
8 submissions and changes in the immigration landscape, it violates the APA and is
9 unenforceable.

10 **E. Wholesale termination is a suitably tailored remedy, but, in the**
11 **alternative, Defendants seek partial termination of the FSA.**

12 Lastly, Plaintiffs argue that wholesale termination is not a suitably tailored
13 remedy under *Rufo*, 502 U.S. at 383. Pls.’ Opp’n, 45. But under *Horne*, which
14 applied *Rufo*, wholesale termination of the FSA is required if it is no longer
15 necessary to ensure compliance with federal law (as explained *supra*, it is not).
16 *Horne*, 557 U.S. at 450–51; *see also* Defs.’ Mot., 31 n.10.

17 That is the case here. Termination as to all parties is necessary because the
18 FSA does not address an ongoing violation of federal law, and its continued
19 enforcement is detrimental to the public interest in that it encourages unlawful
20 migration and requires the Government to disregard the mandatory-detention
21 statutes. *See* Defs.’ Mot., 14, 39. It also encourages children (and their parents) to
22 make the dangerous journey to the United States. Defs.’ Mot., 14. In addition,
23 keeping the FSA intact violates the separation of powers because its continued

1 implementation infringes on the Executive Branch’s ability to enforce immigration
2 laws.

3 Alternatively, as noted in Defendants’ Motion, partial termination as to DHS
4 is necessary under *Aleman Gonzalez*. Defs.’ Mot., 32. At the very least, this Court
5 must terminate the expeditious-release provisions because they restrict DHS’s
6 ability to carry out the FSA.

7 Additionally, as explained in Defendants’ Motion, termination as to HHS is
8 necessary because HHS has substantially incorporated the FSA through the issuance
9 of its updated policy guidance. *Id.* at 36.

10 Termination as to CBP is also required because the Ninth Circuit held that the
11 regulations regarding CBP facilities may take effect. *Id.* at 41. Likewise, this Court
12 must terminate all FSA terms that are incorporated into DHS’s regulations per the
13 FSA’s sunset clause. *Id.* at 40.³

14 Plaintiffs argue that partial termination based on the DHS regulations that are
15 consistent with the FSA is inappropriate because DHS has not “substantially
16 complied” with the FSA. *See* Pls.’ Opp’n, 35. Plaintiffs misapprehend the standard
17 governing partial termination. The *Freeman* standard that Plaintiffs cite (*id.*) sets the
18 standard for incrementally withdrawing court supervision of a “court-supervised

19 ³ Defendants requested partial termination as an alternative to wholesale termination. *See, e.g.,*
20 Defs.’ Mot., 32 (“This Court must dissolve the FSA *as to DHS*”); *id.* at 40–41 (arguing that the
21 injunction should be lifted as to “the corresponding sections” of the DHS Rule that are consistent
22 with the FSA). Defendants’ arguments were sufficient to put Plaintiffs on notice that Defendants
23 alternatively seek partial termination and are sufficient for the Court to rule on them. *In re E.R.*
Fegert, Inc., 887 F.2d 955, 957 (9th Cir. 1989). For the same reasons, if the Court finds that HHS
has substantially complied with the FSA but rejects DHS’s arguments, the Court should terminate
the FSA in its entirety as to HHS. *Horne*, 557 U.S. at 450.

1 desegregation plan” due to substantial compliance. *Freeman v. Pitts*, 503 U.S. 467,
2 491 (1992). Likewise, the Ninth Circuit in *Jeff D. v. Otter* applied the *Freeman*
3 standard in assessing “substantial compliance.” 643 F.3d 288 (9th Cir. 2011). Here,
4 substantial compliance is not necessary for DHS’s regulations to take effect. Indeed,
5 the parties struck the original language requiring “substantial compliance” with the
6 FSA as a condition for termination and instead agreed that the FSA “shall terminate
7 . . . 45 days following defendants’ publication of final regulations implementing this
8 Agreement.” ECF 1567-15 at 32. Thus, the question is not whether termination is
9 warranted based on DHS’s record of compliance, but whether the provisions in
10 DHS’s regulations that are consistent with the FSA “may take effect,” thereby
11 partially displacing the FSA pursuant to its own terms. *Id.*; *see also Flores*, 984 F.3d
12 at 744.

13 Plaintiffs resist this conclusion by arguing that the Ninth Circuit only
14 permitted termination as to HHS based on its regulations. Pls.’ Opp’n, 34–35 (“[T]he
15 Ninth Circuit emphasized that ‘[a]ny motion to terminate the Agreement in part [as
16 to HHS] would have to take into account our holding in *Flores I* that the Agreement
17 protects both unaccompanied and accompanied minors.’”) (citing *Flores*, 984 F.3d
18 at 744 n.12)). Plaintiffs inserted “as to HHS” in brackets, as this language is not in
19 the Ninth Circuit’s opinion. Indeed, the Ninth Circuit’s caution that any motion to
20 terminate must consider that the FSA “protects . . . accompanied minors” signals a
21 motion by *DHS*, as HHS lacks authority to care for such minors. Plaintiffs therefore
22 have not pointed to any authority that precludes lifting the injunction on the portions
23 of the DHS regulations that are not inconsistent with the FSA.

CONCLUSION

1
2 For the foregoing reasons, and the reasons discussed in Defendants’ Motion,
3 the Court should terminate the FSA.

4 DATED: July 25, 2025

Respectfully submitted,

5 BRETT A. SHUMATE

6 Assistant Attorney General

YAAKOV M. ROTH

7 Principal Deputy Assistant Attorney
8 General

DREW C. ENSIGN

9 Deputy Assistant Attorney General
10 Civil Division

WILLIAM C. SILVIS

11 Assistant Director

CHRISTINA PARASCANDOLA

12 MICHAEL CELONE

Senior Litigation Counsel

13 */s/ Katelyn Masetta-Alvarez*

14 KATELYN MASETTA-ALVAREZ

Senior Litigation Counsel

15 JOSHUA C. MCCROSKEY

16 Trial Attorney

United States Department of Justice

17 Office of Immigration Litigation – General

Litigation and Appeals Section

18 P.O. Box 878, Ben Franklin Station

Washington, DC 20044

19 202-514-0120

20 Katelyn.Masetta.Alvarez@usdoj.gov

21 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

1 I certify that on July 25, 2025, I served a copy of the foregoing reply
2 brief on all counsel of record by means of the District Court’s CM/ECF
3 electronic filing system.

4
5 /s/ Katelyn Masetta-Alvarez
6 Senior Litigation Counsel
7 U.S. Department of Justice
8 Office of Immigration Litigation
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CERTIFICATE OF COMPLIANCE

I certify that this brief contains 6,999 words, which complies with the word limitation in the Local Rules.

/s/ Katelyn Masetta-Alvarez
Senior Litigation Counsel
U.S. Department of Justice
Office of Immigration Litigation