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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
(San Diego)

18 AL OTRO LADO, Inc., *et al.*,

19 *Plaintiffs,*

20 v.

21 KRISTI NOEM,¹ *et al.*,

22 *Defendants*

Case No. 17-CV-02366-BAS-KSC

Hon. Cynthia Bashant

**PLAINTIFFS’ REPLY IN SUP-
PORT OF RULE 60(B) MOTION
FOR RELIEF FROM THE JUDG-
MENT AND REQUEST FOR IN-
DICATIVE RULING**

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28 ¹ Secretary Noem is automatically substituted pursuant to Fed. R. Civ. P. 25(d).

1 The parties largely agree about the facts and the merits of Plaintiffs’ Motion
2 for Relief from the Judgment (ECF No. 842) (the “Motion”). Indeed, Defendants
3 “do[] not oppose the request for an indicative ruling or the underlying relief.” Resp.
4 at 2. Plaintiffs provide the following reply to clarify two remaining points.

5 First, Defendants agree that very few PI class members have been identified
6 in recent years, and further screening is unlikely to result in any tangible benefit to
7 class members. Defendants’ attached declaration suggests that of the approximately
8 3,225 cases of potential PI class members with unexecuted expedited removal orders
9 whose cases had been reviewed as of December 18, 2024, only eight individuals, or
10 0.2% of screened cases, have been positively identified as PI class members. In fact,
11 Plaintiffs’ review of that evidence shows that only half of those—four PI class mem-
12 bers, or 0.1% of screened cases—were eligible for any relief under the injunction
13 after having been identified through the screening procedures Defendants put in
14 place in September 2022.

15 Second, Defendants do not dispute that the requested relief is fair to the PI
16 class. While Defendants suggest that they disagree about how to weigh the Rule
17 23(e) fairness factors in the abstract, those arguments do not actually challenge the
18 fairness of Plaintiffs’ proposed vacatur of the Court’s injunction.

19 At any rate, these abstract disagreements do not detract from the central prem-
20 ise of the Motion, upon which all parties agree—that the continued burden and ex-
21 pense to locate and screen potential PI class members is unlikely to produce any
22 practical benefit for class members, but does impose real burdens on the parties.
23 Mot. at 11-14. Because the Permanent Injunction has achieved its purposes and all
24 parties agree that the equities favor dissolution of its remaining obligations, Plain-
25 tiffs request that this Court enter an indicative ruling that when it has jurisdiction, it
26 will grant Plaintiffs’ motion for relief from the Permanent Injunction and vacate the
27 injunction’s requirements to identify new class members as to all parties.

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1 **I. The parties agree that the Permanent Injunction is unlikely to further**
2 **benefit unknown class members.**

3 The parties agree that very few PI class members have been identified in re-
4 cent years, and further outreach is unlikely to produce significant positive results for
5 class members. *See* Resp. at 3. That is consistent with Plaintiffs’ assertion that the
6 Permanent Injunction has run its course and achieved the “object which the [Court]
7 intend[ed] to accomplish,” and applying it prospectively would be inequitable. Mot.
8 at 10-14 (citing *Jeff D. v. Otter*, 643 F.3d 278, 284 (9th Cir. 2011)).

9 While Defendants speculate that there may be unknown PI class members
10 who could still be identified, Resp. at 3, experience shows that very few, if any,
11 would actually be entitled to relief, *see* Mot. at 9-10. For example, Defendants’ evi-
12 dence shows that Defendants identified a total of eight PI class members out of 3,225
13 unexecuted expedited removal order cases screened, or about 0.2% of cases. Resp.
14 Ex. A, Joseph Decl. ¶ 5, ECF No. 846-1. However, Plaintiffs’ review of that data
15 determined that only four of these eight class members (0.1% of cases screened)
16 were ultimately deemed eligible for relief after being identified through the currently
17 operative screening procedures. Cassler Decl.¹ ¶¶ 5-7. And as stated previously, the
18 last positive screening by Defendants was on May 4, 2023. Crow Decl. ¶ 44. Like-
19 wise, despite diligent and ongoing efforts, Plaintiffs have identified only two PI class
20 members who were previously removed from the country. Crow Decl. ¶ 40. Indeed,
21 Plaintiffs are aware of only one class member who was previously removed and is
22 currently seeking relief, and that class member has already moved for reopening of
23 his immigration proceedings and returned to the United States. Crow Decl. ¶ 40 &
24 n.4; Cassler Decl. ¶ 9. The low success rate, combined with the passage of time—

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27 ¹ The Declaration of Rebecca M. Cassler in Support of Plaintiffs’ Rule 60(b) Motion for Relief
28 from the Judgment and Request for Indicative Ruling (“Cassler Decl.”) is filed concurrently here-
with. The Declaration of Melissa Crow in Support of Plaintiffs’ Rule 60(b) Motion for Relief from
the Judgment and Request for Indicative Ruling (“Crow Decl.”) was filed with Plaintiffs’ Motion.

1 which makes it more and more difficult to identify and contact potential class mem-
2 bers—indicate that further screening would be unlikely to produce tangible benefits
3 for the PI class.

4 In sum, the parties agree that further outreach is unlikely to yield significant
5 benefits to the PI class, but it will impose heavy burdens on Plaintiffs and Defend-
6 ants. Relieving the parties of their burdens would also better serve the public interest
7 and preserve party and judicial resources. Mot. at 12-14. Accordingly, this Court
8 should grant relief from the judgment and enter an indicative ruling to that effect.

9 **II. The requested relief is fair to the PI class.**

10 Defendants do not dispute that vacating the Permanent Injunction would be
11 fair to the PI class. *Compare* Resp. at 3-5, *with* Mot. at 14-17. The parties agree that
12 because this motion involves a certified class, this Court must determine whether
13 dismissal of the injunction would be “fair, reasonable, and adequate.” Resp. at 4
14 (quoting Fed. R. Civ. P. 23(e)(2)). Defendants do not address most of the factors that
15 go into a Rule 23(e) fairness analysis, and thus waive those arguments. *See Hanlon*
16 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (discussing the factors).
17 While Defendants quibble with two of the factors, they do not cast doubt on the
18 fairness of the Motion.

19 First, Defendants assert vaguely that the Rule 60(b) motion “is not the result
20 of any settlement.” Resp. at 4. That point is not disputed, and Rule 23(e) applies
21 equally to a “voluntary dismissal.” Fed. R. Civ. P. 23(e). Defendants’ lack of proce-
22 dural or substantive objections should assure this Court that the relief Plaintiffs seek
23 is fair.

24 Second, Defendants agree that granting relief from the Permanent Injunction
25 could streamline the issues for further review. Resp. at 4. Given the complexity of
26 this long-running dispute, streamlining issues would at least mitigate the “risk, ex-
27 pense, complexity, and likely duration of further litigation.” *Hanlon*, 150 F.3d at
28

1 1026. Defendants contend that granting relief may not moot the appeal entirely be-
2 cause of this Court’s declaratory judgment. Resp. at 4. That remains an open ques-
3 tion, as all three members of the Ninth Circuit panel suggested that the case was
4 already moot or that the mootness analysis with respect to the vacated metering pol-
5 icy hinged on the presence of injunctive relief “to ameliorate past and present harms
6 stemming from the policy.” *Al Otro Lado v. Executive Office for Immigration Re-*
7 *view*, 120 F.4th 606, 614 n.3 (9th Cir. 2024); *id.* at 644 (Nelson, J., dissenting). But
8 even without addressing the question of mootness, all agree that the existing injunc-
9 tion will be a major point of contention in any further appellate proceedings that will
10 require significant attention and briefing, including in the briefs due to the Ninth
11 Circuit on February 28, 2025 on the subject of whether the case should be reheard
12 en banc. Resp. at 5. Vacating the requirements imposed by the Permanent Injunction
13 would alleviate the fact-intensive and legal questions raised by that relief and pre-
14 serve resources for Plaintiffs, Defendants, and the courts.

15 In any event, the other factors confirm that vacating the Permanent Injunction
16 is fair. Mot. at 14-17. Plaintiffs have already obtained as much relief for the PI class
17 as is likely ever to be obtained.² Because the purposes of the Permanent Injunction
18 have been fulfilled—and in light of the ever-decreasing chance of locating additional
19 PI class members—relief from the Permanent Injunction’s requirements to locate
20 and screen unknown class members is certainly fair.

21 CONCLUSION

22 This Court’s Permanent Injunction has served its core purpose of restoring the
23 status quo to a time-limited class of Plaintiffs. That injunction is unlikely to provide
24

25 ² The Permanent Injunction has benefitted the individuals with final removal orders that the gov-
26 ernment has identified through various screening procedures, *see* Crow Decl. ¶¶ 43-46, the few
27 individuals Plaintiffs identified through their extensive outreach efforts, *id.* ¶ 41, and an unknown
28 number of class members who were in removal proceedings at the time the injunction was issued
and thus benefitted, in the form of not having the Asylum Transit Rule applied in their cases,
without additional screening by the parties.

1 any further relief, but does impose continuing burdens on Plaintiffs' counsel and
2 Defendants. Accordingly, Plaintiffs request that this Court enter an indicative ruling
3 under Rule 62.1(a)(3) that when it has jurisdiction, it will grant Plaintiffs' Rule 60(b)
4 motion for relief from the Permanent Injunction and vacate the injunction's require-
5 ments to identify new class members as to all parties.

6
7 Dated: February 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I served a copy of this document on the Court and all parties by filing this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

DATED: February 7, 2025

Respectfully submitted,

s/ Matthew E. Fenn

Matthew E. Fenn

Attorney for Plaintiffs

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