IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

J.O.P., *et al.*,

Plaintiffs,

v.

U.S. Department of Homeland Security, *et al.*,

Defendants.

Civil Action No.
8:19-CV-01944-SAG

CLASS COUNSEL'S BRIEF IN SUPPORT OF THEIR MOTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 60(b) TO EXTEND THE TERMINATION DATE OF THE SETTLEMENT AGREEMENT

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I. INTRODUCTION

With fewer than two months until termination of the Settlement Agreement, likely well over 74,000 Class Members have not received their right to an adjudication by USCIS on the merits of their asylum application and over one hundred Class Members have been removed by ICE in brazen disregard for the stay of removal provision of the Settlement Agreement. The Court should exercise its equitable power under Fed. R. Civ. P. 60(b)(5) to extend the termination date of the Settlement Agreement to rectify Defendants' intransigence and allow Class Members to receive their bargained-for rights under the Settlement Agreement.

There is no reasonable dispute that Defendants have failed to substantially comply with the Settlement Agreement. The Settlement Agreement mandates that USCIS must adjudicate Class Members' asylum applications on the merits. The Settlement Agreement also prohibits ICE from removing a Class Member so long as their asylum application remains pending with USCIS, and directs ICE to enter system alerts in Class Member records to prevent their removal. The March 2026 evidentiary hearing confirmed Defendants' utter disregard of these provisions: USCIS admits it has failed to adjudicate nearly 74,000 Class Members' applications, and ICE deportation officers regularly removed Class Members despite a system alert instructing them not to, resulting in the removal of more than one hundred Class Members in violation of the Settlement Agreement. These are not minor non-compliances—they go to the core of Class Members' rights under the Settlement Agreement, and the extent of the non-compliances is shocking. Extending the termination date of the Agreement is necessary to rectify Defendants' substantial non-compliance, which was not reasonably foreseeable when the Parties entered into the Settlement Agreement with its current termination provision.

To this end, Class Counsel proposes that the Court modify the Settlement Agreement under Fed. Rule Civ. P. 60(b)(5) to institute a performance-based termination mechanism that is suitably

tailored to address Defendants' noncompliance by tying the Agreement's sunset to Defendants' completion of a core set of actions, rather than to a fixed termination date in a particular year to come. These actions, designed to vindicate Class Members' core rights under the Agreement, include: (1) the creation of a comprehensive Potential Class Member List; (2) the adjudication on the merits of the asylum applications of all Class Members removed from the United States in violation of the Agreement who elect to return for an adjudication; (3) individualized notice to all people on the Potential Class Member List inviting them to request that USCIS adjudicate their pending asylum applications on the merits under the terms of the Settlement Agreement; and (4) the adjudication on the merits of the asylum applications of those Class Members who accept this invitation. This approach preserves the Agreement's core benefit for those who wish to receive it while still providing an endpoint that Defendants could accelerate with prompt compliance. The Court should exercise its discretion to extend the Settlement Agreement until Defendants have made good on their promises to the Class.

II. FACTUAL BACKGROUND

A. The Settlement Agreement

Young asylum seekers previously determined by the U.S. government to be unaccompanied children ("UCs") have the right to an asylum adjudication through a non-adversarial process before a USCIS asylum officer—regardless of the posture of any immigration court removal proceedings. 8 U.S.C. 1158(b)(3)(C). Further, UCs are exempt by statute from the one-year deadline that generally applies to applications for asylum. 8 U.S.C. 1158(a)(2)(E). After years of litigation, in June 2024, the Parties in this case reached a Settlement Agreement honoring those protections, ECF No. 199-2, which this Court approved in November 2024. ECF No. 205.

One of the key protections for Class Members is found in Section III.B, which reads:

> USCIS will exercise Initial Jurisdiction over Class Members' asylum applications in accordance with the terms of this Settlement Agreement and adjudicate them on the merits, and USCIS will hold such applications exempt from the One-Year Deadline.

ECF No. 199-2 at 6, § III.B. Other terms in Section III are designed to ensure that Class Members actually receive the benefits of Section III.B, by preventing actions by Defendants that would contravene USCIS's exercise of its initial jurisdiction and adjudication on the merits. For example, Section III.G requires Defendants to adopt expedite procedures to allow certain Class Members in precarious situations—including those in immigration detention and those with a removal order—to receive an accelerated merits adjudication. ECF No. 199-2 at 8, § III.G; Ex. 1[1] (Feb. 18 Hearing Tr.) at 73 ("Based on the provision for Class Members to try to expedite their review, it certainly doesn't suggest that anyone was contemplating them being detained in perpetuity."). Section III.H prohibits ICE from arguing in a Class Member's removal proceedings against USCIS's initial jurisdiction or against postponements while the Class Member awaits USCIS's adjudication of their asylum claim. ECF No. 199-2 at 8, § III.H.

Crucially, Section III.I ensures that ICE does not deprive Class Members of the USCIS asylum adjudication they are entitled to under Section III.B by removing them from the United States. Section III.I reads:

> With respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement. In order to comply with this provision, ICE Enforcement and Removal Operations (ERO), the agency responsible for executing removal orders, will make an entry indicating there is a stay in its system of records for all identified Class Members, including Class Members identified by USCIS. This alert will not be removed from any individual case until such time as USCIS indicates it is appropriate to remove it.

[1] Exhibits cited herein are attached to the Declaration of Kevin J. DeJong, filed contemporaneously with this memorandum.

Id. at 8-9, § III.I.

Section IV.K specifies that the Settlement Agreement "shall terminate 548 days after the Effective Date," except that the Court shall have jurisdiction to enforce the Agreement's term regarding the issuance of a superseding memorandum (Section III.A) until three years after the superseding memorandum's effective date. *Id.* at 12, § IV.K. In other words, barring intervention by this Court, the Settlement Agreement is set to terminate on May 27, 2026.

B. Defendants' Brazen Failures to Comply with the Settlement Agreement

1. USCIS Has Failed to Adjudicate Likely Well Over 74,000 Class Members' Asylum Applications on the Merits

Despite its duty under Section III.B to accept initial jurisdiction over Class Members' asylum applications, hold them exempt from the One-Year Deadline, and "adjudicate them on the merits," USCIS has failed to adjudicate likely well over 74,000 Class Members' asylum applications on the merits. Until recently, Class Counsel had no information about the overall rate or number of USCIS adjudications of Class Members' asylum applications. During the March 2026 evidentiary hearing, a USCIS official revealed that there were 73,460 individuals on USCIS's March 9, 2026 list of "potential" *J.O.P.* Class Members who are still awaiting a USCIS adjudication on the merits. Ex. 3 (Mar. 20, 2026 Tr.) at 96 (Orendach testimony). In comparison, in October 2024, about a month before the Court granted final approval of the Settlement Agreement, there were 73,939 individuals on USCIS's very first list of "potential" *J.O.P.* Class Members. *Id.* at 86.

USCIS testimony also revealed that the 73,460 number of "potential" Class Members awaiting a USCIS adjudication is seriously underinclusive of the true number, for two reasons. First, USCIS's list excludes Class Members who were not in removal proceedings at the time they filed their asylum application. Ex. 2 (Mar. 19, 2026 Tr.) at 71-73, 77 (Sicard testimony). Second,

USCIS's list also excludes Class Members whose asylum applications have not been adjudicated on the merits but are not considered by USCIS to be currently pending due to, for example, a jurisdictional rejection by USCIS (which also violates the Settlement Agreement). *Id.* at 78; *see also* Ex. 3 (Mar. 20, 2026 Tr.) at 90, 102-103 (Orendach testimony). In other words, with the May 27, 2026 Termination Date approaching, USCIS has failed to adjudicate on the merits likely well over 74,000 Class Members' asylum applications that remain pending with USCIS. The true, potentially much higher, number of Class Members who have not received the USCIS merits adjudication to which they are entitled under the Settlement Agreement remains unknown, due to USCIS's deficient class list process (*see infra* pp. 12-13).

Compounding the problem, USCIS has also halted processing asylum applications since December 2025.[2] On December 2, 2025, USCIS issued a policy ("No Asylum Adjudications

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[2] For months, Class Counsel repeatedly raised the No Asylum Adjudications Policy with Defendants, but Defendants refused to substantively respond. During a December 2, 2025 meet-and-confer, Class Counsel asked Defendants how the newly issued policy would be applied to B.E.M.L. and J.A.M.L.—whom Defendants had claimed could seek an expedited adjudication of their asylum applications as a remedy for DHS's successful motions to re-calendar their removal proceedings. Ex. 16. Defendants responded, "As this is outside of settlement, Defendants will not provide an answer." *Id.* Class Counsel again raised the policy on December 18, 2025, regarding Class Member J.M.A. who had then been detained by ICE for approximately three months and had requested an expedited adjudication under Section III.G on December 9, noting that he was "suffering due to th[e] long period of detention." Ex. 17. Defendants again claimed that "this allegation is outside the scope of the Settlement Agreement," further noting that J.M.A had since been released. *Id.* During the December 22, 2025 Court-ordered meet and confer, Defendants again refused to disclose if and how Defendants were applying the policy to Class Members, again asserting that the policy is "outside the scope of the agreement." Dec. 22, 2025 Meet-and-Confer ("M&C") at 01:05:40-01:07:20. Consequently, Class Counsel's Third Motion to Enforce filed on January 22, 2026, asked the Court to order Defendants to "promptly adjudicate" the asylum application of any wrongfully removed Class Member electing to return who requests an expedited adjudication under Section III.G, and to prohibit Defendants from "subject[ing] the application to any 'asylum adjudication hold' including that described in the December 2, 2025 USCIS Memorandum." ECF No. 459-1 at 4. In their opposition, Defendants again claimed that the No Asylum Adjudications Policy was "vastly beyond the scope of the settlement agreement." ECF No. 462 at 12.

Policy") halting asylum adjudications, with no exception for *J.O.P.* Class Members. Ex. 5. In relevant part, that policy states that "USCIS has determined that it must implement an adjudicative hold on all pending asylum applications, regardless of the alien's country of nationality," *id.* at 2, with the hold to "remain in effect until lifted by the USCIS Director through a subsequent memorandum." *Id.* at 2-3. During the February 18, 2026 hearing, the Court observed that the No Asylum Adjudications Policy was a "rather massive changed circumstance in that the very remedy that was bargained for here, which is having a USCIS hearing before removal, is at this point, as far as I can tell, rendered impossible by virtue of this memo." Ex. 1 (Feb. 18 Hearing Tr.) at 74. The Court further commented that the Policy was a "very, very large problem with respect to the promises that were made to the class," *id.*, that the Court has "grave concerns about the situation" because the Policy "undermines the entirety of what this settlement was intended to achieve," *id.* at 74, 82. The Court scheduled an evidentiary hearing for March 19 and ordered Defendants to "produce individuals with personal knowledge to provide testimony" at that hearing regarding, among other things, "Application of the USCIS December 2, 2025 Policy Memorandum, both since its issuance and prospectively, to Class Members, including those who have requested expedited adjudication." ECF No. 472 at 2.

At the March 19 hearing, Asylum Officer Kimberly Sicard disclosed that USCIS was indeed applying the December 2, 2025 No Asylum Adjudications Policy to *J.O.P.* Class Members. Ex. 2 (Mar. 19, 2026 Tr.) at 100. Officer Sicard further testified that USCIS issued guidance on February 13, 2026 instructing asylum officers that they should lift the hold and adjudicate the asylum applications of detained unaccompanied children if ICE requested an expedited adjudication for public safety or national security reasons. *Id.* at 109; Ex. 6 (Feb. 13 Guidance). She conceded that the February 13 Guidance empowers USCIS asylum officers to deny such

asylum applications, but does not permit asylum officers to approve the applications; instead, if they wish to recommend an approval they must submit the case to headquarters. Ex. 2 (Mar. 19, 2026 Tr.) at 106-107. Officer Sicard testified that since the February 13 Guidance, 81 people have received a "final decision," though she did not know how many of the 81 were Class Members, how these decisions were reached, and whether each individual received an interview. *Id.* at 110.

Notably, the February 13 Guidance does not address how USCIS will respond to a Class Member's request to expedite their asylum application. When asked if USCIS had lifted the adjudications hold for any *J.O.P.* Class Member who had requested an expedited adjudication under Section III.G of the Agreement, she answered, "Not to my knowledge." Ex. 2 (Mar. 19, 2026 Tr.) at 102. Given Officer Sicard's testimony to lack of knowledge, the Court ordered Defendants to present a witness who could testify "about the application of the USCIS December 2, 2025 Policy Memorandum to Class Members, including but not limited to whether Class Members or potential Class Members requested expedited adjudication since that time, whether any such requests were granted, whether any of the 81 asylum applications processed by USCIS since that time were Class Members or potential Class Members, and what the outcomes of those applications were." ECF No. 493. On March 23, 2026, Defendants called Supervisory Asylum Officer Kimberly Trinh, Officer Sicard's supervisor. Officer Trinh also had no knowledge of whether USCIS had adjudicated any *J.O.P.* Class Member's asylum application since the December 2 policy, how many *J.O.P.* Class Members had requested an expedited adjudication since December 2, or of the outcomes of such requests. Ex. 4 (Mar. 23, 2026 Tr.) at 124-127. She testified that USCIS had "adjudicated" 96 asylum applications of unaccompanied children—of which some unspecified subset may or may not include *J.O.P.* Class Members—since December 2, 2025 resulting in 95 denials of asylum and one purportedly "withdrawn" application. *Id.* at 121-

122. Officer Trinh admitted that USCIS could have searched its database to identify *J.O.P.* Class Members who had received adjudications but apparently had not done so. *Id.* at 140. She did not know how the 95 "adjudications" were conducted, whether ICE officers were present during the interviews, or whether ICE gave asylum officers instructions about how to conduct the adjudications. *Id.* at 147-148. On April 2, 2026, Defendants filed a Notice with the Court citing a USCIS press release which states that "[h]olds have been lifted for . . . asylum applications from non-high risk countries" and that USCIS will continue to deny asylum applications "regardless of the alien's country of nationality." ECF No. 523.

In sum, during the 16 months the Settlement Agreement has been in effect, Defendants have failed to adjudicate on the merits the asylum applications of likely well over 74,000 Class Members. For four of those months, Defendants applied a No Asylum Adjudications Policy to all Class Members, save for possibly a very small number (between 0 and 95) whose applications ICE asked USCIS to expedite for public safety or national security reasons; asylum officers were permitted to deny but not approve those applications, and indeed denied all of them. And, if Defendants' recent press release is taken as true, USCIS continues to apply the No Asylum Adjudications Policy at least to Class Members from 40 "high-risk countries." ECF No. 523.

2. ICE Has Removed Likely 100 Confirmed or Potential Class Members in Utter Disregard of the Settlement Agreement and the Court's April 23 Order

Before the March 2026 evidentiary hearing, Class Counsel were aware of only fourteen (14) confirmed or "potential" Class Members who had been removed while the Settlement Agreement was in effect without being afforded an adjudication on the merits.[3] Then, at the March

[3] Class Counsel brought two of these cases (Cristian and E.M.P.) to Defendants' attention after learning about them from the Class Members' immigration attorneys. In the other 12 cases,

19 hearing, Officer Sicard disclosed that ***over one hundred*** Class Members had been removed without being afforded a merits adjudication, and that she had reported those removals to the USCIS Office of Chief Counsel three to four weeks earlier. Ex. 2 (Mar. 19, 2026 Tr.) at 90-94.[4] As shocking as that number may be, the true number of removals that violate the Settlement Agreement and the Court's April 23 order is likely much higher, in view of (1) ICE's failure to verify that noncitizens are not Class Members protected by the Agreement before effectuating removal; (2) USCIS's deficient Class List procedures; and (3) numerous ICE policies and practices instituted in 2025 that were not contemplated when the Parties signed the Agreement in 2024.

a. ICE Deportation Officers Have Been Removing Class Members In Violation of the Agreement and Despite Unambiguous Instructions Not To Do So

Testimony at the March 2026 evidentiary hearing regarding the removals of nine Class Members revealed systemic failures in ICE's procedures to implement Section III.I of the Agreement, which have enabled ICE officers to remove an unknown number of *J.O.P.* Class Members with impunity.

Despite appearing on a USCIS Class list, ICE failed to enter a *J.O.P.* banner for several Class Members, including R.L.T.—who despite appearing on USCIS's first Class list never had a banner added to his record. Ex. 3 (Mar. 20, 2026 Tr.) at 87; ECF No. 497 (Lewis Decl.) ¶ 4 (filed

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Defendants alerted Class Counsel, after-the-fact, that ICE had removed "potential" Class Members: Defendants disclosed one in April 2025 (Ex. 18) and one in July 2025 (Ex. 19); six on September 29, 2025 (Ex. 20); two on November 10, 2025; and two more on March 17, 2026 (Ex. 21), days before the evidentiary hearing began. While two of the fourteen turned out to be statutory UCs and thus not Class Members, ICE removed them—just as with the other twelve—without ruling out Class membership despite their presenting indicia of potential Class Membership. As set forth in the Declaration of Rebecca Scholtz, in addition to Cristian, at least seven individuals are in fact Class Members, despite Defendants' continued labeling of them as "potential" Class Members. Scholtz Decl. ¶¶ 4-23, 32-34.

[4] On March 23, Defendants' counsel represented to the Court that, in addition to the previously disclosed 12 individuals, 49 Class Members and 42 "potential Class Members" had been removed. Ex. 4 (Mar. 23, 2026 Tr.) at 91.

under seal on March 22, 2026). Even for the six out of nine who, prior to their removal, were on a USCIS Class list and had a *J.O.P.* banner in their ICE record, the banner failed to stop ICE officials from removing them. Multiple ICE officers testified that they "could not recall" if they saw a *J.O.P.* banner in the individual's record prior to removing them, or if they even checked for a banner. *See, e.g.*, Ex. 4 (Mar. 23, 2026 Tr.) at 46-47 (M.M.V.), 66 (W.M.C.); Ex. 3 (Mar. 20, 2026 Tr.) at 137, 139 (E.P.P.). ICE officers admitted that they had seen *J.O.P.* banners before removing a Class Member but claimed they had gotten clearance from USCIS to remove the individual despite admitting that they failed to contact the authorized officials to obtain such clearance. For example, ICE removed B.A.G. on April 9, 2025, despite an immigration judge order prohibiting his removal due to his potential *J.O.P.* Class membership. Ex. 3 (Mar. 20, 2026 Tr.) at 50-52; Ex. 7 (Apr. 7, 2025 Immigration Judge Order). Officer Parsons testified that he saw the *J.O.P.* comment in B.A.G.'s record, Ex. 2 (Mar. 19, 2026 Tr.) at 162, but instead of contacting the listed OPLA and/or USCIS asylum office contacts, he had an in-person conversation with a USCIS "contracting officer" at the detention center who stated that B.A.G. was cleared for removal, Ex. 3 (Mar. 20, 2026 Tr.) at 56-58. That USCIS officer then testified that the conversation had not happened. Ex. 4 (Mar. 23, 2026 Tr.) at 114-115. That was not the only putative conversation described under oath that does not appear to have occurred. *Compare* Ex. 3 (Mar. 20, 2026 Tr.) at 119-120 (ICE Officer Stambaugh testified that he saw *J.O.P.* banner and spoke with supervisor who cleared W.U.P. for removal) *with* Ex. 4 (Mar. 23, 2026 Tr.) at 82-84 (supervisor then testified that he had no recollection of any such conversation with Officer Stambaugh). Officer Stambaugh's supervisor also admitted that he did not discipline Officer Stambaugh for removing an individual that had been flagged as a potential Class Member. Ex. 4 (Mar. 23, 2026 Tr.) at 88.

More broadly, multiple ICE officials whom Defendants brought to the March 2026 hearing to testify about ICE's compliance with the Agreement had no familiarity with ICE's own guidance, hyperlinked in the *J.O.P.* banner, for implementing the Agreement. Ex. 2 (March 19, 2026 Tr.) at 125 (acknowledging that *J.O.P.* banner links to the ICE policy); Ex. 3 (Mar. 20, 2026 Tr.) at 56 (Officer Parsons, who deported B.A.G., did not know what the guidance was); Ex. 4 (Mar. 23, 2026 Tr.) at 72 (same, as to Officer Romero who deported W.M.C.), 54 (same, as to Officer Rey, who deported M.M.V.).

Defendants also admit that ICE takes no steps to identify Class Members, or rule out Class membership, before removing asylum seekers, instead relying solely on those identified through USCIS's Class lists. Dec. 22, 2025 Meet-and-Confer ("M&C")[5] at 00:09:20-00:09:56, 01:33:05-01:33:52, 01:51:35-01:53:22. ICE Unit Chief Nichols admitted at the March 2026 hearing that ICE had not entered a *J.O.P.* banner into EARM for any individual not identified by USCIS, even though ICE had the ability to do so. Ex. 2 (Mar. 19, 2026 Tr.) at 24. When asked if ICE would refrain from deporting an individual who identified themselves to ICE as a *J.O.P.* Class Member until ICE could rule out Class membership, Chief Nichols responded, "I would say that would be the best practice" but he could not "speak to what everybody would do." *Id.* at 33. Further, hearing testimony confirmed that ICE's databases contain all the information required to determine *J.O.P.* Class membership—though ICE does not look for this information before removal. *Id.* at 34 (ICE database reflects date of birth and prior unaccompanied child determination); 37 (ICE has access to USCIS systems); 75 (ICE has access to USCIS asylum database information and can see if an asylum application has been filed).

[5] A copy of the video from the Dec. 22, 2025 meet-and-confer was provided to the Court on a USB stick on January 22, 2025.

In short, despite the Settlement Agreement's prohibition on the removal of Class Members, ICE deportation officers have routinely removed Class Members regardless of whether an alert had been entered in the Class Member's file.

b. USCIS Relies on Deficient Class Lists to Identify Class Members

Testimony from USCIS officials at the March 2026 evidentiary hearing also revealed multiple deficiencies by design in USCIS's procedures for creating the Class lists which the agency sends to ICE to comply with Section III.I of the Agreement. USCIS officials knowingly designed the parameters for the *J.O.P.* Class list in a way that excluded a significant subset of the *J.O.P.* Class. First, USCIS only included asylum-seeking unaccompanied children on the *J.O.P.* Class list if USCIS had accorded them a "special group code" called "PRL" at intake, a code used only for those in removal proceedings at the time they filed their asylum application with USCIS. Ex. 2 (Mar. 19, 2026 Tr.) at 52-53, 63, 71 (Sicard testimony). But Defendants' own data suggest that a large number of *J.O.P.* Class Members were likely not in removal proceedings at the time they filed their asylum applications and thus would have been excluded by USCIS from the Class list transmitted to ICE. [6] Officer Sicard, who helped design the parameters for USCIS's Class lists, conceded that USCIS could have created, but did not create, a special group code that covered all asylum applicants with prior unaccompanied child determinations, regardless of whether they were in removal proceedings. Ex. 2 (Mar. 19, 2026 Tr.) at 77. This deficiency likely explains why two of the nine removed Class Members discussed during the March 2026 hearing—F.D.E. and

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[6] *See* Ex. 8, DHS Office of Inspector General, *Management Alert - ICE Cannot Monitor All Unaccompanied Migrant Children Released from DHS and U.S. Department of Health and Human Services' Custody*, OIG-24-46, at 1 (noting 291,000 unaccompanied children as of May 2024 for whom DHS had not commenced removal proceedings); Ex. 9, DHS Office of Inspector General, *Final Report - ICE Cannot Effectively Monitor the Location and Status of All Unaccompanied Alien Children After Federal Custody*, OIG-25-21, at 4 (noting 233,000 unaccompanied children as of January 2025 for whom DHS had not commenced removal proceedings).

L.O.B.—did not appear on a USCIS Class List until after ICE had deported them. *Compare* Ex. 3 (Mar. 20, 2026 Tr.) at 92 (USCIS added F.D.E. to the Class list on June 27, 2025 and L.O.B. on September 26, 2025), *with id.* at 124 (ICE deported F.D.E. in May 2025), *id.* at 149 (ICE deported L.O.B. in August 2025).

Second, USCIS included *J.O.P.* Class Members on the Class list only if USCIS's systems characterized their asylum application as currently "pending," thus excluding from the Class list those individuals whose asylum applications USCIS wrongfully rejected for lack of jurisdiction in violation of the Agreement. Ex. 2 (Mar. 19, 2026 Tr.) at 77-78. Similarly, each Class list USCIS transmits to ICE contains a tab for "Alert Removals," signifying to ICE that the applicant is no longer a potential Class Member and any stay of removal can be lifted. Ex. 3 (Mar. 20, 2026 Tr.) at 66, 70, 90. But USCIS's criteria for removing someone from the list covered not only asylum adjudications on the merits but also USCIS "administrative closures" of the applicant's file—which are by definition *not* decisions on the merits. *Id.* at 102-103; Ex. 4 (Mar. 23, 2026 Tr.) at 145-146.

Moreover, until November 24, 2025 (a full year after the Agreement went into effect), USCIS sent ICE a Class list only once per month, thus guaranteeing long lapses of time when a Class Member who recently filed their asylum application, or whose erroneous omission from a prior Class list USCIS had recently corrected, would be at risk of removal by ICE because USCIS might not transmit their name to ICE for 30 days after identifying them as a potential Class Member. Ex. 3 (Mar. 20, 2026 Tr.) at 79.

C. ICE's Enforcement Policies and Practices in 2025 All But Guarantee That the Removal of 100 Confirmed or Potential Class Members Is the Tip of the Iceberg

Since the Parties executed the Settlement Agreement, ICE has enacted an unprecedented series of policies aimed at detaining and deporting as many noncitizens as possible and applied those policies indiscriminately, including to noncitizens, like *J.O.P.* Class Members, in the process of seeking lawful status. Not only did these policies not exempt unaccompanied children seeking asylum, but in fact some of the policies expressly targeted unaccompanied children for enforcement. These new policies, coupled with USCIS and ICE's inadequate processes to comply with Section III.I, described above, greatly increase the likelihood that ICE has removed multiples of 100 Class Members in violation of the Agreement.

First, beginning in January 2025, ICE implemented daily arrest quotas, instructing ICE agents to arrest and detain any noncitizen whom the agency believes to be removable from the United States.[7] Noncitizens swept up as a result of these quotas included those in the process of seeking asylum—a population not previously targeted for immigration enforcement. That same month, ICE issued an internal policy directing ICE agents to track down and target for enforcement unaccompanied children who had been previously released to a sponsor—a population that

[7] *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F. Supp. 3d 1, 44 (D.D.C. 2025) (noting a call in January 2025 in which senior ICE officials "were told that each of the agency's field offices should make 75 arrests per day [totaling more than 1,800 daily arrests nationwide]" and that "managers would be held accountable for missing those targets" and senior White House adviser Stephen Miller increased the quota to 3,000 daily nationwide in May 2025, and prompted that the administration was "going to keep pushing to get that number up higher each and every day"); *Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 868 (C.D. Cal. 2025) ("In January [2025], the administration gave ICE field offices an arrest quota of seventy-five (75) arrests a day. The administration also shut down multiple oversight agencies. The administration set a new arrest quota of 3,000 arrests per day and reportedly threatened job consequences if officials failed to meet arrest quotas.").

includes many *J.O.P.* Class Members.[8] Later in 2025, ICE increased its daily arrests quotas from 1,000 people per day to 3,000 people per day.[9]

Then, in July 2025, days after Congress exponentially increased ICE's budget though the passage of the One Big Beautiful Bill Act,[10] ICE instituted a new and unprecedented "mandatory" detention policy, all but ensuring that most noncitizens the agency detained would remain detained throughout their immigration proceedings and any appeals—unless they were fortunate enough to engage habeas counsel.[11] The federal courts began to receive a tidal wave of habeas petitions, with the vast majority of judges concluding that the new mandatory detention policies were unlawful.[12] Many of those ICE targeted for detention were noncitizens whom the government had previously released after encountering them at the border and/or who were in the process of pursuing immigration relief, including many who came to the United States as unaccompanied children and undoubtedly *J.O.P.* Class Members in the process of seeking asylum.[13]

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[8] Ex. 10 (ICE Internal Agency Memo, Unaccompanied Alien Child Joint Initiative Field Implementation (Jan. 2025) (internal agency memorandum).

[9] *See* cases cited *supra* footnote 7.

[10] H.R. 1, 119th Congress; Public Law 119-21 (Jul. 4, 2025).

[11] Ex. 11, ICE Memo, July 8, 2025, Interim Guidance Regarding Detention Authority for Applicants for Admission ("July 8, 2025 ICE Policy"). The Board of Immigration Appeals soon followed suit through the adoption of the precedential decision *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (2025). On December 18, 2025, the District Court for the Central District of California issued an order vacating the July 8, 2025 ICE Policy as contrary to law. *Bautista v. Santacruz*, 813 F. Supp. 3d 1084, 1093, 1125 (C.D. Cal. 2025).

[12] *See, e.g., Jacobo-Ramirez, et al. v. Noem, et al*. No. 2:25-CV-02136-RFB-MDC, 2026 WL 879799, at *3 (D. Nev. Mar. 30, 2026).

[13] *See, e.g.*, *Garro-Pinchi v. Noem*, No. 25-cv-05632-PCP, 2025 WL 3691938, at *20 (N.D. Cal. Dec. 19, 2025) (concluding that Plaintiffs had established the existence of a re-detention policy beginning in May 2025 in which ICE "began re-detaining released noncitizens on a large scale" without any determination of changed circumstances); *Garcia Ramirez v. ICE*, 812 F. Supp. 3d 86, 109 (D.D.C. 2025) (acknowledging 2025 ICE practice of "re-arresting and detaining" unaccompanied children who had previously been released from ORR custody upon reaching 18).

ICE also began subjecting detained noncitizens to coercive "voluntary departure" practices, telling them that they could either accept "voluntary" departure or remain detained indefinitely pursuant to ICE's new mandatory detention scheme.[14] Recent data show that "voluntary" departure rates increased more than 20-fold in 2025 from the 2024 rate.[15] One ICE voluntary departure policy was targeted specifically at detained unaccompanied children, offering them $2,500 to sign forms to voluntary depart rather than pursue their immigration cases.[16]

ICE's unprecedented 2025 detention and enforcement policies mean that many more Class Members are now at risk of arbitrary arrest and detention, and consequently at risk of being deported without being afforded the protections they are entitled to under the Settlement Agreement. While Defendants' deficient processes alone ensured that Section III.I would be violated, ICE's adoption of the above-described policies during the year after the Parties signed the Settlement Agreement created conditions causing a risk of widespread, systemic violations of Sections III.I and III.B.

III. CLASS COUNSEL'S PROPOSAL FOR EXTENDING THE TERM OF THE SETTLEMENT AGREEMENT

Against this backdrop, given Defendants' substantial non-compliances, Class Counsel urges the Court to modify the Settlement Agreement to extend its termination date, currently set for May 27, 2026. Rather than adopt a new fixed termination date that might again prove inadequate due to Defendants' substantial non-compliance (requiring yet another round of

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[14] *See, e.g.*, *Perez-Funez . v. Dep't. of Homeland Security*, No. 2:81-CV-01457-MWF-E, at *7 (C.D. Cal. Apr. 6, 2026).
[15] Ex. 12, Graeme Blair & David Hausman, *Immigration Enforcement in the First Nine Months of the Second Trump Administration* (Jan. 27, 2026).
[16] Ex. 13, Valerie Gonzalez, *Trump Administration Offers Migrant Children $2,500 to Voluntarily Return to Home Countries*, AP News, Oct. 3, 2025; *see also* Ex. 14, Didi Martinez, Laura Strickler & Julia Ainsley, *Trump Administration Offering Some Unaccompanied Migrant Children $2,500 to Self-Deport, According to Memo*, NBC NEWS (Oct. 4, 2025).

motions), Class Counsel proposes a performance-based termination mechanism. This proposal ensures that Class Members can receive the Settlement Agreement's core benefits, Defendants retain control over their internal processes and implementation speed, and the Court acts as the final arbiter of the Agreement's end. Class Counsel suitably tailored this proposal to the changed circumstances underpinning this motion.

As detailed in Class Counsel's proposed order, current Section III.S of the Settlement Agreement (Termination Date) would be removed, and Section IV.K (Termination) would be wholly replaced with this new mechanism. At a high level, new Section IV.K requires Defendants to complete four actions before moving the Court for a termination order. *First*, Defendants must create a Potential Class Member List, which is defined in new Section III.Y. This Potential Class Member List will avoid the underinclusive nature of USCIS's current approach. *Second*, Defendants must adjudicate on the merits the asylum applications of the Class Members removed from the United States in violation of Section III.I who elect to return for an adjudication. To enable this return, Defendants must provide Class Counsel with complete contact information for each removed person on the Potential Class Member List and then allow a minimum of a year for locating and engaging with that person.[17] Defendants must finance and facilitate the return of each removed Class Member who elects to return and must then perform the required adjudication on the merits.

[17] There is no dispute that Defendants can identify removed Class Members, despite their assertion to this Court that any investigation is "cumbersome." For example, Mr. Patrick Lewis, Program Manager in the Office of the Chief Information Officer (OCIO) at ICE, testified that he was able to query ICE's records to identify all individuals within a *JOP* banner in their file, and can also query based on the "Departed By" field in the database. Ex. 4 (Mar. 23, 2026 Tr.) at 18-21. This query would result in an underinclusive list, because ICE's records are based on USCIS's underinclusive Class Lists. USCIS will also need to create a complete Class list and work with ICE to determine whether any additional Class Members were removed that were not previously flagged with a *JOP* banner.

Third, Defendants must provide individualized notice to all people on the Potential Class Member List (by personal service or by mail, depending upon their detention status) and their attorneys of record inviting them to request that USCIS adjudicate their pending asylum application on the merits under the terms of the Settlement Agreement. The deadline to submit such a request must be reflected on the notice and must provide Potential Class Members with sufficient time to assess their options and submit a request if desired. (Class Counsel proposes a minimum of 180 days from completion of the notification process.). *Fourth*, USCIS must adjudicate on the merits the asylum applications of all Class Members who request such adjudications by the deadline referenced above. Class Counsel views this approach—limiting USCIS's obligation to complete adjudications on the merits for *all* Class Members—as a substantial good faith effort to cabin the life of the Settlement Agreement while preserving the Agreement's core benefit for those who wish to receive it.

In addition to the new Sections III.Y and IV.K, Class Counsel proposes harmonizing revisions to several other Sections. The first is a change to current Section V.A reflecting that the Court retains jurisdiction over the implementation and enforcement of the Settlement Agreement until it grants Defendants' termination motion (rather than until a set Termination Date). The second is a change to current Section III.S.1 aligning the defined term "Termination Date—USCIS Memo" to *either* three years after the memorandum's effective date *or* the date the Court grants Defendants' termination motion, whichever is later. This preserves the Class's bargained-for rights to have the memorandum in place for at least three years *and* for at least the life of Settlement Agreement, as well as the right to Court jurisdiction to enforce the memorandum (now found in new Section IV.K). The third and final change is to Section V.B, ensuring robust compliance

reporting on Defendants' progress toward termination under this new and performance-based approach.

IV. LEGAL STANDARDS

"The court's inherent authority to modify a consent decree or other injunction is now encompassed in Rule 60(b)(5)," *Thompson v. U.S. Dep't of Hous. & Urban Dev.*, 404 F.3d 821, 826 (4th Cir. 2005), which provides for relief from a final judgment or order when "applying it prospectively is no longer equitable," Fed. R. Civ. P. 60(b)(5). Despite being anchored in the Rule, this power "springs from the court's inherent equitable power over its own judgments," and "[t]he hallmark of equity, of course, is its flexibility." *Thompson*, 404 F.3d at 830.

A motion to modify a consent decree under Rule 60(b)(5) is governed by the standard set out in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). *See Thompson*, 404 F.3d at 827-29 (applying *Rufo*). Under the *Rufo* standard, modification is appropriate if the party seeking modification demonstrates that "a significant change in circumstances warrants revision of the decree," provided that the grounds for modification were not actually "anticipated at the time it entered into a decree." *Rufo*, 502 U.S. at 383, 385. The inquiry "is whether the parties *actually* anticipated the events giving rise to the modification request; that the events were theoretically foreseeable does not foreclose a modification." *Thompson*, 404 F.3d at 828. The Court must also consider whether the proposed modification is "suitably tailored to the changed circumstances." *Rufo*, 502 U.S. at 383. And "once a party carries [the *Rufo*] burden, a court abuses its discretion 'when it refuses to modify an injunction or consent decree in light of such changes.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Agostini v. Felton*, 521 U.S. 203, 215 (1997)).

"In institutional reform litigation, modification of a consent decree to extend the period of enforcement may be justified by a significant and unanticipated degree of noncompliance with its

terms." *Duvall v. Moore*, 2024 WL 4529261, at *6 (D. Md. Oct. 18, 2024) (Maddox, J.) (*Duvall II*) (collecting cases); *see also Duvall v. Hogan*, 2021 WL 2042295, at *14 (D. Md. May 21, 2021) (Hollander, J.) (*Duvall I*) ("Courts have consistently held that the failure of substantial compliance with the terms of a consent decree can qualify as a significant change in circumstances justifying modification."); *Thompson*, 404 F.3d at 831 (affirming district court's conclusion that defendants' "lack of compliance with their obligations under the Consent Decree was an unanticipated and substantial change of circumstance").

V. THE COURT SHOULD EXTEND THE TERMINATION DATE OF THE SETTLEMENT AGREEMENT IN VIEW OF DEFENDANTS' SUBSTANTIAL NON-COMPLIANCE WHICH HAS DEPRIVED THOUSANDS OF CLASS MEMBERS OF THEIR BARGAINED-FOR RIGHTS

The Settlement Agreement imposes on Defendants both prohibitions and affirmative obligations. For the past year, the Parties have been principally litigating violations of the Agreement's *prohibitions*—*i.e.*, the prohibition on removing Class Members. But the Agreement also imposes an affirmative obligation on Defendants to adjudicate Class Members' asylum applications on the merits. Defendants have systematically failed to do so—for likely well over 74,000 Class Members—and imposed a near-complete moratorium on the adjudication of Class Members' asylum applications. In addition, Defendants have failed to substantially comply with the prohibition on removing Class Members, having removed potentially over 100 Class Members—a number Defendants failed to promptly disclose and which only came to light during witness testimony during the March 2026 hearing. And this number may only be the tip of the iceberg. Defendants' substantial noncompliance with the Agreement is a changed circumstance that warrants reasonably extending the Agreement's termination date to provide the Class with the benefit of the bargain it struck.

A. Defendants' Failure to Comply with the Settlement Agreement Is an Unforeseen Changed Circumstance Warranting Extending the Agreement

1. Defendants' Failure to Adjudicate Class Members' Asylum Applications and to Honor the Agreement's Stay Provision Are Changed Circumstances

As this Court has previously noted, one of "the Settlement Agreement's core protections for Class Members" is found in Section III.B: "USCIS will exercise Initial Jurisdiction over Class Members' asylum applications in accordance with the terms of this Settlement Agreement and adjudicate them on the merits." ECF No. 253 at 3. Defendants have failed to comply with this obligation—indeed, they issued a blanket, indefinite "hold" on adjudicating *any* asylum applications (subject to very narrow, discretionary exceptions) whose current status is opaque at best. In addition, Defendants have rampantly disregarded their obligation under Section III.I not to remove Class Members awaiting this exercise of Initial Jurisdiction. These significant and unanticipated non-compliances constitute changed circumstances.

Regarding Class Members' asylum adjudications, "[i]n Maryland, 'it is a general principle of contract law that when a contract calls for performance but does not specify a time, a reasonable time will be implied.'" *Horsetail Techs., LLC v. Del. State Police Fed. Credit Union*, 2020 WL 3402302, at *29 (D. Md. June 19, 2020); *see Anne Arundel Cty. v. Crofton Corp.*, 410 A.2d 228, 232 (Md. 1980) ("In the absence of an express time for performance, a reasonable time will be implied."); *Y.Y. v. State*, 205 Md. App. 724, 744 (2012) (same). Because the provision requiring Defendants to adjudicate Class Members' asylum applications does not expressly state a time for performance, Defendants must perform within a "reasonable time." *Anne Arundel*, 410 A.2d at 232.

In deciding what constitutes "a reasonable time," the Court "should look to the subject matter of the agreement in an effort to supply a durational term that produces a reasonable result."

Horsetail Techs., 2020 WL 3402302, at *30 (quoting *Lerner v. Lerner Corp.*, 132 Md. App. 32, 45 (2000)). The Settlement Agreement's subject matter is the Class "[M]embers' rights to have their asylum applications adjudicated on the merits by USCIS while they remained physically present in the United States." ECF No. 253 at 1. By its terms, the Settlement Agreement provides that its various provisions, including the obligation to adjudicate Class Members' asylum applications and the prohibition on removing Class Members, terminate 548 days after the Effective Date," *i.e.*, on May 27, 2026. ECF No. 199-2 at 12, § IV.K. Accordingly, for the duty of Section III.B to have any teeth at all, the reasonable time for its performance must precede the Termination Date. After all, Maryland courts interpret a contract's various "provisions harmoniously, so that, if possible, all of them may be given effect," and "consistently 'strive to interpret contracts in accordance with common sense.'" *Lithko Contracting, LLC v. XL Ins. Am., Inc.*, 487 Md. 385 (2024) (citation omitted). To give effect to Section III.B's protections, Defendants' duty to perform under Section III.B must be triggered while it is still in force.

Yet it is now apparent that, for nearly all Class Members, Defendants have not performed their obligation to adjudicate their asylum applications on the merits and will not do so by May 27, 2026. Defendants represented that, as of March 9, 2026, there were approximately 74,000 potential Class Members awaiting a USCIS asylum adjudication on the merits, but they also acknowledge—as they must—that this number excludes an untold additional number of Class Members whom USCIS excluded from the Class list. This number makes it impossible for Defendants to adjudicate their asylum applications on the merits by next month—even if Defendants were wholeheartedly attempting to do so. And they are not. There has been essentially no meaningful progress in adjudicating Class Members' asylum applications during the period while the Agreement has been in force. In fact, Defendants set themselves even further back via

their No Asylum Adjudications Policy, which Officer Sicard confirmed at the March 19, 2026 hearing was applied to Class Members. Ex. 2 (Mar. 19, 2026 Tr.) at 100. Indeed, application of that policy was tantamount to a "repudiation" of one of the Settlement Agreement's key protections. *See, e.g.*, *Rad Concepts, Inc. v. Wilks Precision Instr. Co., Inc.*, 167 Md. App. 132, 172-73 (2006) (affirming judgment for breach of contract on ground that breaching party "expressed his intention not to pay for the 5,000 units"); Restatement (Second) of Contracts § 250 (1981) (repudiation is either "a statement by the obligor to the obligee indicating that the obligor will commit a breach" or "a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach"). As in *Duvall*, modification of the Settlement Agreement is warranted because "it is clear that defendants will not be in compliance with the Agreement by the current expiration date." *Duvall I*, 2021 WL 2042295, at *15.

Regarding Class Members' removals, here, too, it is abundantly clear that Defendants will not be in compliance with the Agreement by May 27, 2026, thereby warranting modification. There is no question that Defendants' removals of Class Members constitute substantial noncompliance with Section III.I of the Agreement. What began as the known removal of one Class Member in March 2025 grew to the revelation of more than a dozen followed by the remarkable admission during the March 2026 evidentiary hearing that roughly a hundred potential Class Members have been removed in violation of the Agreement over the last year. *See supra* pp. 8-9. And, as discussed above, that number is likely substantially higher and will continue to grow absent Court intervention to enforce the Agreement. *Id*. Defendants will not bring back all removed Class Members who wish to return to the United States and complete their bargained-for adjudications on the merits of their asylum applications under Section III.B of the Agreement in the next seven weeks. Indeed, Class Counsel's recent unsuccessful attempts to have Defendants

return removed Class Member E.M.P. to the United States prove this point. *See* Ex. 4 (Mar. 23, 2026 Tr.) at 161. Extending the Agreement is warranted to unravel the extent of Defendants' non-compliances while this Court retains enforcement authority and to allow for any removed Class Member to return at Defendants' expense.

The Seventh Circuit's recent decision in *Castañon-Nava v. U.S. Department of Homeland Security*, 161 F.4th 1048 (7th Cir. 2025), supports Class Counsel's requested modification. There, the plaintiffs brought a class action against DHS and ICE's practice of warrantless arrests in violation of the statutory criteria. *Id.* at 1052. The parties eventually settled and entered into a three-year consent decree: the defendants agreed not to conduct such warrantless arrests, among other duties, and established a mechanism for resolution of allegations of noncompliance, including judicial enforcement. *Id.* at 1053. A few weeks before termination, the plaintiffs moved under Rule 60(b)(5) to extend the termination date, citing "Defendants' repeated material noncompliance." *Id.* at 1054. Meanwhile, DHS "unilaterally declar[ed] that ICE's obligations under the Consent Decree were terminated." *Id.* The district court found that the defendants "had failed to substantially comply with the Consent Decree" and extended the Consent Decree under Rule 60(b)(5). *Id.* The Seventh Circuit affirmed, finding no abuse of discretion in the conclusion that "Defendants' substantial non-compliance with the Consent Decree constituted a significant change in circumstances that warranted a modification of the Consent Decree under Rule 60(b)(5)" in light of the "multiple instances where Defendants had failed to comply with the Consent Decree while making warrantless arrests" and "the unilateral proclamation by a DHS senior official … that DHS would no longer comply with the Consent Decree." *Id.* at 1059.

Defendants' noncompliance here is similar and, if anything, more significant than in *Castañon-Nava*. As discussed above, instead of complying with their obligations to adjudicate

Class Members' asylum applications on the merits and not to remove them in the interim, Defendants unilaterally halted adjudicating Class Members' asylum applications and have wrongfully removed some large, still-unknown number of Class Members. *See supra* 5-8. Indeed, the No Asylum Adjudications Policy in effect declared that Defendants would not honor their commitment in Section III.B to adjudicate Class Members' asylum applications, akin to DHS's declaration in *Castañon-Nava*. This conduct is substantial noncompliance with the Agreement, and "[i]t is not uncommon for a court to modify a consent decree by extending the termination date when a party has failed to substantially comply." *Duvall I*, 2021 WL 2042295, at *15.

2. The Magnitude of Defendants' Noncompliance Was Unforeseen

Class Counsel could not have anticipated the extent of Defendants' noncompliance with the Settlement Agreement when the Parties executed it in July 2024. For example, it was not anticipated that Defendants would later issue a complete moratorium in the form of "an adjudicative hold on all pending asylum applications, regardless of the alien's country of nationality," Ex. 5, and then take the position that this hold applied to Class Members. The No Asylum Adjudications Policy itself references "[r]ecent" events that postdate the Settlement Agreement, such as an attempted terror attack on Election Day 2024 and the shooting of two National Guard members in November 2025, as justifications. *Id.* at 2. Those events, of course, and Defendants' subsequent asylum hold were not foreseen in July 2024.

More generally, it was not anticipated that, on the eve of the Settlement Agreement's expiration, likely far more than 74,000 Class Members' asylum applications would remain unadjudicated by May 2026. Indeed, at the start of this litigation, the available evidence suggested that the universe of *potential* Class Members would be some fraction of 27,106—which is the number, as of March 31, 2019, of pending asylum cases filed under the initial jurisdiction provision

of the TVPRA while applicants were in removal proceedings. *See* ECF No. 117-1 at 7. When the Parties executed the Settlement Agreement in July 2024, no available data indicated that the number of Class Members would balloon, with their asylum applications remaining largely unadjudicated.

Likewise, it was not foreseen that Defendants would fail to comply with the Settlement Agreement (and this Court's Orders enforcing the Settlement Agreement) by removing at least one hundred potential Class Members—and likely more. The Settlement Agreement's prohibition on the removal of Class Members is unequivocal, not open to interpretation. *See* ECF No. 199-2 at 8, § III.I ("With respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member's final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement."). And the Agreement even spells out the procedures Defendants must follow to ensure compliance. *Id.* As a result, Class Counsel could not have foreseen that Defendants would rampantly violate the Agreement—much less any related order of this Court—by returning many young asylum seekers to the very countries from which they were seeking protection.

That the Settlement Agreement contains a mechanism for addressing "alleged noncompliance," ECF No. 199-2, § V.D, in no way means that the Parties anticipated the *extent* of Defendants' noncompliance. In *Thompson*, the Fourth Circuit affirmed the modification of a consent decree under Rule 60(b)(5) even though "the parties when executing the Consent Decree must have anticipated the likelihood that" it would terminate "before the Local Defendants had completed their obligations under the Decree." 404 F.3d at 828. That is because "the Plaintiffs did not anticipate *the degree* of the Local Defendants' non-compliance." *Id.* at 829 (emphasis added). "If the parties had actually anticipated that the Local Defendants would be so far behind

on their obligations at this stage in the proceedings," *Thompson* reasoned, "the Consent Decree would never have been executed. The Plaintiffs would not have given up their claims in exchange for an agreement that they anticipated would not be followed." *Id.* at 828-29. Similarly, in *Castañon-Nava*, the district court extended the consent order under Rule 60(b)(5) even though the plaintiffs "anticipated that ICE might violate the Agreement—they negotiated provisions that provide for motions to enforce the Agreement based on allegations of individual violations and based on repeated, material violations," and "[t]hey also negotiated remedial provisions in the event that such violations of the Agreement were established." 806 F. Supp. 3d 823, 861 (N.D. Ill. 2025), *aff'd*, 161 F.4th 1048 (7th Cir. 2025). What mattered is that the plaintiffs did not "actually fores[ee] that ICE would pursue a policy that would eviscerate the very foundation of the Agreement that they spent well over a year negotiating." *Id.*

Even the fact "that the events were theoretically foreseeable does not foreclose a modification," because "the issue is whether the parties *actually* anticipated the events giving rise to the modification request." *Thompson*, 404 F.3d at 828. There can be no doubt that these events were not actually anticipated.

B. Class Counsel's Proposal to Extend the Settlement Agreement Is Suitably Tailored to Resolve Defendants' Non-Compliances

Class Counsel propose that the Settlement Agreement's term be extended until Defendants satisfy a straightforward performance-based metric, designed to enable Class Members—including those removed from the United States in violation of the Agreement—to receive the protections they were promised. Under this framework, Defendants will take reasonable measures to notify all potential Class Members of their right to receive an asylum adjudication on the merits, offering them a window to opt in. The Settlement Agreement then terminates after the Court

concludes that Defendants have, in fact, adjudicated the asylum applications of those Class Members who timely opted in.

This proposal "nicely meets *Rufo*'s requirement that any modification be 'suitably tailored to the changed circumstance.'" *Thompson*, 404 F.3d at 831 (quoting *Rufo*, 502 U.S. at 391). The most salient changed circumstance is Defendants' failure to adjudicate Class Members' asylum applications on the merits, as discussed above. This proposal offers a narrowly tailored modification to ensure that Class Members who so desire will receive that adjudication—precisely what the Settlement Agreement was meant to guarantee.

Notably, Class Counsel recognize that this proposal would allow the Settlement Agreement to terminate before *all* Class Members receive an adjudication on the merits. Indeed, in the normal course, some portion of asylum applications in immigration courts are ultimately not adjudicated for a number of reasons: *e.g.*, the applicant's circumstances change, removal proceedings have been dismissed or terminated, the applicant receives other immigration relief, or the applicant fails to comply with relevant deadlines[18]; similarly, some applicants seeking asylum before USCIS may choose not to complete the process. It therefore makes sense to tie the proposed performance-based termination mechanism to the adjudication of asylum applications for those applicants who affirmatively opt in. The proposed mechanism will also significantly reduce the burden on Defendants and ensure that the Settlement Agreement may terminate in the foreseeable future while Class Members who wish to exercise their rights under the Settlement Agreement are given the opportunity to do so.

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[18] *See* Ex. 15, Congressional Research Service, *Asylum Process in Immigration Courts and Selected Trends* at 9-10) (noting that, in fiscal year 2025, 54% of asylum applications in immigration courts had an outcome of "Other," which is further broken down into "Not Adjudicated"—a category that "likely includes cases that were dismissed or terminated"—"Withdrawn," and "Abandoned").

Class Counsel's proposed modification also requires Defendants to identify all potential Class Members who have been removed and to offer them the choice to return to the United States for the adjudication of their asylum applications. That proposal is likewise suitably tailored to the changed circumstance of Defendants' substantial noncompliance with the Settlement Agreement's prohibition on removing Class Members.

In sum, the proposed performance-based metric is "suitably tailored to ensure that Defendants increase the pace of their progress toward compliance with the Agreement," *Duvall II*, 2024 WL 4529261, at *7, and that the Settlement Agreement will not expire without Class Members receiving the benefit of their bargain. It also avoids the prospect of repeated Rule 60 motions that might result from a purely time-based extension, in light of Defendants' pattern of noncompliance. Because Class Counsel have met their burden under the *Rufo* standard, "the court must modify the consent decree 'in light of such changes.'" *Id.* at *6 (quoting *Horne*, 557 U.S. at 447).

VI. CONCLUSION

For all of the above reasons, the Court should exercise its equitable power under Fed. R. Civ. P. 60(b)(5) to extend the termination date of the Settlement Agreement in view of Defendants' substantial noncompliance with the Agreement to allow Class Members to receive their bargained-for rights under the Agreement.

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Respectfully submitted,

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