

SUMMARY

The Nationwide *Perez-Fuñez* Permanent Injunction Provisions for Unaccompanied Children in DHS Custody

JUNE 2014

The *Perez-Fuñez* injunction is a nationwide class action permanent injunction that requires the U.S. Department of Homeland Security (DHS) to take certain steps before removing unaccompanied children to their countries of origin via voluntary departure. The injunction was originally entered in 1984, was modified and made permanent in 1985, and further modified in 1986. This document summarizes the injunction’s requirements as it remains in place today. Although removal proceedings did not exist at the time the injunction was entered, class counsel believe that the injunction would apply with equal force to today’s removal proceedings regardless of whether unaccompanied minors are being removed via regular removal proceedings or expedited removal.

Who benefits from the injunction’s protections?

The injunction’s beneficiaries include all unaccompanied children who are, or in the future will be, in the custody of federal immigration agents for possible removal from the U.S. The injunction applies regardless of the child’s country of origin, though there are lesser protections for nationals of Mexico and Canada if they were apprehended in the immediate vicinity of the border.

The court-certified nationwide class is “All persons who appear, are known, or claim to be under the age of eighteen years who are now or in the future taken into or held in custody in the United States by agents of the Immigration and Naturalization Service for possible deportation from the United States, and who are not accompanied by at least one of their natural or lawful parents at the time of being taken or received in custody within the United States.”¹ (1984 order)

The permanent injunction’s requirements

Below are excerpts from the language in the injunction regarding the steps DHS officers must take before offering an unaccompanied minor voluntary departure or expedited removal. These steps include the provision of an advisal of rights, as well as making efforts to contact a relative or close family member of the child, or actually documenting that such contact was made, in the cases of all children other than Mexicans and Canadians apprehended in the immediate vicinity of the border. In the excerpts that follow, some text

¹ “[A]gents of the [former] Immigration and Naturalization Service” are now understood to include agents and officials who work for agencies within DHS, including U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

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has been formatted in bold font for (added) emphasis and some has been paraphrased for brevity's sake. For the exact language of the 1984, 1985, and 1986 orders, please consult the orders issued by the court or contact NILC (contact information provided below).

IT IS FURTHER ORDERED that defendants, their agents and successors in office shall not in any way attempt to persuade or dissuade class members when informing them of the availability of voluntary departure pursuant to 8 U.S.C. Sec. 1252(b), that defendants, their agents and successors in office shall permit class members to retain copies or facsimiles thereof of any documents signed by the class member, and that defendants, their agents and successors in office shall not inform any class member of the availability of voluntary departure pursuant to 8 U.S.C. Sec. 1252(b) until such defendant, agent, or successor in office has:

- Provided the class member with a copy of the (simplified) **rights advisal and the free legal services list** compiled pursuant to 8 C.F.R. section 292a.1 and has permitted the class member to retain these in his or her possession. If the class member indicates that he or she cannot read the notice, the INS agent shall read the notice to the class member; and has
- Obtained a signed acknowledgment on a separate copy of the notice showing that notice was provided to the class member. (1984 order)
- **Applicable only to Mexican and Canadian children:** With respect to class members apprehended in the immediate vicinity of the border and who reside permanently in Mexico or Canada, the INS shall inform the class member that he or she may make a **telephone call to a parent, close relative, or friend, or to an organization found on the free legal services list**. The INS shall so inform the class member of this opportunity prior to presentation of the voluntary departure form. (1985 order)
- **Applicable to children from all countries other than children apprehended in the immediate vicinity of the border who are Mexican or Canadian:** With respect to all other class members, the INS shall provide access to telephones and **ensure that the class member has in fact communicated, by telephone or otherwise, with a parent, close adult relative, friend, or with an organization found on the free legal services list**. The INS shall provide such access and ensure communication prior to presentation of the voluntary departure form. (1985 order)
- The INS shall obtain a signed acknowledgment from the class member on a separate copy of the simplified rights advisal showing that the INS has provided all notices and required information, including confirmation of communication with a parent, close relative, friend, or legal organization, when applicable. (1985 order).
- Communication by the minor with any attorney, whether or not included on the legal services list, will satisfy this requirement. Likewise, contact with the

National Center for Immigrants' Rights will constitute compliance.² Finally, if and only if, a class member on his/her volition chooses to contact a consular officer of his/her home country, communication with a consular officer will satisfy this requirement. (1986 order)

- **Communication with any one of the following categories of persons will suffice to satisfy the purpose of the judgment:** Parents, close adult relatives, adult friends, consular officers (as limited above), legal services organizations, attorneys, and the National Center for Immigrants' Rights. The class member may not frustrate his processing by insisting on contacting any one particular one of these categories of persons. The INS should make reasonable efforts to contact the person of the minor's choice, but there shall be no fixed time period after an unsuccessful effort to contact that person before the INS may facilitate contact with another person for purposes of complying with this judgment. The test of compliance is reasonableness. In the particular circumstances of each case, the INS shall make reasonable efforts to contact the person of the minor's first choice. (1986 order)
- The judgment should not be read to forbid the INS from giving a minor the form which is used for the election between voluntary return and a deportation hearing, before (s)he communicates with an adult. It may be helpful for the minor to have the form so that (s)he may refer to it while speaking with an adult. What is proscribed is for the minor to make an election by signing the form before speaking with an adult. (1986 order)
- If communication with an adult is done by telephone, the INS is under no duty to obtain or record the name or telephone number of the adult whom the minor contacts, if the minor is not willing to provide that information. The INS may rely on the minor's statements as to whom (s)he has spoken to. (1986 order)
- The INS shall make a record of the refusal by a class member apprehended in the immediate vicinity of the border, who resides permanently in Canada or Mexico, of the opportunity to contact an adult before electing voluntary departure. (1986 order).

The district director shall update and maintain the **free legal services list** compiled pursuant to 8 C.F.R. § 292a.1.

FOR MORE INFORMATION on the *Perez-Fuñez* injunction or to report suspected violations of the injunction, contact NILC's Linton Joaquin, joaquin@nilc.org or 213-674-2909, or Karen Tumlin, tumlin@nilc.org or 213-674-2850.

² The injunction uses the National Immigration Law Center's former name, which was National Center for Immigrants' Rights.