No. 24A1079

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Applicants,

v.

SVITLANA DOE, ET AL.

ON APPLICATION TO STAY THE ORDER ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

APPENDIX TO RESPONDENTS' OPPOSITION TO APPLICATION TO STAY

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APPENDIX TO RESPONDENTS' OPPOSITION TO APPLICATION TO STAY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
KRISTI NOEM, in her official capacity as Secretary of Homeland Security; TODD M. LYONS, in his official capacity as the Acting Director of Immigration and Customs Enforcement; PETE R. FLORES, in his official capacity as Acting Commissioner of U.S. Customs and Border Protection; KIKA SCOTT, in her official capacity as the Senior Official Performing the Duties of the Director of U.S. Citizenship and Immigration Services; and DONALD J. TRUMP, in his official capacity as President of the United States,	*	Civil Action No. 1:25-cv-10495-IT
	*	
Defendants.	*	

MEMORANDUM & ORDER GRANTING IN PART PLAINTIFFS' EMERGENCY MOTION FOR A STAY OF DHS'S *EN MASSE* TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE

April 14, 2025

Among several motions pending before the court is Plaintiffs' Emergency Motion for Preliminary Injunction and Stay of DHS's *En Masse* Truncation of All Valid Grants of CHNV Parole [Doc. No. 70]. For the reasons that follow, and pending further court order, the court grants emergency relief staying the *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025), insofar as it revokes, without case-by-case review, the previously granted parole and work authorization issued to noncitizens paroled into the United States pursuant to parole programs for noncitizens from

Cuba, Haiti, Nicaragua, and Venezuela (the "CHNV parole programs") prior to the noncitizen's originally stated parole end date.

I. Background

A. The Statutory Parole Authority

Under the Immigration and Nationalization Act, as amended:

> The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5) (emphasis added).[1]

B. The CHNV Processes

On October 19, 2022, the Department of Homeland Security ("DHS") announced an effort to address the increasing number of Venezuelan nationals arriving at the southern border of the United States by "coupl[ing] a meaningful incentive to seek a lawful, safe and orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly." Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63507 (Oct. 19, 2022). Under the program, individuals who passed a national security and public safety vetting and who had a supporter in the United States who agreed to provide housing and other support could receive an advanced authorization to travel to the United States for the purposes of seeking, on a case-by-case basis, a discretionary grant of parole at an internal port of entry. See

[1] An "alien" is "any person not a citizen or national of the United States." Id. § 1101(a)(3).

id. at 63515; see also id. at 63508 ("[o]nly those who meet specified criteria and pass national security and public safety vetting would be eligible for consideration for parole under this process.").[2] The program specified that discretionary grants of parole would be for a temporary period of up to two years, during which time individuals could seek humanitarian relief or other benefits and receive work authorization. See id. at 63508. The program specified further that those "who are not granted asylum or other immigration benefits will need to leave the United States at the expiration of their authorized period of parole or will generally be placed in removal proceedings after the period of parole expires." Id. The process was capped at 24,000 beneficiaries. See id. Individuals who had been ordered removed from the United States in the past five years, or who crossed into the United States between ports of entry or entered Mexico or Panama without authorization after October 19, 2022, were barred from the program. Id.

In early 2023, DHS implemented similar processes for nationals of Cuba, Haiti, and Nicaragua. See Implementation of a Parole Process for Cubans, 88 Fed. Reg. 1266 (Jan. 9, 2023); Implementation of a Parole Process for Haitians, 88 Fed. Reg. 1243 (Jan. 9, 2023); Implementation of a Parole Process for Nicaraguans, 88 Fed. Reg. 1255 (Jan. 9, 2023).

On October 4, 2024, DHS announced that there would be no "re-parole" beyond the initial two-year period for the parolees who entered the United States under the CHNV parole programs. See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13614 n.24 (Mar. 25, 2025).[3]

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[2] In contrast, "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6)(A)(i).

[3] Plaintiffs do not dispute that re-parole is not available through the CHNV processes. See Mem. ISO Second Mot. for PI at 3 n.4 [Doc. No. 72].

C. The January 20, 2025 Executive Orders

On January 20, 2025, President Trump signed numerous executive orders, including two that are relevant here:

The first order directed the Secretary of Homeland Security to "take all appropriate action [consistent with applicable law] to . . . [t]erminate all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders, including the [CHNV program]." See Exec. Order No. 14165, 90 Fed. Reg. 8467 (Jan. 30, 2025).

The second order directed the Secretary to take "all appropriate action, consistent with law," to:

> ensur[e] that the parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised on only a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual alien demonstrates urgent humanitarian reasons or a significant public benefit derived from their particular continued presence in the United States arising from such parole[.]

See Exec Order No. 14159, 90 Fed. Reg. 8443 (Jan. 29, 2025).

D. The Huffman Memorandum

On January 20, 2025, Acting Secretary of Homeland Security Benjamin C. Huffman issued a memorandum stating that "[i]t is evident that many current DHS policies and practices governing parole are inconsistent with [8 U.S.C § 1182(d)(5)]." See Huffman Memorandum 2 [Doc. No. 41-1]. The memorandum stated that the language and context of 8 U.S.C. § 1182(d)(5) "make it abundantly clear that it is a limited use authority, applicable only in a very narrow set of circumstances," and that the statute "does not authorize categorical parole programs that make aliens presumptively eligible on the basis of some set of broadly applicable criteria." Id. at 1-2 (emphasis in original). The memorandum further stated that "it is generally unlawful to parole into the United States aliens with pending applications for refugee status filed abroad, and aliens

found to have *prima facie* asylum claims who are being allowed into the United States to await adjudication of those claims." Id. at 2.

The Huffman memorandum ordered that within 60 days, the Director of U.S. Immigration and Customs Enforcement ("ICE"), the Commissioner of U.S. Customs and Border Protection ("CBP"), and the Director of U.S. Citizenship and Immigration Services ("USCIS") were to compile and review all policies pertaining to parole to determine "which are not strictly in accord with" 8 U.S.C § 1182(d)(5), and to thereafter "[f]ormulate a plan for phasing out" any such policies. See id. It further ordered that pending such review, DHS Components would have "discretion to pause, modify, or terminate any parole program described in [the previous paragraph] to the extent" that: (1) the policy was not promulgated pursuant to the procedural requirements of the APA; (2) DHS could take such action while protecting legitimate reliance interests; and (3) taking such action was otherwise consistent with applicable statutes, regulations, and court orders. See id.

Huffman concluded his memorandum by stating that "should any court disagree with the interpretation of the parole statute articulated in this memorandum, I clarify that I am also implementing this policy as a matter of my discretion to deny parole in any circumstance." Id.

E. The Davidson Memorandum

On February 14, 2025, Andrew Davidson, the Acting Deputy Director of USCIS, issued a memorandum authorizing an immediate agency-wide administrative hold on all pending status readjustment and benefit requests filed by individuals paroled into the United States under the CHNV programs, pending "the completion of additional vetting flags in ELIS to identity any fraud, public safety, or national security concerns." Davidson Memorandum [Doc. No. 41-3]. The memorandum stated that USCIS had suspended parts of the CHNV processes in July 2024

after a USCIS assessment identified potential concerns related to fraudulent sponsorship requests. Id. at 2. Based on this assessment, the memorandum stated that "benefit requests filed by aliens who are or were paroled under any of these categorical parole programs need further review to determine the level of fraud and the possible involvement of beneficiaries." Id.[4]

The Davidson memorandum concluded by stating:

> Any case subject to this administrative hold with a litigation need may only be lifted from the hold on a case-by-case basis, in a subsequent memo to file, with approval by the USCIS Director or USCIS Deputy Director. This case-by-case requirement must be followed even when aliens are member of a class that is subject to injunction, settlement agreement, or other court order. Once USCIS completes a comprehensive review and evaluation of the in-country population of aliens who are or were paroled into the United States under these categorical parole programs, USCIS may issue a subsequent memo lifting this administrative hold.

Id. To date, the "administrative hold" has not been lifted.

F. The March 25, 2025 Federal Register Notice

On March 25, 2025, DHS published a Federal Register Notice ("FRN") announcing that, effective immediately, DHS "is terminating the categorical parole programs for inadmissible aliens from Cuba, Haiti, Nicaragua, and Venezuela." See Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025).[5] The

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[4] The Davidson Memorandum also suspended benefits requests filed by individuals paroled under the Uniting for Ukraine and Family Reunification Parole programs. See Davidson Memorandum 1 [Doc. No. 41-3]. The court will address Plaintiffs' challenge to the Davidson Memorandum in a separate order.

[5] The FRN repeatedly uses the term "inadmissible aliens" in describing the individuals in the United States pursuant to these parole programs. See e.g. id. at 13614 (referring to "inadmissible aliens arriving in local communities"); id. at 13618 ("Between October 19, 2022, and January 22, 2025, approximately 532,000 inadmissible aliens received parole into the United States pursuant to the CHNV parole programs.") (emphasis added). Parole is authorized for individuals "applying for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). In other words, parole may be granted when an individual has not yet been deemed either admissible or inadmissible. The FRN gives no reason for mislabeling individuals who received parole through CHNV (or any other program) as "inadmissible" and, when detailing the statutory scheme, acknowledges

FRN announced further that "[t]he temporary parole period of aliens in the United States under the CHNV parole programs and whose parole has not already expired by April 24, 2025[,] will terminate on that date unless the Secretary makes an individual determination to the contrary." Id. It directed further that "[p]arolees without a lawful basis to remain in the United States following this termination of the CHNV parole programs must depart the United States before their parole termination date." Id. The FRN detailed further that:

> DHS generally intends to remove promptly aliens who entered the United States under the CHNV parole programs who do not depart the United States before their parole termination date and do not have any lawful basis to remain in the United States. DHS retains its discretion to commence enforcement action against any alien at any time, including during the 30-day waiting period created by this notice.

Id. at 13618.[6]

The FRN stated that terminating the CHNV programs and existing grants of parole under CHNV was consistent with the President's executive orders, including Executive Order 14165. See id. at 13611. According to the FRN, the CHNV programs "do not serve a significant public benefit, are not necessary to reduce levels of illegal immigration, did not sufficiently mitigate the domestic effects of illegal immigration, are not serving their intended purposes, and are inconsistent with the Administration's foreign policy goals." Id. at 13612.[7] The FRN further

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that "a parolee remains an applicant for admission during the period of parole in the United States." Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13618 (Mar. 25, 2025).

[6] The FRN further stated that "DHS intends to prioritize for removal those who (1) have not, prior to the publication of this notice, properly filed an immigration benefit request, with appropriate fee (or fee waiver request, if available) to obtain a lawful basis to remain in the United States (e.g., adjustment of status, asylum, Temporary Protected Status, or T or U nonimmigrant status) and (2) are not the beneficiary of an immigration benefit request properly filed by someone else on their behalf (e.g., petition for alien relative, fiancé petition, petition for immigrant employee), with appropriate fee (or fee waiver request, if available)." Id. at 13619.

[7] The FRN explained in some detail why the original grounds for the CHNV program did not warrant continuing the program. See id. at 13612-13614 (explaining why, in DHS's view, the

stated that as to prior arguments or determinations "that these programs were consistent with the requirement of 'urgent humanitarian reasons' for granting parole, DHS believes that consideration of any urgent humanitarian reasons for granting parole is best addressed on a case-by-case basis consistent with the statute, and taking into consideration each alien's specific circumstances." Id. The FRN concluded that these reasons, independently and cumulatively, support termination of the CHNV programs. Id.

After addressing DHS's rationale for terminating the CHNV programs, the FRN turned to the reliance interests of prospective supporters and parolees. Id. at 13617. The FRN asserted first that "the temporary and discretionary nature of the programs indicate that reliance on the continued existence of the CHNV parole programs would be unwarranted," but that it was addressing certain reliance interests "in an abundance of caution." Id.

The FRN addressed first the reliance interests of supporters and potential beneficiaries of the CHNV programs, concluding that the costs potentially incurred by these individuals were minimal and "pale in comparison to the U.S. Government's sovereign interest in determining who is paroled into the United States." Id. at 13617-18.

The FRN addressed next the reliance interests of potential beneficiaries with approved advanced travel authorizations ("ATA") and their supporters. The FRN stated that "[t]here are no currently approved ATAs upon which an alien may travel under the CHNV programs," and that

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CHNV programs were unnecessary to achieve border security goals); id. at 13614-15 (explaining why, in DHS's view, the CHNV programs did not minimize "the burden on communities, state and local governments, and NGOs"); id. at 13615-16 (explaining why, in DHS's view, the CHNV programs are inconsistent with the new administration's foreign policy goals); id. at 13616-17 (explaining why, in DHS's view, other factors do not counsel in favor of maintaining the CHNV programs).

the interests of any individual whose application for an ATA has been cancelled are outweighed by the other concerns specified in the FRN. Id. at 13618.[8]

Finally, the FRN addressed the reliance interests of individuals with a current grant of parole under the CHNV programs, including that these individuals "will have departed their native country; traveled to the United States; obtained housing, employment authorization, and means of transportation; and perhaps commenced the process of building connections to the community where they reside." Id. at 13619. The FRN stated that "any assessment of" these interests "must account for CHNV parolees' knowledge at the outset that (1) the Secretary retained the discretion to terminate the parole programs at any point in time, and to terminate any grants of parole at any time when, in her opinion, the purposes of such parole have been served; and that (2) the initial term of parole would be limited to a maximum of two years." Id.

The FRN concluded that "the potential reliance interests among aliens paroled into the United States under the CHNV parole programs do not outweigh the U.S. government's strong interest in promptly removing parolees when the basis for the underlying program no longer exists." Id. DHS stated that it considered the alternative of permitting CHNV parole recipients to

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[8] The absence of any approved ATA requests followed a directive issued on January 23, 2025, by Jennifer B. Higgins, then Acting Director of USCIS, to her colleagues to "ensure effective immediately that your staff do not make any final decisions (approval, denial, closure) or issue a travel document or I-94 for any initial parole or re-parole application, petition, motion, or other request" for the CHNV, or other parole programs. See Higgins E-mail [Doc. No. 41-2]. On January 28, 2025, USCIS provided notice on its website that it was "pausing acceptance" of the Form I-134A, Online Request to be a Supporter and Declaration of Financial Support used to initiate the parole processes for the CHNV and certain other programs, "until the Agency had reviewed all categorical parole programs as instructed by Executive Order (EO) 14165." See Kika Scott Decl. ¶ 4 [Doc. No. 41-4]. The court will address Plaintiffs' challenge to the Higgins E-mail in a separate order.

remain in the country until the natural expiration of the parole, but the FRN rejected that alternative on the grounds that it would:

> essentially foreclose DHS's ability to expeditiously remove those CHNV parolees with no lawful basis to remain in the United States. Under this alternative, CHNV parolees may begin to accrue more than two years of continuous presence in the United States, such that DHS would have to initiate section 240 removal proceedings to effectuate their removal. *See* INA 235(b)(1)(iii)(II), 8 U.S.C. 1235(b)(1)(iii)(II). As a result, the already overburdened immigration court system would be further taxed with adjudicating the section 240 removal proceedings for the pertinent CHNV beneficiary population, a result DHS finds unacceptable.

Id. at 13619-20.

For the same reason, DHS rejected the alternative of more than a 30-day termination period for existing grants of parole. See id. at 13620.

The FRN concluded by stating DHS's view that publication of the notice in the Federal Register constitutes legally sufficient notice to all interested or affected persons. Id.

G. Plaintiffs Who Were Paroled into the United States Under the CHNV Programs[9]

Plaintiffs[10] who were paroled into the United States under the CHNV Programs have supported the pending motions with declarations stating the following:

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[9] For the purposes of this order, this court addresses only the claims of individuals who received parole through a CHNV program. The court does not address here the claims of Plaintiffs who supported individuals or are seeking to support individuals for parole through the CHNV programs. The court is also not addressing here the claims of Plaintiffs who received parole or have supported or are seeking to support individuals through any parole program other than CHNV.

[10] These Plaintiffs are proceeding here under pseudonyms pursuant to the parties' Stipulated Protective Order Concerning Confidential Doe PII [Doc. No. 57] and this court's Electronic Order [Doc. No. 69] granting Plaintiffs' Second Supplemental Motion to Proceed Under Pseudonym [Doc. No. 64]. All Plaintiffs except Miguel Doe voluntarily provided their identities to Defendants, and all Plaintiffs have provided their identities to this court for *in camera* review. See Mem. & Order [Doc. No. 79]; Sealed Notice Providing Plaintiffs' Identities [Doc. No. 81-1].

1. Armando Doe[11]

Armando Doe fled Nicaragua due to the dangers he faced stemming from his work dedicated to documenting government abuse, the arrest of his father-in-law, and the harassment and persecution of his wife's family.[12] He lawfully entered the United States pursuant to a two-year grant of parole in February 2024. He received work authorization in April 2024 and has been working at a company that makes tractor trailers. The salary he earns helps him provide for his family here as well as for his parents in Nicaragua, including to pay for their medical appointments and living expenses. If Armando Doe cannot work in the United States, he will be forced to returned to Nicaragua and face persecution by the Nicaraguan government. He is scared to return to Nicaragua and has a pending asylum application, which he submitted in January 2025. He attended his biometrics appointment for his asylum application in February 2025.

2. Ana Doe[13]

Ana Doe, the wife of Armando Doe, is also a citizen of Nicaragua who received a two-year grant of parole in February 2024. She received work authorization in April 2024. In Nicaragua, Ana Doe completed college studies computer engineering. Here, she has been working for a company that supplies personal protective equipment. She uses her salary here to provide for her family and for her mother who lives in Nicaragua.

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[11] See Armando Doe Decl. [Doc. No. 24-3].

[12] Armando Doe's wife is Plaintiff Ana Doe.

[13] See Ana Doe Decl. [Doc. No. 24-2].

Ana Doe has a pending asylum application that she submitted in January 2025 because she fears persecution by the current governmental regime. She states that she is not even certain she would be allowed entry into Nicaragua, which would leave her and her family stateless.

3. Carlos Doe[14]

Carlos Doe is a citizen of Nicaragua and is the cousin of Ana and Alejandro Doe. In his hometown in Nicaragua, the government assassinated 32 people and disappeared more than 50 after protests broke out. The army identified him as being involved in the protests and in opposition to the government, and soldiers and police officers came to his home several times and made death threats against him and his family. He and his father fled their hometown and went into hiding, but later received anonymous calls and more death threats. Soldiers visited his mother's home in 2021 and told her that they would imprison Carlos Doe and his father for treason if they found them. A family member living in the U.S. sponsored him for CHNV parole, and he was approved to travel to the United States in May 2023. He arrived in the United States and received a two-year grant of parole, originally set to expire in June 2025.

Carlos Doe obtained work authorization in October 2023. He currently works at a manufacturing plant performing welding and soldering. He has also worked providing food delivery services and performing home renovations and has learned English through these jobs.

Carlos Doe has a pending application for asylum that he submitted in January 2025 and had an appointment with USCIS for his asylum application scheduled for March 4, 2025.

[14] See Carlos Doe Decl. [Doc. No. 24-4].

4. Andrea Doe[15]

Plaintiff Andrea Doe is a citizen of Nicaragua whose husband was sentenced to over 20 years in prison due to his opposition to the Nicaraguan government. In prison, Andrea Doe's husband suffered physical and mental torture. While her husband was incarcerated, Andrea Doe's home was surveilled, and police vehicles stationed themselves in front of her home. When Andrea Doe and her children traveled to the penitentiary to visit her husband, police agents waited at the corner until she and her children got on the bus. After her husband was in prison for four years, the Nicaraguan government agreed to release 222 political prisoners, including her husband, on the condition that the United States would take them. The political prisoners were abruptly released from prison and placed on a flight to the United States. Her husband received parole into the United States, and the Nicaraguan government stripped him and the other passengers on the flight of their Nicaraguan citizenship, making Andrea Doe's husband stateless.

Andrea Doe states that the U.S. government told her husband and other passengers on his flight to use the CHNV programs to apply for reunification with their family members who were left behind in Nicaragua. Her husband followed that instruction, and Andrea Doe and their children arrived in the United States in the summer of 2023, after being sponsored for CHNV parole by someone outside her family.

In the United States, Andrea Doe received work authorization, and she and her husband both work at a company that installs vinyl on cars for advertising. Their children attend elementary school.

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[15] See Andrea Doe Decl. [Doc. No. 27-1].

Andrea Doe's husband included her on his asylum application, which is still pending. She fears returning to Nicaragua, where government officials saw her visiting her husband in prison and know she is his wife. She reports that when she and her children were leaving Nicaragua, they were pulled out of the line, had their passports taken, and were held up at the airport for two hours. She believes that if she was forced to return to Nicaragua, she would be detained, and the government would take away her children.

5. Lucia Doe[16]

Plaintiff Lucia Doe is a Venezuelan national who left her home country due to her family's difficult financial circumstances. She has a bachelor's degree in Christian Education from a university in Puerto Rico, but her salary as Director of Children's Ministries at a Christian church in Venezuela was insufficient to provide for basic needs like food, rent, and clothing. Her family had to rely on financial assistance from her relatives living abroad. She received a two-year grant of parole in July 2024 and obtained a work permit in August 2024.

Lucia Doe works cleaning apartments, condominiums, houses, schools, and businesses. Her plan when seeking parole was to use her two-year grant of parole to work to support her parents and to save money for the future, as well as to pay back her sister for the money her sister spent helping Lucia Doe obtain a work permit and secure transportation to the United States. She fears returning to Venezuela, where she says it is especially difficult to find employment over the age of 40. She has been saving money in case she needs to purchase a last-minute ticket to Venezuela, as to avoid unlawful status in the United States.

[16] See Lucia Doe Decl. [Doc. No. 64-3].

Lucia Doe is concerned about returning to Venezuela with a parole stamp on her passport and states that other Venezuelans who have returned with such stamps have been forced to pay money to military officials at the border in order to be allowed to return to Venezuela, while others have had their passports confiscated, have been imprisoned, or have disappeared.

6. Miguel Doe[17]

Plaintiff Miguel Doe is a Nicaraguan national and is the brother of Alejandro Doe. In Nicaragua, he struggled to find stable work, after being unable to complete his university studies due to interruptions from the Covid-19 pandemic, subsequent changes to the curriculum and course requirements, and the frequent cancellation of courses at his public university. He received a two-year grant of parole in July 2024 after being sponsored by his cousin. He intended to use his two-year grant of parole to provide for his family and save money. He never intended to stay in the United States indefinitely, as his mother needs help caring for herself. Miguel Doe received work authorization in September 2024 and currently works full-time producing marble panels.

Miguel Doe fears that the Nicaraguan government will assume he opposes it if he returns as a deportee and recipient of parole. He believes the risk is even greater if he applies for but does not receive asylum in the United States. However, he also fears staying in the United States without lawful status.

7. Daniel Doe[18]

Plaintiff Daniel Doe is a Haitian national. While in Haiti, Daniel Doe worked as a court interpreter and as an interpreter for the U.S. Embassy, among other groups. On multiple

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[17] See Miguel Doe Decl. [Doc. No. 64-4].

[18] See Daniel Doe Decl. [Doc. No. 64-5].

occasions, he was followed by people on motorcycles on his way to work; Daniel Doe believes these individuals were part of a gang and were tracking his and his family's whereabouts due to his work as an interpreter and with the U.S. Embassy.

In Haiti, his neighborhood came under the control of a gang, whose members attacked and kidnapped neighborhood residents. Daniel Doe and his wife left their original neighborhood after the gang broke into their neighbor's home, physically attacked the husband of the household, and kidnapped the wife of the household. In their new neighborhood, a gang attacked the police station, and there are no longer police forces in the neighborhood.

A friend of Daniel Doe's father offered to support him for CHNV parole but could only afford to support Daniel and not his family. Daniel Doe and his wife searched for a supporter through a matching process so that they could be paroled as a family. They were matched with a sponsor, but Daniel Doe subsequently received travel authorization through his original application. He was granted a two-year period of parole in February 2024.

Daniel Doe received work authorization in March 2024. He worked as a tutor and currently works as an English as a Second Language teacher at two schools. He also obtained his license as a life insurance agent, is currently taking courses on financial investing, and is seeking to receive certification to work as an interpreter in the United States. Daniel Doe has also started a company that promotes education for Haitian immigrants who are new to the United States. He is the main financial supporter of his wife and daughter who live in Haiti. Without work authorization, Daniel Doe will not be able to provide for his family.

Daniel Doe received Temporary Protected Status in September 2024, which was originally set to expire in February 2026. The government has since modified his TPS to terminate in August 2025.

II. Jurisdiction and Reviewability

Defendants raise numerous challenges to this court's jurisdiction. While Defendants are correct that the Secretary's discretion in this area is broad, their conclusion that the Secretary's actions are wholly shielded from judicial review is incorrect. Accordingly, while this court recognizes that its role in reviewing agency action in this area is limited, within that limited role the court is not precluded from considering Plaintiffs' APA claims or from staying the *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 5, 2025) insofar as it revokes, without case-by-case review, previously granted parole and work authorizations for individuals currently in the United States.

A. Standing

"If at least one plaintiff has standing, the suit may proceed." Biden v. Nebraska, 600 U.S. 477, 489 (2023). To satisfy Article III's standing requirements, an injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409 (2013) (quoting Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149 (2010)). "At the preliminary injunction stage . . . the plaintiff must make a 'clear showing' that she is 'likely' to establish each element of standing." Murthy v. Missouri, 603 U.S. 43, 58 (2024). The court finds that the Plaintiffs listed above are similarly situated for purposes of this inquiry and are all likely to establish each element of standing to challenge the FRN's early termination of their parole and work authorization.

The Plaintiffs described above attest to the risks they face from the loss of lawful status and work authorization as well as from a subsequent removal from the United States. See supra Part I.G. Defendants argue that these injuries are not redressable by a stay of the FRN because even if the FRN is stayed, the Secretary still retains authority (1) to end the CHNV programs any

time, without issuing guidance in the Federal Register; and (2) to make individual determinations terminating Plaintiffs' parole.

The first argument goes to the underlying merits of this dispute, namely whether the discretion to end the CHNV program moving forward allows the Secretary to ignore, on a categorical basis, the specific duration of parole accorded in the grant of parole to each individual parolee. The first argument does not go to the threshold question of standing. The second argument is beside the point, where Defendants have made no individual determinations regarding the revocation of individual grants of parole and Plaintiffs' challenge is to Defendants' categorical actions.

The court finds that Plaintiffs have standing to challenge the shortening of their grant of parole. Plaintiffs were paroled into the United States by complying with the immigration processes made available to them. As lawful parolees, they did not have to fear arrest for being in the United States, were permitted to legally work if they received work authorization, and could apply for adjustment of status or other benefits while paroled into this country. The immediate impact of the shortening of their grant of parole is to cause their lawful status in the United States to lapse early—in less than two weeks. If their parole status is allowed to lapse, Plaintiffs will be faced with two unfavorable options: continue following the law and leave the country on their own, or await removal proceedings.

If Plaintiffs leave the country on their own, they will face dangers in their native countries, as set forth in their affidavits. For some Plaintiffs, leaving will also cause family separation. Leaving may also mean Plaintiffs will have forfeited any opportunity to obtain a remedy based on their APA claims, as leaving may moot those claims.

If, in the alternative, Plaintiffs remain in the United States and await removal proceedings, they may be subject to arrest and detention, they will no longer be authorized to work legally in this country[19] and their opportunities to seek any adjustment of status will evaporate. In this litigation, Defendants have repeatedly contended that Plaintiffs will have the opportunity to renew their requests for immigration benefits if placed in removal proceedings.[20] But even if Plaintiffs can renew requests for certain benefits, some requests may very well be denied simply because Plaintiffs would no longer be in lawful status. Defendants' positions are also inconsistent. Despite claiming Plaintiffs could renew requests in removal proceedings, Defendants: (1) are defending the FRN, which states that the revoking of parole is designed to ensure expedited removal (thereby avoiding removal proceedings); and (2) insist that Plaintiffs can be subjected to expedited removal proceedings while acknowledging, at a hearing before this court, that Plaintiffs could not renew most immigration benefits requests if placed in expedited proceedings. See infra Part IV.A. Finally, Defendants neglect to mention that the Davidson Memorandum—which Defendants maintain is lawful—imposed an indefinite suspension of immigration benefits adjudications, rendering Plaintiffs' chances of having any benefits adjudicated outside of removal proceedings a virtual nullity.

In either event, Plaintiffs have standing.

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[19] Denial of work authorization over the course of this litigation would cause harm to Plaintiffs that could not be remedied through damages. See supra Part I.G.

[20] See, e.g., Opp. to Supp. Mot. for Class Cert. 8 [Doc. No. 90] ("If Rescinded Parolee Plaintiffs are placed into removal proceedings under 8 U.S.C. § 1229a, they can renew their requests for relief—whether for asylum, withholding of removal, TPS, or adjustment of status—in those proceedings, which have multiple levels of appellate review."); Opp. to Mot. for PI 7 [Doc. No. 42] ("If a Parolee Plaintiff who asserts a fear of return to her home country or entitlement to TPS is placed in removal proceedings under § 1229a, those claims could be raised before the immigration judge.").

B. Section 1252(a)(2)(B)(ii)

Defendants argue that 8 U.S.C. § 1252(a)(2)(B)(ii) precludes this court's review of Plaintiffs' claims. See Opp. to Second Mot. for PI 7 [Doc. No. 89]. That is incorrect.

Section 1252(a)(2)(B)(ii) strips district courts of jurisdiction to review "any [] decision or action of . . . the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of . . . the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title."[21] The decision to categorically truncate, without any individual review, grants of parole is not specified in the Subchapter to be within the Secretary's discretion.

Defendants argue that the decision whether to terminate parole is within the Secretary's discretion under 8 U.S.C. § 1182(d)(5)(A) and is therefore precluded from review by Section 1252(a)(2)(B)(ii). As to the revocation of an individual grant of parole, that statement is unremarkable: The parole statute, which is in the same subchapter, provides that an alien's parole may be terminated "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served[.]" 8 U.S.C. § 1182(d)(5)(A) (emphasis added). Section 1252(a)(2)(B)(ii) applies to matters where discretion is conferred by statute on the Secretary, see Kucana v. Holder, 558 U.S. 233, 251-52 (2010) (emphasis added), and under 8 U.S.C. § 1182(d)(5)(A), Congress has placed individual parole determinations, and the decision of whether to revoke such individual grants of parole, within the Secretary's discretion.

But there is a separate question as to whether Congress, by statute, also has given the Secretary the discretion, after parole has been granted and individuals have entered the country

[21] Section 1158(a) pertains to the granting of asylum. See 8 U.S.C. § 1158(a).

on a lawful basis for approved periods, to categorically truncate these grants of parole *en masse* and without individual review, such that review of that *en masse* revocation may be precluded here under Section 1252(a)(2)(B)(ii). The answer is no. As this court explains below, the FRN's categorical truncation of Plaintiffs' previously awarded period of parole violates Section 1182(d)(5)(A). That statute requires grants of parole to be made on a case-by-case basis. Thus, the statute requires that to determine whether the purposes of a grant of parole "have been served" such that termination is warranted, the Secretary must attend, in some way, to the reasons an individual alien received parole. See infra Part IV.A. Because the categorical termination of the period of parole previously awarded to the parolees violates the parole statute, the same statute cannot be read to give the Secretary the discretion to take such unlawful action. Therefore, Section 1252(a)(2)(B)(ii) is no bar to review.

The Supreme Court's decision in Kucana points to the same conclusion. The Kucana Court, in considering whether Section 1252(a)(2)(B)(ii) barred judicial review of an administrative determination, emphasized "a familiar principle of statutory construction: the presumption favoring judicial review of administrative action." 558 U.S. at 251. "When a statute is 'reasonably susceptible to divergent interpretation, [the Court] adopt[s] the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review" Id. (internal quotations omitted)." With these principles in mind, the Kucana Court concluded that Section 1252(a)(2)(B)(ii)'s limitation on judicial review applied only to Attorney General determinations made discretionary by statute, and not to determinations declared discretionary by the Attorney General. Id. at 249-52.[22]

[22] It is thus of no consequence, despite Defendants' suggestion to the contrary, see Opp. to Second Mot. for PI 7 [Doc. No. 89], that the guidance instituting the CHNV programs asserted

Consistent with that distinction, "courts have declined to apply [Section 1252(a)(2)(B)(ii)] to claims challenging the legality of policies and processes governing discretionary decisions under the INA." Roe v. Mayorkas, 2023 WL 3466327, at *8 (D. Mass. May 12, 2023) (quoting Aracely, R v. Nielsen, 319 F. Supp. 3d 110, 135 (D.D.C. 2018)); R.F.M. v. Nielsen, 365 F. Supp. 3d 350, 369 (S.D.N.Y. 2019) ("The plaintiffs do not seek to litigate individual claims but rather a policy the agency uses to adjudicate those claims."); Doe 1 v. Mayorkas, 530 F. Supp. 3d 893, 909 (N.D. Cal. 2021) ("[T]he Court does not find 8 U.S.C. § 1252(a)(2)(B)(ii), which applies to decisions made to individual applications, applicable here to this challenge of immigration policy."); Doe v. Trump, 288 F. Supp. 3d 1045, 1072 (W.D. Wash. 2017) (concluding Section 1252(a)(2)(B)(ii) may bar challenge to denial of refugee admission, but not challenge to failure to act on refugee admissions).

Defendants suggest that there is no reason to distinguish the FRN's "announcement of the decision to terminate numerous CHNV parolees' existing parole terms . . . from an individual decision to terminate a particular grant of parole for purposes of § 1252(a)(2)(B)(ii)." Opp. to Second Mot. for PI 7 [Doc. No. 89]. That argument is addressed on the merits below. But as to the jurisdiction stripping statute, the distinction between an individual revocation of parole and the categorical truncation of grants of parole is warranted where the presumption of reviewability has been "consistently applied" to immigration statutes and can only be overcome by "clear and

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that "[t]he Secretary retains the sole discretion to terminate the [Parole Program] . . . at any point" and that the CHNV programs were "being implemented as a matter of the Secretary's discretion." 88 Fed. Reg. 1266, 1277 (Jan. 9, 2023) (alterations in original). Section 1252(a)(2)(B)(ii)'s bar on review applies only to determinations made discretionary by statute and not to determinations made by the guidance itself.

convincing evidence" of congressional intent to preclude judicial review. Guerrero-Lasprilla v. Barr, 589 U.S. 221, 229 (2020) (internal citations omitted).

Nor do cases relied upon by Defendants dictate otherwise, as each finds a stripping of jurisdiction under Section 1252(a)(2)(B)(ii) warranted only after examining the specific immigration statute at issue, none of which involved Section 1182(d)(5)(A). See Thigulla v. Jaddou, 94 F.4th 770, 774-76 (8th Cir. 2024) (finding that Section 1252(a)(2)(B)(ii) barred review of an adjudication hold policy promulgated under authority granted in 8 U.S.C. § 1255(a)); accord Cheejati v. Blinken, 106 F.4th 388, 394-95 (5th Cir. 2024); Geda v. Dir. United States Citizenship and Immigr. Servs., 126 F.4th 835, 843-44 (3d Cir. 2025).[23]

Defendants cite Patel v. Garland, 596 U.S. 328 (2022), for the proposition that "the statutory bar applie[s] to every decision in the chain leading to [a] particular decision, including, as relevant to the CHNV termination, the agency's guidance related to that ultimate discretionary judgment." Opp. to Second Mot. for PI 8 [Doc. No. 89]. But the Patel Court was construing Section 1252(a)(2)(B)(i), which bars review of judgments under five specific statutes providing for individual, discretionary relief.[24] 596 U.S. at 336. While the Kucana Court noted that

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[23] In Patel v. Jaddou, defendants argued that the challenged action was an act within the Secretary's discretion conferred by Section 1255(a), precluding judicial review by the district court. 695 F. Supp. 3d 158, 166 (D. Mass. 2023). This court determined that the inquiry first required consideration of the claim on the merits, see id. at 169, and concluded, after a detailed review of Section 1255(a), that the challenged action "does not contradict § 1255" and was "an act within the Secretary's discretion[.]" Id. at 173. The First Circuit, in turn, affirmed the dismissal based on its review of Section 1255(a), without addressing defendants' continuing objection that courts are barred by Section 1252(a)(2)(B)(ii) from even considering the question. Gupta v. Jaddou, 118 F.4th 475 (1st Cir. 2024).

[24] See 8 U.S.C. § 1252(a)(2)(B)(i) (listing § 1182(h) (waiver of alien's inadmissibility based on single offense of marijuana possession), § 1182(i) (waiver of immigrant's inadmissibility for fraud or willful misrepresentation of material fact), § 1229b (cancellation of removal for certain permanent residents), § 1229c (permission for alien to voluntarily depart the United States), and § 1255 (adjustment of status of alien).

decisions shielded from review by Sections 1252(a)(2)(B)(i) and 1252(a)(2)(B)(ii) "are of a like kind," 558 U.S. at 248, Patel focused in large part on language found only in the former Section, namely that courts are without jurisdiction to review any judgment "regarding the granting of relief" under the specified statutes. Patel, 596 U.S. at 336-40. The Patel Court parsed this phrase, including the term "regarding," which it found "in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject [any judgment regarding the granting of relief], but also matters relating to that subject.'" Id. at 338-39. Given this language, the Court found that Section 1252(a)(2)(B)(i) barred review of an immigration judge's underlying factual findings in a proceeding under the five statutes identified in Section 1252(a)(2)(B)(i). Id. at 339. The text of Section 1252(a)(2)(B)(ii) is distinct and, specifically, does not include the broadening word "regarding."

The Court in Patel found its reading of Section 1252(a)(2)(B)(i) reinforced by Section 1252(a)(2)(D), id., "which preserves review of constitutional claims and questions of law" by appellate courts of the judgments obtained through the individual discretionary-relief process under the enumerated statutes, 8 U.S.C. § 1252(a)(2)(D). In contrast, there is no individual discretionary-relief process before an immigration judge (with appellate review of questions of law) as to the impending termination of the grant of parole or of the revocation of parole after it has occurred.[25] Accordingly, if Section 1252(a)(2)(B)(ii) precludes a district court from

[25] Instead, an individual who leaves the United States voluntarily may forfeit all claims related to the original grant of parole. And while an individual who stays may be able to seek review of a removal order and seek adjustment of status, he would be treated as an applicant for admission, not a parolee, for the purposes of that petition, see 8 U.S.C. § 1182(d)(5), negating any potential legal challenge to the categorical termination of his parole.

considering Plaintiffs' challenges to Defendants' categorical actions at issue here, review of that question of law will not be preserved by Section 1252(a)(2)(D).

As discussed further below, "[t]he APA . . . creates a 'presumption favoring judicial review of administrative action." Sackett v. E.P.A., 566 U.S. 120, 128 (2012) (quoting Block v. Cmty. Nutrition Inst., 467 U.S. 340, 345 (1984)). "[O]nly upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review." Abbott Laboratories v. Gardner, 387 U.S. 136, 141 (1967) (citing Rusk v. Cort, 369 U.S. 367, 379-80 (1962)). The reasoning in Patel as to Section 1252(a)(2)(B)(i) does not suggest any clear legislative intent that the categorical actions challenged here are precluded from judicial review by Section 1252(a)(2)(B)(ii).

C. Committed to Agency Discretion by Law

Defendants argue that Plaintiffs cannot challenge the actions at issue here because Section 1182(d)(5)(A) commits parole and other immigration benefits decisions to the "discretion" of the Secretary of Homeland Security. See Opp. to Second Mot. for PI 8-9 [Doc. No. 89]. The APA "establishes a 'basic presumption of judicial review [for] one 'suffering legal wrong because of agency action[,]'" but that presumption may rebutted, including by a showing that the "agency action is committed to agency discretion by law." Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 16-17 (2020) (first alteration in original) (citations omitted). The Supreme Court has read this exception "quite narrowly, restricting it to 'those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.'" Dep't of Com. v. New York, 588 U.S. 752, 772 (2019) (citations omitted).

This is not the rare circumstance in which the agency's decision is "committed to agency discretion by law." As a preliminary matter, as stated above and discussed further below, the Secretary does not have the discretion to categorically terminate grants of parole. In any event, the parole statute establishes standards for the Secretary's exercise of discretion in granting parole—in that such grants must be made on a case-by-case basis for urgent humanitarian reasons or public benefit—and the statute also establishes standards for the termination of parole by requiring a determination by the Secretary that "the purposes of such parole . . . have been served[.]" 8 U.S.C. § 1182(d)(5)(A).

This court finds further support for the view that Plaintiffs' challenge to the FRN is reviewable in the Supreme Court's decision in Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020). Rejecting the government's argument that decisions related to Deferred Action for Childhood Arrivals ("DACA") were committed to agency discretion by law, the Court determined that DACA was not an unreviewable non-enforcement policy but rather was a program for conferring affirmative immigration relief, including the conferral of eligibility for work authorization and Social Security. Id. at 18-19. On that basis, the Court reasoned that "[t]he creation of that program—and its rescission—is an 'action [that] provides a focus for judicial review.'" Id. at 18 (second alteration in original) (quoting Heckler v. Chaney, 470 U.S. 821, 832 (1985)).

The CHNV programs similarly created processes for conferring affirmative immigration relief and related benefits, including lawful entry into the United States and work authorization. The categorical termination of all grants of parole made pursuant to the CHNV programs creates a focal point for judicial review. See Regents, 591 U.S. at 10 (DACA Memorandum instructed ICE to "exercise prosecutorial discretion[] on an individual basis"); see also I.N.S. v. Yueh-

Shaio Yang, 519 U.S. 26, 32 (1996) ("Though the agency's discretion is unfettered at the outset, if it announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as 'arbitrary, capricious, [or] an abuse of discretion' within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)."); see also Padula v. Webster, 822 F.2d 97, 100 (D.C. Cir. 1987) ("Judicially manageable standards may be found in formal and informal policy statements and regulations as well as in statutes[.]"). Therefore, the action challenged by Plaintiffs here is not committed to agency discretion by law.

Accordingly, Defendants' arguments that this court lacks jurisdiction to consider Plaintiffs' challenge to the truncation of their periods of parole and related benefits fail.

III. Class Treatment

Because the relief that Plaintiffs seek will have nationwide impact, the court considers whether Plaintiffs may proceed on a class-wide basis as to this relief.[26]

"An order that certifies a class action must define the class and the class claims, issues, or defenses[.]" Fed. R. Civ. P. 23(c)(1)(B). The order "may be altered or amended before final judgment." Fed. R. Civ. P. 23(c)(1)(C).

Plaintiffs' Supplemental Motion for Class Certification [Doc. No. 73] proposes a subclass consisting of "[a]ll individuals who have received parole through humanitarian parole processes, including but not limited to U4U, CHNV, OAW, FRP, MPIP, and CAM, which parole is subject

[26] This court will address class certification in full, including other subclasses proposed by Plaintiffs and Defendants' objections to such proposals, in subsequent orders.

to the March 25 FRN and subsequent similar actions by Defendants to rescind individual grants of parole on a categorical and *en masse* basis (the 'Rescinded Parolee Class')."

Plaintiffs' proposed Rescinded Parolee Subclass is defined more broadly than necessary for the challenge to the March FRN presently before the court. First, it encompasses programs besides CHNV, which are not the subject of the present order. It also includes "subsequent similar actions by Defendants," referring to actions that have not yet occurred,[27] and does not exclude individuals who have already left the United States.[28] Accordingly, the court considers whether certification is appropriate only as to the "Early Revocation Parolee Class," which this court defines to include:

> All individuals who have received a grant of parole that is subject to the *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025), rescinding individual grants of parole on a categorical and *en masse* basis, except: (1) those individuals who voluntarily left, and remain outside, the United States prior to the issuance of that Notice; and (2) those individuals who choose to opt out of the class in order to seek relief in separate litigation.

A. The Rule 23(a) Requirements

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;

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[27] If Defendants take or threaten further action affecting Plaintiffs, modification of the class definition might be warranted, but the request here is premature.

[28] Individuals who voluntarily leave the United States generally lose their parole authorization. See 8 C.F.R. § 212.5 ("Parole shall be automatically terminated without written notice (i) upon the departure from the United States of the alien, or, (ii) if not departed, at the expiration of the time for which parole was authorized[.]").

> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

The Early Revocation Parolee Class satisfies these four requirements. First, the class is numerous because it includes several hundred thousand members.

Second, there are common issues of law and fact capable of class-wide resolution under the standard set forth in Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) ("What matters to class certification . . . is not the raising of common 'questions' . . . but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.") (first alteration in original) (emphasis in original) (internal citations omitted). All members of the class challenge the FRN's categorical revocation of their existing grants of parole. That categorical revocation was made on the same terms for every class member. Answering the question of whether such termination was lawful will resolve the issue of whether, in the absence of individual determinations, all class members' parole should expire no later than the date specified in the FRN or, by contrast, on the date set forth on each class members' original grant of parole.

Third, the claims of the representative Plaintiffs are typical of the claims of the class. "The plaintiff can meet [the typicality] requirement by showing that [their] injuries arise from the same events or course of conduct as do the injuries of the class, and that [their] claims are based on the same legal theory as those of the class." In re Boston Scientific Corp. Secs. Litigation, 604 F. Supp. 2d 275, 282 (D. Mass. 2009). The claims of the representative Plaintiffs described above are typical in that all Plaintiffs advance the same arguments as to why the categorical termination of their grants of parole was unlawful.

Fourth, the representative Plaintiffs fairly and adequately protect the interests of the class. "The First Circuit requires two elements to establish adequacy under Rule 23(a)(4): (1) 'that the interests of the representative party will not conflict with the interests of any of the class members,' and (2) 'that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation.'" Bowers v. Russell, 2025 WL 342077, at *5 (D. Mass. Jan. 30, 2025) (quoting Andrews v. Bechtel Power Corp., 780 F.2d 124, 130 (1st Cir. 1985)). The interests of the representative Plaintiffs will not conflict with those of any class members because the FRN does not differentiate between the different CHNV programs and instead categorically revokes parole for all individuals paroled through those programs. Additionally, the FRN's rationale for why parole was no longer justified for these individuals did not depend on circumstances specific to any Plaintiff or to Plaintiffs from any of the four countries at issue. Finally, this court finds that Plaintiffs' attorneys are qualified, experienced, and able to vigorously conduct the proposed litigation.

Therefore, the Rule 23(a) requirements are satisfied as to the Early Revocation Parolee Class.

B. The Rule 23(b)(2) Requirements

Plaintiffs argue that certification is appropriate here under Rule 23(b)(2), which applies where Defendants have "acted or refused to act on grounds that apply generally to the class." Fed. R. Civ. P. 23(b)(2). "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant." Wal-Mart, 564 U.S. at 360.

Certification under Rule 23(b)(2) is appropriate here. A stay of the FRN as to the revocation of existing grants of parole would address each Plaintiffs' injuries, as described above. See supra Part II.A.

IV. Preliminary Relief

Courts weigh four factors in determining whether a stay should issue: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 425-26 (2009).

A. Likelihood of Success on the Merits

"An agency's decision is arbitrary and capricious if the agency relied on improper factors, disregarded 'an important aspect of the problem, offered an explanation that runs counter to the evidence,' or when a reasonable explanation for the agency's decision cannot be discerned." Gulluni v. Levy, 85 F.4th 76, 82 (1st Cir. 2023) (quoting Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins., 463 U.S. 29, 43 (1983)). "[A] court 'is not to substitute its judgment for that of the agency' but rather determine 'whether there has been a clear error of judgment.'" Id. (quoting Fed. Commc'ns Comm'n v. Fox Television Stations, Inc., 556 U.S. 502, 513 (2009)).

Plaintiffs raise two arguments regarding DHS's termination of existing grants of parole made pursuant to the CHNV programs.

First, Plaintiffs argue that the FRN's explanation for why DHS rejected the alternative of allowing CHNV parole to expire naturally rather than in 30 days was based on an "obvious legal error." Mem. ISO Mot. for Second PI 10 [Doc. No. 72]. The FRN stated that DHS rejected that alternative because allowing parolees to remain in the United States for longer than 30 days

would "essentially foreclose" DHS's ability to deport them via expedited removal because it would increase the likelihood that they would accrue more than two years of continuous presence in the United States. See 90 Fed. Reg. at 13620 (citing 8 U.S.C. § 1232(b)(1)(iii)(II)).

Plaintiffs are likely to prevail on this argument because they are not subject to expedited removal even if they have been here less than two years. Section 1225(b)(1), entitled "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled," provides for screening and expedited removal for a non-citizen "arriving in the United States" or a non-citizen "who has not been admitted or paroled into the United States, and who has not affirmatively shown . . . that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. §§ 1225(b)(1)(A)(i), 1225(b)(1)(A)(iii)(II). The statute thus allows for expedited removal for a non-citizen "arriving in the United States" (i.e., arriving at the border or a port of entry) and for a non-citizen who entered the United States without authorization, except that a non-citizen who entered the United States without authorization, that is an individual who "has not been paroled or admitted into the United States," may not be subject to the expedited removal period if that individual has been present in the United States for two years. The statute does not subject persons who were authorized to enter the United States to expedited removal, regardless of how long they have been in the United States.

Citing a case from the 11th Circuit, Defendants respond that the use of the present perfect tense ("has not been . . . paroled") reflects a "state that continues into the present," meaning such an alien may be processed for expedited removal under the provision once said alien's parole has been terminated or has expired. See Opp. to Second Mot. for PI 12 [Doc. No. 89]. But that case

merely explained that "the use of the present-perfect tense can, as a matter of pure semantics, refer to a time in the indefinite past or to a past action or state that continues into the present." Turner v. U.S. Att'y Gen., 130 F.4th 1254, 1261 (11th Cir. 2025) (emphasis in original). That the present perfect tense may sometimes denote a state continuing into the present is obvious. But the text of the provision at issue here makes clear its purpose, which is to limit the Secretary's authority to utilize expedited removal only with regard to those arriving at the border or a port of entry, or those who entered the country unlawfully and have not been present in the country long enough to warrant consideration of any interests their residence may have created.

The government further argues that, in any event, individuals whose parole has terminated "may also be processed for expedited removal as an alien 'arriving in the United States' under § 1225(b)(1)(A)(i)." That argument is contrary to the FRN's rationale. The FRN justified early termination of the parole periods based on the two-year period of accrual specified in 1225(b)(1)(iii)(II). If, as Defendants contend, removal is proper under a provision with no two-year period of accrual, early termination cannot be justified on the grounds that it would remove an obstacle to expedited removal.

Plaintiffs are thus likely to prevail on their claim that DHS's sole basis for rejecting the alternative of allowing parole to expire naturally was based on a legal error. While "DHS was not required . . . to 'consider all policy alternatives in reaching [its] decision' . . . it was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." Regents of the Univ. of California, 591 U.S. at 33 (quoting State Farm, 463 U.S. at 51). DHS acknowledged the reliance interests of individuals who are lawfully present in the United States based on grants of parole pursuant to

the CHNV programs, but its stated reason for terminating parole grants within 30 days lacked a rational basis.[29]

Defendants maintain that even if this justification for rejecting the alternative was in error, the decision was separately justified by DHS's conclusion that "neither urgent humanitarian reasons nor significant public benefit warrants the continued presence of aliens paroled under the CHNV programs and the purposes of such parole therefore have been served." See 90 Fed. Reg. at 13620. But the FRN did not attend to any of the humanitarian reasons underlying the creation of the CHNV programs and ignores that, under the CHNV programs, "case-by-case temporary parole" was being used to address the relevant humanitarian concerns.[30]

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[29] DHS's rationale regarding expedited removal may have a further problem, namely, that expedited removal proceedings "[do] not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry." 8 U.S.C. § 1225(b)(1)(F).

[30] See, e.g., Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63507, 63515 (Oct. 19, 2022) ("The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian reasons faced by so many Venezuelans subject to the repressive regime of Nicolás Maduro."); Implementation of a Parole Process for Cubans, 88 Fed. Reg. 1266, 1275 (Jan. 9, 2023) ("The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian needs of Cuban nationals who have fled crippling economic conditions and social unrest in Cuba. The [Government of Cuba] continues to repress and punish all forms of dissent and public criticism of the regime and has continued to take actions against those who oppose its positions. This process provides a safe mechanism for Cuban nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States."); Implementation of a Parole Process for Haitians, 88 Fed. Reg. 1243, 1251 (Jan. 9, 2023) ("The case-by-case temporary parole of individuals pursuant to this process also will address the urgent humanitarian needs of many Haitian nationals[.] . . . [E]scalating gang violence, the aftermaths of an earthquake, and a cholera outbreak have worsened already concerning political, economic, and social conditions in Haiti."); Implementation of a Parole Process for Nicaraguans, 88 Fed. Reg. 1255, 1263 (Jan. 9, 2023) ("The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian needs of Nicaraguan nationals who have fled the Ortega regime and Nicaragua. The Government of Nicaragua continues to repress and punish all forms of dissent and public criticism of the regime and has continued to take actions against those who oppose its positions.").

The FRN gave no explanation or support for the conclusion that the CHNV programs were addressing relevant humanitarian concerns through something other than case-by-case determinations. The FRN also gave no rationale for its conclusion that such humanitarian concerns no longer justified the existing parole programs and offered no reasons for categorically revoking parole despite the humanitarian concerns previously articulated by DHS. Finally, despite asserting that "DHS believes that consideration of any urgent humanitarian reasons for granting parole is best addressed on a case-by-case basis consistent with the statute, and taking into consideration each alien's specific circumstances," 90 Fed. Reg. at 13612, the FRN provides for no individual case-by-case determination as to the humanitarian concerns facing each parolee whose parole is being truncated.

Given the significant reliance interests at stake—which the FRN recognized as aliens departing their native countries, incurring expenses traveling to the United States, obtaining housing and means of transport, and building connections in their communities—DHS was required to give a justification for terminating existing grants of parole within 30 days instead of on the original termination dates. Plaintiffs are likely to prevail on their claim that DHS's justification was inadequate because it was based on a legal error and failed to explain why humanitarian concerns no longer justified the original periods of parole extended to the CHNV parolees. Therefore, Plaintiffs are likely to prevail on their claim that the early termination of parole was arbitrary and capricious.[31]

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[31] Defendants' contention that Plaintiffs are improperly seeking to challenge the application of expedited removal, see Opp. to Second Mot. for PI at 13 [Doc. No. 89], mischaracterizes Plaintiffs' argument, which is that a desire to avoid the two-year accrual period of the expedited removal statute was not a valid reason for early termination of grants of parole.

Second, Plaintiffs argue that the decision to truncate all existing grants of parole was contrary to the statutory requirement that parole be exercised "only on a case-by-case basis." 8 U.S.C § 1182(d)(5)(A). Defendants respond that while Section 1182(d)(5)(A) requires grants of parole to be made on "a case-by-case basis," it imposes no similar requirement on terminations of parole, where "[t]he sole statutory requirement to terminated parole is that, 'in the opinion of the Secretary,' the purposes of parole have been served." See Opp. to Second Mot. for PI 13 [Doc. No. 89] (quoting 8 U.S.C § 1182(d)(5)(A)). But the text of the statute supports Plaintiffs' reading. Throughout the provision, Section 1182(d)(5)(A) refers in singular, rather than plural, to grants of parole:

> The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(Emphasis added). The statute thus seems to contemplate termination of parole on an individual, rather than categorical, basis. This makes sense: Even under the categorical programs, grants of parole were to be made on a case-by-case basis. While the reasons underlying grants pursuant to the CHNV programs were likely fairly consistent, an individual parolee's application was subject to case-by-case review. The grant of parole may well have been justified for reasons not applicable to others paroled through the programs, such that a categorical determination that the "purposes of such parole" have been served may not attend to the reasons for that individual's grant of parole. Certainly, the Secretary has significant discretion to terminate a grant of parole

under the statute. But by the terms of the statute, such termination must attend to the reasons an individual alien received parole.

Defendants point to Zheng v. Napolitano, No. 09-cv-00347, 2009 WL 1258908, at *2 (D. Colo. May 4, 2009), as "rejecting argument asserted in habeas petition that sought to 'engraft[] the requirements pertaining to initial parole decisions onto parole revocation decisions.'" See Opp. to Second Mot. for PI at 14 [Doc. No. 89] (alteration in original). While that court did note that it had found no case law supporting petitioner's claim that individual determinations were required, it explained that petitioner's notice that his parole had been revoked "specifically informed him that parole had been granted initially to allow him to acquire appropriate travel documents," that such documents had been obtained previously, and there was no reason to believe that travel documents would not be forthcoming. 2009 WL 1258908, at *2. In other words, an individual decision was made to revoke his parole. The absence of case law supporting Plaintiffs' position may thus reflect DHS's prior practice of making individual determinations to revoke parole and does not undermine the textual analysis.

Therefore, Plaintiffs are likely to succeed on their claim that the FRN's categorical termination of existing grants of parole was arbitrary and capricious.

B. Irreparable Harm

Absent preliminary relief, the FRN will cause Plaintiffs' parole to terminate in less than two weeks, at which time they will be forced to choose between two injurious options: continue following the law and leave the country on their own, or await removal proceedings. The court discussed the harmful consequences of either of these two options above. See supra Part II.A. The first option will expose Plaintiffs to dangers in their native countries and will cause Plaintiffs forfeit their APA claims. The second option will put Plaintiffs at risk of arrest and detention and,

because Plaintiffs will be in the United States without legal status, undermine Plaintiffs' chances of receiving other forms of immigration relief in the future—potentially permanently. Waiting for final relief will not spare Plaintiffs from these consequences.[32]

C. The Balance of Equities and the Public Interest

The final two factors, the balance of equities and the public interest, "merge when the Government is the opposing party." Nken, 556 U.S. at 435. Defendants maintain that preliminary relief would "limit the Administration's ability to pursue its foreign policy goals and to exercise its discretionary powers with respect to immigration." Opp. to Second Mot. for PI 18 [Doc. No. 89]. However, the relief contemplated in this order would not authorize the entry of any individual currently outside the United States. Nor would it extend the original grants of parole awarded by DHS. It would only require the agency to give fuller consideration to the reliance interests of parolees who entered the United States lawfully and who followed instructions established by the United States government for seeking discretionary grants of parole, and to make any decisions terminating grants of parole in an individual, case-by-case manner.

Defendants contend that preliminary relief would "impede the Government's strong interest in being able to remove aliens from the United States who lack the ability to obtain more

[32] At an April 10, 2025 hearing before the court, Defendants emphasized the FRN's language indicating that DHS would not prioritize for removal aliens who had filed requests for benefits such as TPS or asylum prior to the issuance of the FRN. See 90 Fed. Reg. at 13619. But this statement is essentially meaningless, where Defendants gave no specificity, in the FRN or at the hearing, as to what it means in this circumstance for individuals with pending benefits requests to not be an enforcement priority. Regardless of whether particular individuals are "enforcement priorities," they would still be unlawfully present in the United States and therefore subject to the negative repercussions of that status, including an inability to legally work and the possibility of being arrested when stepping outside their door. Moreover, Defendants' Davidson Memorandum has indefinitely suspended benefits adjudications filed by CHNV parolees, further undermining Defendants' enforcement priority argument.

permanent status." Id. at 19. The suggestion that these noncitizens "lack the ability to obtain more permanent status" reflects the Defendants' choice to not make permanent status more available to them. Regardless, Defendants have offered no substantial reason or public interest that justifies forcing individuals who were granted parole into the United States for a specified duration to leave (or move into undocumented status) in advance of the original date their parole was set to expire. Nor is it in the public interest to summarily declare that hundreds of thousands of individuals are no longer considered lawfully present in the country, such that these individuals cannot legally work in their communities or provide for themselves and their families. Instead, the early termination, without any case-by-case justification, of legal status for noncitizens who have complied with DHS programs and entered the country lawfully undermines the rule of law.

The court finds the balance of equities and public interest weigh in favor of preliminary relief.[33]

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[33] Defendants argue that, should preliminary relief issue, such relief should be subject to bond. See Fed. R. Civ. P. 65(c). "[T]here is ample authority for the proposition that the provisions of Rule 65(c) are not mandatory and that a district court retains substantial discretion to dictate the terms of an injunction bond." Int'l Ass'n of Machinists and Aerospace Workers v. Eastern Airlines, Inc., 925 F.2d 6, 9 (1st Cir. 1991) (citing Crowley v. Local No. 82, Furniture and Piano Moving, 679 F.2d 978, 999-1001 (1st Cir. 1982)). In Crowley, the court stated that in deciding whether to set a bond requirement in non-commercial cases, the court should consider "the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant," and, "[s]econd, in order not to restrict a federal right unduly, the impact that a bond requirement would have on enforcement of the right[.]" Crowley, 679 F.2d at 1000. Here, the court finds: (1) no showing of any monetary loss on the enjoined parties in staying the early termination of the grants of parole; (2) that requiring a bond would impose a substantial hardship on the Plaintiffs; and (3) a grave risk that imposing a bond would undesirably deter individuals from enforcing their procedural rights to challenge agency action affecting immigration decisions. Accordingly, the court finds that the burden of a bond on Plaintiffs outweighs any likely loss by the government.

V. Request for a Stay Pending Appeal

Defendants orally requested a stay of this decision pending appeal. As with Plaintiffs' request for a stay of the FRN, the court must weigh four factors in determining whether a stay of the court's order pending appeal should issue: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." See Nken, 556 U.S. at 425-26. Here, Defendants have not made a strong showing that they are likely to succeed on the merits or that they will be injured absent a stay, while the issuance of a stay of the court's order would allow for the truncation of parole of hundreds of thousands of parolees. And for the reasons set forth above, the public interest lies in denying Defendants' request for a stay. Accordingly, Defendants' request for a stay in DENIED.

VI. Conclusion

Accordingly, the court grants emergency relief as follows:

1. The *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025), is hereby STAYED pending further court order insofar as it revokes, without case-by-case review, the previously granted parole and work authorization issued to noncitizens paroled into the United States pursuant to parole programs for noncitizens from Cuba, Haiti, Nicaragua, and Venezuela (the "CHNV parole programs") prior to the noncitizen's originally stated parole end date.

2. All individualized notices[34] sent to noncitizens from Cuba, Haiti, Nicaragua, and Venezuela via their USCIS online account notifying them that their parole is being revoked without case-by-case review pursuant to the *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025) are also STAYED pending further court order.

IT IS SO ORDERED.

April 14, 2025

/s/ Indira Talwani
United States District Judge

[34] See, e.g., Termination of Parole Notice [Doc. No. 88-1] ("Effective March 25, 2025, the U.S. Department of Homeland Security (DHS) has exercised its discretion to terminate the categorical parole programs for aliens who are nationals of Cuba, Haiti, Nicaragua, and Venezuela, and their immediate family members.").

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	Civil Action No. 1:25-cv-10495-IT
KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al.,	*	
	*	
Defendants.	*	
	*	

ORDER GRANTING CLASS CERTIFICATION

April 14, 2025

Upon consideration of Plaintiffs' Supplemental Motion for Class Certification [Doc. No. 73], the court hereby certifies a class of:

> All individuals who have received a grant of parole that is subject to the *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611 (Mar. 25, 2025), rescinding individual grants of parole on a categorical and *en masse* basis, except: (1) those individuals who voluntarily left, and remain outside, the United States prior to the issuance of that Notice; and (2) those individuals who choose to opt out of the class in order to seek relief in separate litigation.

The court appoints Armando Doe, Ana Doe, Carlos Doe, Andrea Doe, Lucia Doe, Miguel Doe, and Daniel Doe as Class Representatives[1] and John A. Freedman, Daniel B. Asimow, and Laura Scott Shores of Arnold & Porter Kaye Scholer LLP, Karen C. Tumlin of Justice Action Center, and Anwen Hughes of Human Rights First as class counsel.

[1] These Plaintiffs are proceeding here under pseudonyms pursuant to the parties' Stipulated Protective Order Concerning Confidential Doe PII [Doc. No. 57] and this court's Electronic Order [Doc. No. 69] granting Plaintiffs' Second Supplemental Motion to Proceed Under Pseudonym [Doc. No. 64]. All Plaintiffs except Miguel Doe voluntarily provided their identities to Defendants, and all Plaintiffs have provided their identities to this court for *in camera* review. See Mem. & Order [Doc. No. 79]; Sealed Notice Providing Plaintiffs' Identities [Doc. No. 81-1].

For the reasons set forth in the court's Memorandum & Order Granting in Part Plaintiffs' Emergency Motion for a Stay of DHS's *En Masse* Truncation of All Valid Grants of CHNV Parole ("Order on Motion to Stay") [Doc. No. 97], the court finds, as to the prerequisites set forth in Fed. R. Civ. P. 23(a), that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties[2] are typical of the claims or defenses of the class, and (4) the interests of the representative parties will not conflict with the interests of any of the class members; and as to the types of class actions permitted under Fed. R. Civ. P. 23(b), that Defendants have "acted or refused to act on grounds that apply generally to the class." See Fed. R. Civ. P. 23(b)(2). Finally, the court finds, based on counsels' declarations and filings,[3] that counsel chosen by Plaintiffs are "qualified, experienced and able to vigorously conduct the proposed litigation." Andrews v. Bechtel Power Corp., 780 F.2d 124, 130 (1st Cir. 1985)). Accordingly, certification under Rule 23(b)(2) is appropriate.

At the time of certification, the court "must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B). "Class counsel must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). "In appointing class counsel, the court . . . must consider (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in

[2] See Order on Motion to Stay 10-16 [Doc. No. 97]; see also Armando Doe Decl. [Doc. No. 24-3]; Ana Doe Decl. [Doc. No. 24-2]; Carlos Doe Decl. [Doc. No. 24-4]; Andrea Doe Decl. [Doc. No. 27-1]; Lucia Doe Decl. [Doc. No. 64-3]; Miguel Doe Decl. [Doc. No. 64-4]; Daniel Doe Decl. [Doc. No. 64-5].

[3] See John A. Freedman Decl. [Doc. No. 46-2] (describing experience litigating class actions and immigration challenges and attesting to the work of his team in conducting this litigation); Karen C. Tumlin Decl. [Doc. No. 46-3] (similar); Anwen Hughes Decl. [Doc. No. 46-4] (similar). All counsel state that they are aware of no conflicts of interest.

the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1).

Based on counsels' declarations and filings, the proposed counsel have conducted factual investigations leading to this lawsuit, have engaged in class action litigation or other complex litigation involving immigration matters, have demonstrated knowledge of the applicable immigration law, and have attested to having adequate resources to represent the class. Therefore, the Rule 23(g) requirements are satisfied by the appointment of class counsel here.

This order "may be altered or amended before final judgment." Fed. R. Civ. P. 23(c)(1)(C). Further relief sought in Plaintiffs' Motion to Certify Class [Doc. No. 46] and Supplemental Motion for Class Certification [Doc. No. 73] remains pending.

IT IS SO ORDERED.

April 14, 2025

/s/ Indira Talwani
United States District Judge

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*,	)	
	)	
Plaintiffs,	)	**Civil Action No.**
	)	
v.	)	**1:25-cv-10495-IT**
	)	
KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al.;	)	
	)	
Defendants.	)	

DECLARATION OF KIKA SCOTT

I, Kika Scott, make the following declaration, as permitted by Section 1746 of Title 28 of the United States Code. I am aware that this declaration will be filed in the above-captioned civil action with the United States District Court for the District of Massachusetts. I hereby certify:

1. I am the Senior Official Performing the Duties of the Director of U.S. Citizenship and Immigration Services ("USCIS"), a component agency within the United States Department of Homeland Security (“DHS”). I have held this position since February 9, 2025. Previously, I was the Chief Financial Officer, USCIS, DHS, since May 27, 2019.
2. The statements contained in this declaration are based upon my personal knowledge, and upon information provided to me in my official capacity.
3. President Trump signed Executive Order 14165 on January 20, 2025.[1] Pursuant to that Executive Order, on January 23, 2025, Acting Director Jennifer Higgins directed that USCIS adjudicators should not make any final decisions (approval, denial, closure) or issue a travel document or I-94 for any initial parole or re-parole application, petition, motion, or other request, filed under Uniting for Ukraine (U4U), the parole programs for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), Operation Allies Welcome

[1] Executive Order 14165, Securing Our Borders, 90 Fed. Reg. R 8467 (Jan. 20, 2025) (published Jan. 30, 2025).

(OAW) re-parole, Family Reunification Parole (FRP) programs, and the Central American Minors (CAM) parole program. She further instructed that the pause did not apply to requests for advance parole, non-categorical Form I-131 Humanitarian Parole, or government referrals for parole filed and adjudicated on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

4. On January 28, 2025, USCIS provided notice on its website (*see, e.g.*, www.uscis.gov/i-134A) that it was pausing acceptance of the Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, until the Agency had reviewed all categorial parole programs as instructed by Executive Order (EO) 14165. The Form I-134A is used to initiate the parole processes for the U4U, CHNV, and FRP programs.
5. The CHNV parole programs were also previously briefly paused in July 2024 to evaluate program vulnerabilities, as has been publicly reported.[2] The then-Secretary of Homeland Security instructed USCIS and U.S. Customs and Border Protection (CBP) to pause the CHNV parole programs due to concerns that fraud, public safety, and national security were insufficiently addressed and that U.S.-based supporters were not sufficiently screened and vetted.
6. On February 14, 2025, Acting Deputy Director Andrew Davidson issued a USCIS-wide administrative hold on all pending benefit requests filed by aliens who are or were paroled into the United States pursuant to INA § 212(d)(5)(A) under the U4U, CHNV, and FRP programs pending the completion of additional vetting to identify any fraud, public safety, or national security concerns. The hold was issued pursuant to EO 14165.
7. As of the date of this declaration, the programs have not been terminated. Benefit requests submitted by U4U, CHNV, and FRP parolees remain pending and on hold until USCIS completes its review of the programs and the screening and vetting that these parolees and their supporters received to ensure that it comported with the uniform

[2] *See, e.g.*, Staff of H. Comm. on the Judiciary, 119th Cong., The Biden-Harris Administration's CHNV Parole Program Two Years Later: A Fraud-Ridden, Unmitigated Disaster (2024), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-11-20%20The%20Biden%20Harris%20Administration%27s%20CHNV%20Parole%20Program%20Two%20Years%20Later%20-%20A%20Fraud-Ridden%2C%20Unmitigated%20Disaster.pdf.

baseline that existed on January 19, 2021. USCIS has issued a temporary pause to review vetting procedures to ensure that only individuals who are eligible for immigration benefits receive them.

8. Although certain categorical parole programs have been paused pending further review, DHS and USCIS continue to accept and process certain individual parole requests filed on Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records, on a case-by-cases basis, for urgent humanitarian reasons or significant public benefit, including requests based on military parole in place (MIL PIP), Immigrant Military Members and Veterans Initiative (IMMVI), U.S. Government referrals for parole, as well as individual parole requests not under a particular program or process.[3] Additionally, in some instances where an alien needs to remain in the United States after their period of parole terminates, the alien may request a new period of parole, also known as re-parole, by filing Form I-131 with USCIS from within the United States. Such requests are also adjudicated on a case-by-case basis for urgent humanitarian reasons or significant public benefit which warrants the new period of parole.
9. The Immigration and Nationality Act ("INA") confers upon the Secretary of Homeland Security ("Secretary") the narrow discretionary authority to parole aliens into the United States "temporarily under such conditions as [DHS] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit . . . but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled...." ." *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 8 CFR 212.5(a) and (c) through (e) (discretionary authority for establishing conditions of parole and for terminating parole). Pursuant to EO 14165, the Secretary is evaluating categorical parole programs to determine whether to exercise her discretion in this way, evaluating whether

[3] *See, e.g.*, Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States https://www.uscis.gov/humanitarian/humanitarian_parole

the programs still serve their intended purposes and are consistent with the goals of the current Administration.

9. In this case, DHS, including USCIS, would be harmed if a preliminary injunction were granted to require DHS to resume review of requests filed under certain parole programs before the Secretary of DHS has completed her review. Requiring USCIS to review requests related to parole under the paused parole programs while the Secretary's review is taking place would require USCIS to allocate resources away from other Administration priorities, even though the Secretary may decide not to exercise her discretion to continue these categorical parole programs. Further, to the extent that fraud, public safety, and national security concerns exist among individuals seeking to support a potential beneficiary and among potential beneficiaries under the paused programs, requiring DHS to continue screening, vetting, and reviewing individuals' requests to be a supporter or applications for parole or re-parole would harm the agency's ability to fulfill its mission for the reasons explained below.

10. From their inception, DHS has expressly advised the public that the parole programs are discretionary. In establishing the CHNV parole programs, DHS stated that "[t]he Secretary retains the sole discretion to terminate the [Parole Program] … at any point"[4] and that "DHS may terminate parole in its discretion at any time."[5] The CHNV parole programs were "being implemented as a matter of the Secretary's discretion. [They are] not intended to and [do] not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal." DHS made similar statements regarding FRP, including explaining, "The Secretary retains the sole discretion to terminate this FRP process at any point."[6] In establishing the CAM program, DHS explained, "DHS may terminate parole in its discretion at any time."[7]

[4] *E.g.*, 88 FR at 1268 (Cuba).

[5] *E.g.*, 88 FR at 1272 (Cuba).

[6] 88 FR 43611 at 43619 (FRP for Salvadorans).

[7] 88 FR at 21698 (CAM).

11. In most instances, potential beneficiaries of these parole programs are currently outside of the United States. If individuals are engaged in fraud, or wish to cause harm to the United States, requiring DHS to resume these programs would facilitate the arrival of aliens who may be bad actors onto U.S. soil. Further, once paroled into the United States, DHS would need to expend additional resources to terminate parole and remove the alien, as appropriate.

13. Permitting aliens to travel to the United States, if they are engaged in fraud, also undermines the integrity of the immigration system. If the American public believes that DHS does not have thorough vetting and that aliens who do not warrant a favorable exercise of discretion are paroled into the United States, then there is less trust in the immigration system. Further, perception that DHS is not combatting fraud is likely to encourage more fraudulent applications, petitions, and requests. In this instance, there is reason to believe that there is fraud occurring in these parole programs, based on USCIS' findings in its prior review of the CHNV programs.

14. USCIS would also be harmed if the February 14, 2025 Davidson Memo to pause adjudication of immigration benefits filed by aliens who were paroled into the United States under these programs were enjoined. A temporary hold on processing of immigration benefit requests filed by aliens paroled into the United States under the U4U, CHNV, and FRP programs allows USCIS, in coordination with other partners in DHS, to determine the scope of any further fraud, and implement measures to prevent those individuals from obtaining further immigration benefits in the United States.

15. USCIS may, in its discretion, issue temporary holds on adjudication of certain benefits to conduct investigations and vetting to determine that an individual is eligible for the benefit sought. USCIS has an obligation to only grant immigration benefits to individuals who are eligible for them, and to investigate the individual's background to ensure eligibility. In this instance, as articulated in the February 14, 2025 Davidson Memo, USCIS determined that parolees whose immigration benefits are subject to the hold may not have received screening and vetting to the maximum degree possible or that comports

with the uniform baseline that existed on January 19, 2021, as required per EO 14161, prior to being granted parole. Without this hold, and taking the time to flag cases where the parolee (and/or their supporter) may have committed fraud or pose a national security or public safety concern for additional review, USCIS may inadvertently grant immigration benefits to aliens who are either ineligible for the benefit sought as a matter of law or where the benefit is discretionary, does not warrant a favorable exercise of discretion. Further, while parole is not a permanent benefit, many aliens who were paroled into the United States under these programs now have applications pending that would provide them permanent status in the United States. If USCIS later determines that these benefits were improperly granted, it may be difficult and time-consuming to rescind or terminate.

16. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge. Executed this 20th day of March, 2025, in Camp Springs, Maryland.

KIKA M SCOTT
Digitally signed by KIKA M SCOTT
Date: 2025.03.20 23:01:49 -04'00'

Kika Scott
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Department of Homeland Security

EXHIBIT 1

to Plaintiffs' Emergency Motion for a Preliminary Injunction and Stay of DHS's *En Masse* Truncation of all Valid Grants of CHNV Parole

below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.
Date: April 21, 2025.
Open: April 21, 2025, 10:00 a.m. to 12:15 p.m.
Agenda: Welcome and Opening Remarks; Announcements, and NIH Program Updates; Presentations; and Other Business of the Committee.
Place: National Institutes of Health Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Closed: April 21, 2025, 12:15 p.m. to 01:15 p.m.
Agenda: Review of Grant Applications.
Place: National Institutes of Health Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Open: April 21, 2025, 01:15 p.m. to 04:35 p.m.
Agenda: NIH Program Updates; Presentations; and Other Business of the Committee.
Place: National Institutes of Health Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov,* 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 20, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

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DEPARTMENT OF HOMELAND SECURITY

Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans

ACTION: Notice.

SUMMARY: The Department of Homeland Security (''DHS'') is terminating the categorical parole programs for inadmissible aliens from Cuba, Haiti, Nicaragua, and Venezuela and their immediate family members (hereinafter referred to as ''CHNV parole programs'') that DHS announced in 2022 and 2023. This **Federal Register** notice is intended to provide context and guidance to the public regarding the termination of the CHNV parole programs and related employment authorization.

DATES: DHS is terminating the CHNV parole programs as of March 25, 2025. The temporary parole period of aliens in the United States under the CHNV parole programs and whose parole has not already expired by April 24, 2025 will terminate on that date unless the Secretary makes an individual determination to the contrary. Parolees without a lawful basis to remain in the United States following this termination of the CHNV parole programs must depart the United States before their parole termination date.

FOR FURTHER INFORMATION CONTACT: Ihsan Gunduz, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Over the previous two years, DHS has implemented programs through which inadmissible aliens who are citizens or nationals of designated countries, and their immediate family members, could request authorization to travel to the United States in order to be considered for parole into the country.[1] Under these categorical parole programs, potentially eligible beneficiaries were adjudicated on a case-by-case basis, for advance authorization to travel to a U.S. port of entry (''POE'') in the interior of the country to seek a discretionary grant of parole.

On January 20, 2025, President Trump issued Executive Order 14165, ''Securing Our Borders.'' [2] Section 2 of the Order establishes a policy of the United States to take all appropriate action to secure the borders of our Nation through a range of means, including deterring and preventing the entry of illegal aliens into the United States, and removing promptly all aliens who enter or remain in violation of Federal law. Section 7 of the Order directs the Secretary of Homeland Security to, consistent with applicable law, take all appropriate action to ''[t]erminate all categorical parole programs that are contrary to the policies of the United States established in [the President's] Executive Orders, including the program known as the 'Processes for Cubans, Haitians, Nicaraguans, and Venezuelans.' ''

Consistent with the President's direction, and for the independent reasons stated in this notice, this notice terminates the CHNV parole programs. Although DHS established the categorical programs for each country through a separate notice in the **Federal Register**, the justification for the establishment of each of the four categorical programs was very similar,[3] and the rationale for termination is largely consistent for all four parole programs. Thus, DHS is announcing the termination of all four parole programs by publishing this single notice in the **Federal Register**.

II. DHS Parole Authority

The Immigration and Nationality Act (''INA'') confers upon the Secretary of Homeland Security (''Secretary'') the narrow discretionary authority to parole inadmissible aliens into the United States ''temporarily under such conditions as [DHS] may prescribe only on a case-by-case basis for urgent

[1] Implementation of a Parole Process for Cubans, 88 FR 1266 (Jan. 9, 2023); Implementation of a Change to the Parole Process for Cubans, 88 FR 26329 (Apr. 28, 2023); Implementation of a Parole Process for Haitians, 88 FR 1243 (Jan. 9, 2023); Implementation of a Change to the Parole Process for Haitians, 88 FR 26327 (Apr. 28, 2023); Implementation of a Parole Process for Nicaraguans, 88 FR 1255 (Jan. 9, 2023); Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022); Implementation of Changes to the Parole Process for Venezuelans, 88 FR 1279 (Jan. 9, 2023).

[2] *See* Executive Order 14165, Securing Our Borders, 90 FR 8467 (Jan. 20, 2025) (published Jan. 30, 2025).

[3] *Compare, e.g.,* 88 FR at 1260–63, *with* 88 FR at 1248–52 (setting out the justifications for the parole programs for Nicaragua and Haiti, respectively).

humanitarian reasons or significant public benefit.'' *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 8 CFR 212.5(a) and (c) through (e) (discretionary authority for establishing conditions of parole and for terminating parole). Additionally, upon a finding by DHS that the purpose of the temporary, discretionary parole has been served, the alien is required to depart the United States ''or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

A review of the history of the parole authority supports the contention that discretionary parole determinations were intended by Congress to be narrowly tailored to specific instances and not based on a set of broadly applicable eligibility criteria.[4] Under the law, the determination to parole an alien into the country should only be made on a case-by-case basis, taking into account each alien's unique circumstances. The ultimate determination whether to parole an alien into the United States upon the alien's arrival at a POE is made by U.S. Customs and Border Protection (''CBP'') officers. *See* 8 CFR 212.5(a).

Parole is inherently temporary, and parole alone is not an underlying basis for obtaining any immigration status, nor does it constitute an admission to the United States. *See* INA 101(a)(13)(B), 212(d)(5)(A), 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A). Once an alien is paroled into the United States, the parole allows the alien to stay temporarily in the United States for the duration of the parole period unless and until the parole expires or is otherwise terminated. *See* 8 CFR 212.5(e).

Paroled aliens, including those paroled under the CHNV parole programs, may apply for any immigration benefit or status for which they may be eligible, including discretionary employment authorization under the (c)(11) employment eligibility category. *See* 8 CFR 274a.12(c)(11). In the absence of any subsequent application conferring an immigration benefit or status, and upon termination of parole, such alien will remain an arriving alien. *See* 8 CFR 1.2; *see also* INA 101(a)(13)(B), 8 U.S.C. 1101(a)(13)(B).

III. Rationale for Initial Implementation

When DHS established the CHNV parole programs, DHS provided several justifications for their promulgation. *See, e.g.,* 88 FR at 1248–51 (Implementation of a Parole Process for Haitians). Overall, DHS stated that the programs would provide a significant public benefit for the United States and address the urgent humanitarian reasons underlying the high levels of migration from those countries.

With respect to the significant public benefit, DHS wrote that the CHNV parole programs would: (i) enhance border security by reducing illegal immigration between the POEs, (ii) minimize the domestic impact of high levels of illegal immigration by CHNV nationals, particularly in border communities; (iii) improve vetting for national security and public safety; (iv) reduce the strain on DHS personnel and resources; (v) disincentivize a dangerous journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

For the reasons discussed below, DHS has determined that it is now appropriate and necessary to terminate the CHNV parole programs. These programs do not serve a significant public benefit, are not necessary to reduce levels of illegal immigration, did not sufficiently mitigate the domestic effects of illegal immigration, are not serving their intended purposes, and are inconsistent with the Administration's foreign policy goals.[5] Regarding previous arguments or determinations that these programs were consistent with the requirement of ''urgent humanitarian reasons'' for granting parole, DHS believes that consideration of any urgent humanitarian reasons for granting parole is best addressed on a case-by-case basis consistent with the statute, and taking into consideration each alien's specific circumstances. These reasons, independently and cumulatively, support termination of the CHNV parole programs.

Accordingly, the Secretary, in her discretion, is terminating the CHNV parole programs. Consistent with her statutory authority, the Secretary retains discretion to continue to extend parole to any alien paroled under CHNV—temporarily under such conditions as she may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit. *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). The decision to do so, or not do so, is committed to the Secretary's sole discretion.

1. The CHNV Parole Programs Are Unnecessary To Achieve Border Security Goals

From the announcement of the parole program for Venezuelans and their immediate family members on October 12, 2022, through the subsequent addition of the programs for Cubans, Haitians, Nicaraguans, and their immediate family members in January 2023, and until January 22, 2025, approximately 532,000 inadmissible aliens were granted advance authorization to travel to the United States and receive consideration for parole into the United States.[6]

One justification for these 532,000 discretionary paroles was to ''enhance border security'' at the southwest border of the United States.[7] DHS reasoned that by ''incentivizing individuals to seek a lawful, orderly means of traveling to the United States, while imposing

[4] Parole was codified into immigration law in the Immigration and Nationality Act of 1952. As envisioned then, the 1952 Act authorized the Attorney General to parole aliens temporarily under such conditions as he may prescribe for emergent reasons or reasons deemed strictly in the public interest. As expressed then, ''the parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted.'' *See Leng May Ma* v. *Barber*, 357 U.S. 185, 190 (1958). However, the parole authority, whether intended to be narrow or broad, has in fact been used in an increasingly broad manner since its inception, often earning the criticism of Congress, which in 1996 wrote, ''[i]n recent years, however, parole has been used increasingly to admit entire categories of aliens who do not qualify for admission under any other category in immigration law, with the intent that they will remain permanently in the United States. This contravenes the intent of section 212(d)(5), but also illustrates why further, specific limitations on the Attorney General's discretion are necessary.'' *See* H.R. Rep. 104–469, pt. 1, at 140 (1996). Furthermore, the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (''IIRIRA'') struck from INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A), the phrase, ''for emergent reasons or for reasons deemed strictly in the public interest'' as grounds for granting parole into the United States and inserted ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' *See* Public Law 104–208, div. C, § 602(a). ''The legislative history indicates that this change was animated by concern that parole under 8 U.S.C. 1182(d)(5)(A) was being used by the executive to circumvent congressionally established immigration policy.'' *Cruz-Miguel* v. *Holder,* 650 F.3d 189, 199 n.15 (2d Cir. 2011).

[5] *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (''. . . when the purposes of such parole shall, in the opinion the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled.'').

[6] Office of Homeland Security Statistics (''OHSS'') analysis of advanced travel authorizations data provided by CBP Passenger Systems Program Directorate and valid as of January 22, 2025. Beneficiary travel authorizations excluded expired applications. The Venezuelan program started on October 18, 2022, and the Cuba, Haiti, Nicaragua parole programs started January 6, 2023.

[7] *See, e.g.,* 88 FR at 1255 (''The [Nicaraguan] parole process is intended to enhance border security by reducing the record levels of Nicaraguan nationals entering the United States between POEs.'').

consequences to irregular migration, . . . the new parole process will mitigate anticipated future surges'' of illegal immigration. *See, e.g.,* 88 FR at 1249 (Implementation of a Parole Process for Haitians). DHS pointed to past experience with rapidly increasing ''encounters of Guatemalan and Honduran nationals from January 2021 until August 2021'' along the southwest border, explaining that the resumption of repatriation flights to Guatemala and Honduras helped reduce the amount of illegal immigration but was insufficient to address the sheer numbers.[8] Accordingly, the CHNV parole programs contemplated enhancing border security by combining ''a consequence for [nationals seeking] to enter the United States [in an unlawful manner between POEs (*i.e.,* removal or return to a third country, such as Mexico), while introducing] an incentive to use [a] lawful process to request authorization to travel by air to and enter the United States, without making the dangerous journey to the border.'' [9]

Upon review, DHS concludes that this ''deterrent'' and ''incentive'' approach did not result in a sufficient and sustained improvement in border security, and has exacerbated challenges associated with interior enforcement of the immigration laws. Encounters of CHNV nationals, particularly at POEs, remained unacceptably high while the CHNV parole programs were in effect, and overall migration of CHNV nationals to the United States increased between October 12, 2022 and January 22, 2025. In addition, the CHNV parole programs have at best traded an unmanageable population of unlawful migration along the southwest border for the additional complication of a substantial population of aliens in the interior of the United States without a clear path to a durable status.

As an initial matter, DHS acknowledges that in establishing the CHNV parole programs, and in subsequent DHS evaluations of these programs, DHS focused, in part, on a goal of reducing encounters of CHNV nationals between POEs.[10] And it is true that there was a reduction in encounters of CHNV nationals between POEs from FY 2022 through FY 2024—from around 600,000 encounters in FY 2022 to 416,000 in FY 2023 and 183,000 in FY 2024.[11] But in implementing the CHNV parole programs, DHS also focused on the importance of reducing pressures at the southwest border generally. It was for this reason that the CHNV parole programs required, for instance, that CHNV nationals ''fly at their own expense to an interior [POE] rather than entering at a land POE'' [12] and rendered ineligible those CHNV nationals who irregularly entered the United States, Mexico, or Panama after the programs' announcement.[13]

Consistent with that focus and in light of the reality that DHS's border security mission involves activities at southwest border POEs as well, DHS has concluded that the present assessment of the efficacy of the CHNV parole programs should include encounters at such land POEs. If one includes encounters of CHNV nationals at POEs, the actual reduction in southwest border encounters of CHNV nationals is much more muted: encounters of CHNV nationals at and between southwest border POEs dropped from approximately 626,000 in FY 2022 only to 584,000 in FY 2023 and to 535,000 in FY 2024.[14] This is due to a significant increase in encounters of such aliens at southwest border POEs over that time period: from 26,250 in FY 2022 to 168,010 in FY 2023 and 352,790 in FY 2024.[15] The increase can be attributed to the use of the CBP One mobile application (''CBP One app'' or ''CBP One'') to schedule appointments at southwest border POEs,[16] which resulted in very high numbers of CHNV nationals placed into removal proceedings pursuant to section 240 of the INA, 8 U.S.C. 1229a, (''section 240 removal proceedings'') and released into U.S. border communities,[17] exacerbating the immigration court backlog and the poor incentives that the backlog creates.[18] Finally, it is important to emphasize that in addition to these southwest border encounters, DHS must also consider the 532,000 parolees who entered the United States under the CHNV parole programs.

The decision to terminate the discretionary and temporary parole programs is further informed by the actions of the prior administration, which found the CHNV parole programs, even when paired with the Circumvention of Lawful Pathways rule, to be insufficient to address very high levels of illegal immigration.[19] For example, DHS and the Department of Justice (DOJ) promulgated the Securing the Border framework [20] as an emergency measure to address ongoing high levels of unlawful immigration between southwest border POEs.[21] The Departments explained that ''at the current levels of encounters and with current resources, [DHS] cannot predictably and swiftly deliver consequences to most noncitizens who cross the border without a lawful basis to remain . . . [DHS's] ability to refer and process noncitizens through expedited removal thus continues to be overwhelmed, creating a vicious cycle.'' [22] This conclusion—that DHS's ability to swiftly impose consequences for illegal immigration ''continue[d] to be overwhelmed'' [23]—followed nearly two years of the CHNV parole programs, whose chief justification had been facilitating operational control of the

[8] *See, e.g.,* 87 FR at 63509.

[9] *See, e.g.,* 87 FR at 63510.

[10] *See, e.g.,* 87 FR at 63507 (''The parole process is intended to enhance border security by reducing the record levels of Venezuelan nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.''); *see also* Circumvention of Lawful Pathways 88 FR 31314, 31317 (May 16, 2023) (noting that in the first weeks following implementation of the CHNV parole programs, encounters of CHNV nationals between POEs dropped significantly).

[11] OHSS analysis of January 2025 OHSS Persist Dataset.

[12] *See, e.g.,* 87 FR at 63507; *see also id.* at 63512 (explaining that by ''diverting flows of Venezuelan nationals to interior POEs through a safe and orderly process,'' DHS could relieve pressure on border communities).

[13] *See, e.g.,* 87 FR at 63515.

[14] OHSS analysis of January 2025 OHSS Persist Dataset.

[15] OHSS analysis of January 2025 OHSS Persist Dataset.

[16] Section 7 of Executive Order 14165 also directed the Secretary to, consistent with applicable law, take all appropriate action to cease using the CBP One app. as a method of paroling or facilitating the entry of otherwise inadmissible aliens into the United States. DHS has ceased the use of the CBP One app for this purpose. *See* CBP, Press Release, CBP Removes Scheduling Functionality in CBP One™ App (Jan. 21, 2025), *https://www.cbp.gov/newsroom/national-media-release/cbp-removes-scheduling-functionality-cbp-one-app* (last updated Jan. 22, 2025).

[17] A total of 582,800 CHNV nationals with CBP One registration numbers were encountered at southwest border POEs from Jan. 1, 2023–Jan. 31, 2025, including 576,900 (99 percent) that were issued NTAs. OHSS analysis of January 2025 OHSS Persist Dataset.

[18] *See, e.g.,* Securing the Border, 89 FR 81156, 81181 (Oct. 7, 2024) (explaining that particularly in light of the immigration court backlog, ''releasing individuals who may otherwise be referred for expedited removal may inadvertently incentivize increased irregular migration and the exploitation of the asylum system, especially by human smugglers who encourage migrants to claim fear once they are encountered by USBP as it will allow them to remain in the United States for years pending resolution of their case and, where appropriate, removal.'').

[19] 88 FR 31314 (May 16, 2023).

[20] *See* 89 FR 48710 (June 7, 2024) (interim final rule); 89 FR 81156 (Oct. 7, 2024) (final rule).

[21] ''On June 3, 2024, the President signed Proclamation 10773 under sections 212(f) and 215(a) of the INA, finding that because border security and immigration systems of the United States were unduly strained, the entry into the United States of certain categories of [aliens] was detrimental to the interests of the United States, and suspending and limiting the entry of such [aliens].'' *See* 89 FR at 81157–58.

[22] 89 FR at 48714.

[23] 89 FR at 48715.

southwest border of the United States. Promulgation of the Securing the Border interim final rule in June 2024 reflected the reality that the CHNV parole programs and Circumvention of Lawful Pathways rule did not sufficiently enhance border security.[24]

Finally, to whatever extent the CHNV parole programs could be characterized as reducing encounters of CHNV nationals at the southwest border from the very high levels that existed in late 2022, DHS does not believe that the programs are necessary to achieve such reductions at this time. In December 2022—the last full month prior to implementation of all four programs—the U.S. Border Patrol (USBP) encountered around 84,000 CHNV nationals at the southwest border.[25] That figure has been below 12,000 every month since January 2024, and below 6,000 every month since June 2024, when DHS and DOJ issued the Securing the Border rule.[26] In January 2025, even with the CHNV parole programs paused, USBP encountered around 3,400 CHNV nationals at the southwest border.[27] Whatever the need for these programs may have been in late 2022, the situation at the southwest border now, and the set of tools implemented by DHS to deter illegal immigration, are quite different.

Moreover, with the implementation of President Trump's policies beginning on January 20, 2025, border encounters generally have continued to drop notwithstanding the ongoing pause on these programs. Southwest border encounters between POEs fell from an average of about 1,180 aliens per day in the two-week period ending on January 20, 2025, to an average of about 640 per day in the two-week period from January 21 to February 3, 2025, and fell further to an average just under 260 per day in the two-week period from February 12, 2025 to February 25, 2025.[28] Over those same three time periods, southwest border releases from USBP custody fell from an average of about 240 per day to an average of about 50 per day and then an average of fewer than 5 per day.[29]

The need to break the ''vicious cycle'' of unlawful immigration supports this DHS action to terminate the CHNV parole programs in favor of new presidential directives that address the demand for enhanced border security beyond the 2024 Securing the Border framework.[30] Executive Order 14165, ''Securing Our Borders,'' [31] and Executive Order 14159, ''Protecting the American People Against Invasion,'' [32] exemplify more reasoned and realistic initiatives to control unlawful immigration at the southwest border of the United States.

2. The Domestic Effects of Illegal Immigration Continued To Be Felt Throughout Implementation of the CHNV Parole Programs

Although one goal of the CHNV parole programs was to ''help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of arriving migrants at the SWB,'' the programs did not have this effect. As discussed in the preceding section, overall levels of CHNV migration at and between southwest border POEs did not fall dramatically year-over-year in FY 2023 and FY 2024. In addition, if one takes into account the 532,000 parolees who entered the United States at an interior POE, CHNV migration may have increased over the relevant time period. Recent policy interventions have proven more effective than the CHNV parole programs in addressing very high levels of illegal immigration.

Over the past few years, there has been extensive public discussion of the effects of high levels of illegal immigration and inadmissible aliens arriving in local communities. Although public accounts of these effects do not always distinguish between aliens strictly on the basis of how they entered the country or their status (*e.g.,* CHNV parolees; aliens whom DHS encountered at a southwest border POE placed in section 240 removal proceedings; and aliens present without admission or parole), localities nationwide have experienced the effects of very high levels of migration.[33] CHNV parolees and other recent arrivals have competed for limited resources such as housing, food, transportation, education, legal services, and public benefits.[34] Some localities experienced surges of CHNV parolees in particular.[35]

The domestic impact of the CHNV parole program was also felt at the Federal level in at least three ways. First, the CHNV parole programs resulted in expanded eligibility for Federal public benefits. This is because, for instance, an alien who is paroled into the United States under INA 212(d)(5) for a period of at least 1 year is considered a ''qualified alien.'' *See* 8 U.S.C. 1641(b)(4). Because DHS generally issued two-year periods of parole from the outset, CHNV parolees generally were considered qualified aliens. Although qualified aliens are generally subject to a five-year waiting period before becoming eligible for certain Federal public benefits, *see, e.g.,* 8 U.S.C. 1613(a) (five-year waiting period for Federal means-tested public benefits); 8 U.S.C. 1612(a)(2)(L) (general five-year waiting period before a qualified alien can receive supplemental nutrition assistance program (SNAP) benefits), such waiting periods do not apply to all CHNV parolees with respect to all public benefit programs. For instance, a parolee under the age of 18 may be eligible for SNAP benefits, *see*

[24] DHS notes that on October 4, 2024, the prior administration announced that there would be no ''re-parole'' beyond the initial two-year period for the parolees who entered the United States under the CHNV parole programs. The decision of the prior administration to decline renewal or extension of the CHNV related parole coincided in large part with other actions of DHS to promulgate policies to reduce illegal immigration.

[25] OHSS analysis of January 2025 OHSS Persist Dataset.

[26] OHSS analysis of January 2025 OHSS Persist Dataset.

[27] OHSS analysis of January 2025 OHSS Persist Dataset.

[28] OHSS analysis of data downloaded from UIP February 25, 2025.

[29] OHSS analysis of data downloaded from UIP Feb. 25, 2025. DHS also notes that to whatever extent the incentives created by the parole programs for Cubans and Haitians deterred illegal immigration by sea—a particularly dangerous form of migration—the parole programs are not necessary for such deterrence and raise other issues, some of which are outlined in sections III.2–4 of this notice. DHS has adopted a more robust enforcement posture in general, and will monitor trends in maritime migration and respond as appropriate. Through early February 2025, DHS has yet to see a return to the very high levels of maritime migration observed in 2022.

[30] The streamlined procedures offered by the Securing the Border framework and complementary actions permitted DHS to more than triple the percentage of aliens processed for expedited removal under INA 235(b)(1), 8 U.S.C. 1225(b)(1), and decrease the number of aliens released by USBP pending immigration court proceedings by 89 percent, a number that has only improved further with the end of ''catch and release.'' Encounters and releases based on OHSS analysis of January 2025 OHSS Persist Dataset. Processed for ER based on OHSS analysis of September 2024 OHSS enforcement Lifecycle and CBP data downloaded from UIP ER Daily Report Data Dashboard as of February 4, 2025.

[31] 90 FR 8611 (Jan. 20, 2025).

[32] 90 FR 8443 (Jan. 20, 2025).

[33] *See, e.g.,* Adam Shaw, Fox News, *Biden Admin Faces Mounting Pressure to Dismantle Migrant Parole Program Amid 'Stress' on Small Towns* (Oct. 31, 2024), *https://www.foxnews.com/politics/biden-admin-faces-mounting-pressure-dismantle-migrant-parole-program-stress-small-towns;* Muzaffar Chishti & Colleen Putzel-Kavanaugh, *After Crisis of Unprecedented Migrant Arrivals, U.S. Cities Settle into New Normal,* Migration Policy Institute (Aug. 1, 2024), *https://www.migrationpolicy.org/article/us-cities-innovations-integrate-arrivals.*

[34] *See* Muzaffar Chishti & Colleen Putzel-Kavanaugh, *After Crisis of Unprecedented Migrant Arrivals, U.S. Cities Settle into New Normal,* Migration Policy Institute (Aug. 1, 2024), *https://www.migrationpolicy.org/article/us-cities-innovations-integrate-arrivals.*

[35] Nick Mordowanec, *Map Shows Hotspots for Migrants Flying Into U.S.,* Newsweek (May 1, 2024), *https://www.newsweek.com/migrants-dhs-flying-border-illegal-1896239.*

7 CFR 273.4(a)(6)(ii)(J), as might ''a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980),'' *see* 7 CFR 273.4(a)(6)(ii)(E). Similarly, some states have extended Medicaid and Children's Health Insurance Program benefits without a five-year waiting period to ''lawfully residing'' children and pregnant women, which includes an alien who is paroled into the United States under INA 212(d)(5) for a period of at least 1 year.[36]

Second, the CHNV parole programs have exacerbated backlogs, or risked exacerbating backlogs, for the immigration system writ large. For example, the population of aliens paroled into the United States and who have filed an application for asylum contributes to an already taxed immigration system with historically high backlogs before USCIS and the Executive Office for Immigration Review (''EOIR'').[37] Many such parolees may not otherwise have come to the United States and have exacerbated such backlogs or are likely to eventually do so. U.S. Citizenship and Immigration Services (''USCIS'') recently reported that as of the end of December 2024, the USCIS asylum backlog had increased to over 1.4 million cases.[38] CHNV parolees account for approximately 75,000 affirmative asylum applications.[39] In addition, when a CHNV parolee's two-year parole period ends, if the CHNV parolee has no lawful basis to remain in the United States, DHS may place the alien in section 240 removal proceedings. But, due in part to the overwhelmed expedited removal system, EOIR's immigration court backlog has already been growing rapidly, and will be further strained by the initiation of additional removal proceedings for the CHNV parolee population once their parole period ends. The immigration court backlog increased by approximately 44 percent between the end of FY 2023 (2.5 million cases) and FY 2024 (3.6 million cases).[40]

Third, the CHNV parole programs had a disruptive impact for CBP operations at interior air POEs. A progressive increase in beneficiaries of the CHNV parole programs arriving at POEs with advance travel authorizations ''(ATAs'') were ultimately not granted parole due to CBP's determination that the alien did not warrant a discretionary grant of parole, for instance due to evidence of fraud or confirmation that the alien was a citizen or resident of a non-CHNV country. As a result, CBP processed these aliens for another appropriate disposition under Title 8, including detention or referral into expedited removal proceedings or section 240 removal proceedings, as appropriate. This caused further processing delays and coordination with air carriers for return flights when appropriate, and further contributed to the immigration court backlog.

The overwhelmed immigration systems in particular may incentivize aliens to enter the United States, without regard to the strength of any potential claims for immigration status, as aliens who are subject to expedited removal may nevertheless be placed in section 240 removal proceedings when the system is strained beyond its processing capacity. As a result, many remain in the United States until their immigration benefit requests are adjudicated or their section 240 removal proceedings conclude and any resultant removal order is executed. Any further strain to the immigration systems resulting from aliens pursuing the CHNV parole programs exacerbates these detrimental incentives.

In short, the domestic impact of the CHNV parole programs do not warrant continuing to operate these programs. Implementation of these programs coincided with an overall increase in CHNV migration, significant pressures on localities throughout the country, an expansion of public benefits eligibility, and a further exacerbation of USCIS and immigration court backlogs.

3. The CHNV Parole Programs Are Inconsistent With the Administration's Foreign Policy Goals

One of the stated goals of the CHNV parole programs was to promote the foreign policy objectives of the prior administration. Indeed, DHS explained repeatedly in its notices promulgating the CHNV parole programs that their implementation would advance the foreign policy objectives of the then-current administration.[41] The foreign policy objectives underlying the CHNV parole programs, however, are not consistent with those of the current Administration.

Executive Order 14150, ''America First Policy Directive to the Secretary of State'' (Jan. 20, 2025) clearly sets out the President's vision that ''the foreign policy of the United States shall champion core American interests and always put America and American citizens first.'' [42] Executive Order 14159, ''Protecting the American People Against Invasion'' (Jan. 20, 2025) states that it is the policy of the United States to ''faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people.'' Further, it is the policy of the United States to achieve the ''total and efficient enforcement of those laws, including through lawful incentives and detention capabilities.'' [43]

Whereas implementation of the CHNV parole programs was contingent upon the Government of Mexico (''GOM'') making an independent decision to accept the return or removal of CHNV nationals who migrated illegally, the U.S. Government is pursuing a range of other policy initiatives that would allow DHS to return, remove, or deter the illegal migration of CHNV nationals and other aliens. Section 13 of that Executive Order 14159 specifically addresses repatriation, and directs the Secretaries of State and Homeland Security to take all appropriate action to cooperate and effectively implement, as appropriate, the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), and ensure that diplomatic efforts and negotiations with foreign states include the foreign states' acceptance of their nationals who are subject to removal from the United States. Section 13 further directs the Secretaries to eliminate all documentary barriers, dilatory tactics, or other restrictions that prevent the prompt repatriation of aliens to any foreign state. The Order provides that any failure or delay by a foreign state to verify the identity of a national of that state shall be considered in carrying out section 243(d) sanctions and shall also be considered regarding the issuance of

[36] *See* 42 U.S.C. 1396b(v)(4) (Medicaid); 42 U.S.C. 1397gg(e)(1)(O) (CHIP).

[37] *See* Holly Straut-Eppsteiner, Cong. Rsch. Serv. IN12492, FY2024 EOIR Immigration Court Data: Caseloads and the Pending Cases Backlog (2025); *see also* Elizabeth Jacobs, *Affirmative Asylum Backlog Exceeds One Million for the First Time* (Center for Immigration Studies) (July 26, 2024), *https://cis.org/Jacobs/Affirmative-Asylum-Backlog-Exceeds-One-Million-First-Time.*

[38] USCIS, Performance Data, Asylum Division Monthly Statistics Report (Dec. 2024), *https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2025todatestats_241231.xlsx* (last visited Feb. 25, 2025).

[39] USCIS Office of Performance & Quality.

[40] EOIR, Executive Office for Immigration Review Adjudication Statistics (Jan. 16, 2025), *https://www.justice.gov/eoir/media/1344791/dl?inline.*

[41] *See e.g.,* 87 FR at 63516 (''the implementation of [the Venezuela process] will advance the Administration's foreign policy goals''); 88 FR at 1253 (''[the Haiti process] is fully aligned with larger and important foreign policy objectives of this Administration'').

[42] *See* Executive Order 14150, America First Policy Directive to the Secretary of State, 90 FR 8337 (Jan. 20, 2025) (published Jan. 29, 2025).

[43] *See* Executive Order 14159, Protecting the American People Against Invasion, 90 FR 8443 (Jan. 20, 2025) (published Jan. 29, 2025).

any other sanctions that may be available to the United States.

Further, as noted above, Executive Order 14165, ''Securing Our Borders'' states that DHS shall ''terminate all categorical parole programs that are contrary to the policies of the United States established in [the President's] Executive Orders, including the program known as the 'Processes for Cubans, Haitians, Nicaraguans, and Venezuelans.' '' [44] In the same Order, the President directed that as soon as practicable, the Secretary of Homeland Security, in coordination with the Secretary of State and the Attorney General, shall take all appropriate action to resume the Migrant Protection Protocols in all sectors along the southern border of the United States and ensure that, pending section 240 removal proceedings, aliens described in section 235(b)(2)(C) of the INA (8 U.S.C. 1225(b)(2)(C)) are returned to the territory from which they came.

The President has pursued the cooperation of foreign partners in other ways as well. For instance:

- On January 23, 2025, President Trump in his call with Salvadoran President Nayib Bukele discussed working together to stop illegal immigration and crack down on transnational gangs like Tren de Aragua.[45]
- On January 26, 2025, the Government of Colombia agreed to the unrestricted acceptance of all illegal aliens from Colombia returned from the United States, including on U.S. military aircraft, without limitation or delay.[46]
- On January 27, 2025, President Trump had a productive conversation with Indian Prime Minister Narendra Modi, who agreed to ''do what's right'' in regard to illegal migration.[47]
- Beginning on February 1, 2025, President Trump has issued a number of tariff-related executive orders in connection with the situation at the southern border.[48]
- On February 16, 2025, Panama received a first U.S. military plane transporting 119 deportees of various nationalities, who will then be repatriated to their own respective countries. Panamanian President Jose Raul Mulino has offered his country as a stopover for aliens expelled from the United States.[49]

Multiple agencies of the U.S. Government are actively pursuing the President's foreign policy goals. For instance, the Department of State has announced multiple discussions with neighboring countries regarding DHS's ability to remove or return illegal aliens,[50] consistent with Secretary of State Rubio's January 22, 2025 announcement that a key priority of the Department of State is to curb mass migration and secure our borders.[51] In that announcement, the Department of State made clear that it ''will no longer undertake any activities that facilitate or encourage mass migration'' and that ''[o]ur diplomatic relations with other countries, particularly in the Western Hemisphere, will prioritize securing America's borders, stopping illegal and destabilizing migration, and negotiating the repatriation of illegal immigrants.'' [52] Additionally, pursuant to his authority under section 219 of the INA, 8 U.S.C. 1189,[53] Secretary of State Rubio designated the Venezuelan gang, Tren de Aragua, along with other cartels and gangs, as Foreign Terrorist Organizations.[54]

In other words, in addition to directly fulfilling the President's directive to terminate the CHNV parole programs, this action complements and underscores the Administration's pivot to a foreign policy that prioritizes the United States' interests in a secure border. Regardless of whether the prior Administration saw the CHNV parole programs as a component of a regional migration management strategy, the current Administration is not pursuing that strategy. Rather, as described above, the current Administration has focused its foreign policy attention on other measures to deter and prevent the entry of illegal aliens into the United States and obtain complete operational control of our borders.

These measures will allow DHS to better ''achieve the total and efficient enforcement'' of U.S. immigration law and, as such, champion a core American interest in accordance with the President's vision for American foreign policy.[55] In short, the continued implementation of the CHNV parole programs no longer accords with the President's stated priorities and foreign policy objectives.

4. Other Factors Do Not Counsel in Favor of Maintaining the Programs

The other factors cited by DHS in promulgating the CHNV parole programs also do not counsel in favor of maintaining the programs. For instance:

- DHS predicted that by allowing DHS to vet aliens before they travel to the United States, the programs would enhance national security as compared to high levels of illegal immigration. But as discussed above, these programs are unnecessary to counter high levels of illegal immigration. In addition, and critically, such vetting is inherently limited and, as has been reported publicly, there were significant gaps in the vetting process. In response to these problems, the CHNV parole programs were paused briefly in July 2024 to evaluate the program vulnerabilities.[56]

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[44] *See* Executive Order 14165, Securing Our Borders, 90 FR 8467 (Jan. 20, 2025) (published Jan. 30, 2025).

[45] The White House, ''Readout of President Donald J. Trump's Call with President Nayib Bukele'' (Jan. 23, 2025), *https://www.whitehouse.gov/briefings-statements/2025/01/readout-of-president-donald-j-trumps-call-with-president-bukele/.*

[46] The White House, ''Statement From the Press Secretary'' (Jan. 26, 2025), *https://www.whitehouse.gov/briefings-statements/2025/01/statement-from-the-press-secretary/.*

[47] Meryl Sebastian, *Trump Says India 'Will Do What's Right' on Illegal Immigration* BBC News (Jan. 27, 2025), *https://www.bbc.com/news/articles/cj91z842wlmo.*

[48] *See, e.g.,* Executive Order 14194, Imposing Duties to Address the Situation at Our Southern Border, 90 FR 9117 (Feb. 1, 2025) (published Feb. 7, 2025); Executive Order 14198, Progress on the Situation at Our Southern Border, 90 FR 9185 (Feb. 3, 2025) (published Feb. 10, 2025); Executive Order 14227, Amendment to Duties to Address the Situation at Our Southern Border, 90 FR 11371 (Mar. 2, 2025) (published Mar. 6, 2025).

[49] *Panama Receives First U.S. Deportation Flight Under Trump Administration,* The Tico Times (Feb. 16, 2025), *https://ticotimes.net/2025/02/16/panama-receives-first-us-deportation-flight-under-trump-administration.*

[50] *See, e.g.,* U.S. Department of State, Readout, Secretary Rubio's Meeting with Salvadoran President Nayib Bukele (Feb. 3, 2025) (''President Bukele agreed to take back all Salvadoran MS–13 gang members who are in the United States unlawfully. He also promised to accept and incarcerate violent illegal immigrants, including members of the Venezuelan Tren de Aragua gang, but also criminal illegal migrants from any country.''), *https://www.state.gov/secretary-rubios-meeting-with-salvadoran-president-nayib-bukele/;* U.S. Department of State, Readout, Secretary Rubio's Meeting with Panamanian President Mulino (Feb. 2, 2025) (''Secretary Rubio also emphasized the importance of collaborative efforts to end the hemisphere's illegal migration crisis and thanked President Mulino for his support of a joint repatriation program, which has reduced illegal migration through the Darien Gap.''), *https://www.state.gov/secretary-rubios-meeting-with-panamanian-president-mulino/.*

[51] U.S. Department of State, Press Statement, Priorities and Mission of the Second Trump Administration's Department of State (Jan. 22, 2025).

[52] *Id.*

[53] *See* Executive Order 14157, Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, 90 FR 8439 (Jan. 20, 2025) (published Jan. 29, 2025).

[54] Foreign Terrorist Organization Designations of Tren de Aragua, Mara Salvatrucha, Cartel de Sinaloa, Cartel de Jallisco Nueva Generacion, Carteles Unidos, Cartel del Noreste, Cartel del Golfo, and La Nueva Familia Michoacana, 90 FR 10030 (Feb. 20, 2025).

[55] *See* Executive Order 14159, Protecting the American People Against Invasion, 90 FR 8443 (Jan. 20, 2025) (published Jan. 29, 2025).

[56] Stephen Dinan, *'Parole' program put on hold amid massive fraud; Homeland Security promises to set up safeguards,* Wash. Times (Aug. 2, 2024),

• DHS also initially reasoned that the CHNV parole programs would disincentivize a dangerous journey that puts aliens' lives and safety at risk and enriches smuggling networks. As noted above, however, although these programs were accompanied by a significant decrease in CHNV encounters between southwest border POEs, they were also accompanied by a significant increase in CHNV encounters at southwest land border POEs. This indicates that CHNV nationals continued to engage in dangerous migration to the southwest border, even if the overall level of migration to the southwest border dropped somewhat and CHNV aliens did not cross between POEs with the same frequency. And, as also noted above, the U.S. Government has implemented other policies that have more effectively deterred illegal immigration.

• Another stated goal of the CHNV parole programs was to reduce the burden on DHS personnel and resources that would otherwise be required for detention, monitoring, processing, and removal. However, as noted above, significant resource burdens persisted even after the programs' implementation, including with respect to encounters at and between POEs. Program implementation itself occupied significant resources. For instance, there have been approximately 2,970,000 Forms I–134 and I–134A filed with USCIS since October 2022,[57] which includes 2,140,000 pending review, 642,410 confirmed by USCIS, and 181,820 non-confirmed by USCIS.[58] Further, DHS needed additional resources to counter the fraud, national security concerns, and public safety concerns discussed above. In addition, due to the originating location of beneficiaries of the CHNV parole programs and available travel routes via commercial airlines, over 80 percent of the aliens who were issued an ATA under the CHNV parole programs flew to Florida POEs. The unexpected increase in approximately 25,000 inadmissible aliens per month resulted in CBP experiencing a decrease in enforcement operations and an increase in wait times, overtime expenditures, and other needs at Florida POEs. Processing an alien requesting parole under the CHNV parole programs requires secondary processing and enrollment of biometrics, resulting in a more extensive and prolonged time in CBP facilities.

IV. Reliance Interests of Prospective Supporters and Parolees

In deciding whether and how to terminate the CHNV parole programs, DHS has considered potential reliance interests of a range of potential supporters and beneficiaries of these programs. At the outset, however, DHS observes that the temporary and discretionary nature of the programs indicate that reliance on the continued existence of the CHNV parole programs would be unwarranted. The notices establishing the CHNV parole programs expressly advise the public that, ''[t]he Secretary retains the sole discretion to terminate the [Parole Program] . . . at any point'' [59] and that ''DHS may terminate parole in its discretion at any time.'' [60] The CHNV parole programs were ''being implemented as a matter of the Secretary's discretion. [They are] not intended to and [do] not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.'' [61]

In addition, DHS observes that on October 4, 2024, the prior administration announced that there was no re-parole process under CHNV, informing participants that, ''if you have not sought a lawful status or period of authorized stay, you will need to leave the United States before your authorized parole period expires, or you may be placed in removal proceedings after your period of parole expires.'' [62] Finally, as noted above, Executive Order 14165 directs the Secretary to terminate the CHNV parole programs consistent with law.

Notwithstanding that DHS made very clear that reliance on these programs would be inappropriate, that DHS made clear months ago that there would be no ''re-parole'' process under the CHNV parole programs, and the additional notice provided in Executive Order 14165, DHS has analyzed the effects of this action on any potential reliance interests in an abundance of caution.[63]

1. Reliance Interests of Potential Supporters and Beneficiaries

DHS first considered the potential reliance interests of those U.S.-based supporters who had intended to file or have filed a Form I–134A in support of a potential parolee. In general, the costs associated with such filings are minimal. The potential supporter may have incurred the opportunity cost of completing Form I–134A, estimated at 2.60 hours per response, and a few potential supporters who submitted Form I–134A may have submitted their biometrics (photograph and fingerprints) at a USCIS Application Support Center for biometric screening and vetting by USCIS as part of the review of their Form I–134A.[64]

At this early stage in the process, the costs incurred by a potential beneficiary are also minimal. Once a supporter is confirmed, the potential beneficiary receives instructions to create a USCIS online account, confirm their biographic information in their online account, and attest to meeting the eligibility requirements, including public health requirements, and certain vaccination requirements. It is also possible that a beneficiary who has received instructions to create an online account may have obtained vaccinations in anticipation of the required attestation. After confirming their biographic information, the beneficiary received instructions to access the CBP One mobile application to enter biographic information and submit a live photo. CBP One was used to collect the beneficiary's biographic information and photo and was an additional step in the process prior to the alien being authorized to travel to the United States to seek parole. The total estimated time to complete the CBP One part of the

https://www.washingtontimes.com/news/2024/aug/2/dhs-suspends-parole-program-amid-rampant-fraud/.

[57] Under the parole program for Venezuelans, a U.S.-based supporter would initiate consideration for parole under the program by filing Form I–134, *Declaration of Financial Support* (Online), along with supporting evidence. 87 FR at 63515. In January 2023, when DHS expanded the programs to cover Cubans, Haitians, and Nicaraguans and their immediate family members as well, DHS announced that it would instead begin accepting the Form I–134A *Online Request to be a Supporter and Declaration of Financial Support,* along with supporting evidence, to initiate consideration for parole under all four programs. *See, e.g.,* 88 FR at 1279. Neither form could be filed on paper by mail and neither form required the payment of a fee.

[58] OHSS analysis of USCIS Form I–134/Form I–134A data as of January 22, 2025. The Venezuelan parole program started on October 18, 2022, and the Cuba, Haiti, Nicaragua parole programs started January 6, 2023. ''Confirmed'' in this context meant that that USCIS had determined that the supporter was eligible to be a supporter and that they demonstrated the ability to financially support the beneficiary, while ''non-confirmed'' meant that USCIS had determined that the potential supporter had been determined to be ineligible to be a supporter or failed to demonstrate ability to financially support the beneficiary.

[59] *E.g.,* 88 FR at 1268 (Cuba).

[60] *E.g.,* 88 FR at 1272 (Cuba).

[61] *E.g.,* 88 FR at 1277 (Cuba).

[62] Camilo Montoya-Galvez, *U.S. Won't Extend Legal Status For 530,000 Migrants Who Arrived Under Biden Program,* CBS News (Oct. 4, 2024), *https://www.cbsnews.com/news/venezuelans-legal-status-chnv-program/.*

[63] *See* USCIS, Frequently Asked Questions About the Processes for Cubans, Haitians, Nicaraguans, and Venezuelans (Oct. 4, 2024), available at *https://web.archive.org/web/20250104043158/https://www.uscis.gov/humanitarian/frequently-asked-questions-about-the-processes-for-cubans-haitians-nicaraguans-and-venezuelans.*

[64] Biometrics submission is estimated to require 1.17 hours per respondent. 89 FR 104557 (Dec. 23, 2024).

ATA process was 10 minutes. *See* 88 FR 62810, 62812 (Sept. 13, 2023).

In general, these costs are not significant and pale in comparison to the U.S. Government's sovereign interest in determining who is paroled into the United States. DHS intends to issue a notice of non-confirmation for all remaining pending Forms I–134A. DHS will also rescind the confirmation of all Form I–134A that were previously confirmed and issue updated notices of non-confirmation for any potential beneficiaries who have not yet traveled to a POE to seek parole. Potential beneficiaries will no longer be able to execute any attestations or seek ATA through a USCIS online account based on a previously confirmed Form I–134A.

2. Reliance Interests of Potential Beneficiaries With Approved ATAs and Their Supporters

A beneficiary with an approved ATA may travel to the United States to seek a discretionary grant of parole. Authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel, at no cost to the U.S. government, via commercial air to the United States.[65] DHS intends to cancel all pending applications for advance authorizations to travel to the United States to seek a discretionary grant of parole under the CHNV parole programs. There are no currently approved ATAs upon which an alien may travel under the CHNV parole programs.[66]

A beneficiary whose application for an ATA is cancelled may have, for example, provided notice to their landlord, sold property, and/or resigned from employment. In addition, a confirmed Form I–134A supporter may have incurred expenses, for example, to secure living quarters or furniture for the beneficiary in anticipation of their process being completed through parole into the United States.

DHS recognizes that the potential costs incurred by supporters and potential beneficiaries at this point could be viewed as significant. Nevertheless, as explained above, supporters and potential beneficiaries were apprised that DHS could terminate the programs at any point. Moreover, the notices for each parole program made it clear that the approval of an ATA or grant of parole at a POE was entirely discretionary. *See, e.g.,* 88 FR 1243, 1252 (noting that a potential beneficiary may be ''ineligible for advance authorization to travel to the United States as well as parole under this process'' for a range of reasons, including if the alien ''fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion''); 88 FR at 1253 (''Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the [aliens] is a discretionary determination made by CBP at the POE at the time the [alien] arrives at the interior POE''); 88 FR at 1253 (''[Aliens] who . . . otherwise do not warrant parole pursuant to [section 212(d)(5)(A) of the INA], and as a matter of discretion upon inspection, . . . may be referred to ICE for detention.''). While the termination of the CHNV parole programs as provided in this notice may result in costs incurred by both the supporter and potential beneficiary who have prepared to travel to the United States, those parties chose to incur such expenses knowing that completion of the process was never guaranteed by the terms of the program, and the termination of the programs was possible at any time. DHS has concluded that any such reliance interests are outweighed by other interests and policy concerns as explained in this notice.[67]

V. Effect of Termination on Current Parolees Under the CHNV Parole Programs and Corresponding Reliance Interests

The notices establishing the CHNV parole programs explain that parole is not an admission of the alien to the United States, and a parolee remains an applicant for admission during the period of parole in the United States. *See also* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). DHS may set the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole. *Id.* Aliens may be granted advance authorization to travel to the United States to seek parole. *See* 8 CFR 212.5(f). The Secretary may terminate parole in her discretion at any time when, in her opinion, neither urgent humanitarian reasons nor significant public benefit warrants the continued presence of the alien in the United States, and parole shall be terminated when the purpose for which it was authorized has been accomplished. *See* 8 CFR 212.5(e). And, finally, aliens who are paroled into the United States, including those paroled through the CHNV parole programs, may generally apply for and be granted employment authorization under the (c)(11) employment eligibility category. *See* 8 CFR 274a.12(c)(11).

As noted above, between October 19, 2022, and January 22, 2025, approximately 532,000 inadmissible aliens received parole into the United States pursuant to the CHNV parole programs. DHS has determined that as one aspect of the termination of the CHNV parole programs, consistent with the Secretary's statutory and regulatory authority,[68] the parole of aliens who have been paroled into the United States under the CHNV parole programs and whose parole has not already expired by April 24, 2025 will terminate on that date unless the Secretary makes an individual determination to the contrary.

Following this termination, and consistent with the direction in Executive Order 14165, DHS generally intends to remove promptly aliens who entered the United States under the CHNV parole programs who do not depart the United States before their parole termination date and do not have any lawful basis to remain in the United States. DHS retains its discretion to commence enforcement action against any alien at any time, including during the 30-day waiting period created by this notice. Parolees without a lawful basis to remain in the United States following the termination of the CHNV programs must depart the United States

[65] Authorization to travel does not guarantee parole. Parole of the individual is a discretionary determination made by CBP when the individual arrives at the interior POE. *See, e.g.,* 88 FR 1255, 1264 (Jan. 9, 2023).

[66] OHSS analysis of advance travel authorization data provided by CBP PSPD and valid as of February 27, 2025.

[67] DHS has considered the alternative of allowing any approved ATAs to remain in place until they were used or expired by their terms. Even if there were currently approved ATAs, DHS would not pursue this route, because DHS would not wish to incentivize aliens flying to the United States to seek parole under policies that DHS no longer supports or appear to encourage them to incur additional expenses based on a belief that they will be paroled upon arrival at the POE. Such an approach would risk exacerbating the problems created by the CHNV parole programs. As is always the case, however, CBP may consider a request for parole under DHS's existing parole authority, on a case-by-case basis for urgent humanitarian reasons or significant public benefit. If parole is not granted, the alien may be returned to their home country at U.S. Government expense or processed for another appropriate disposition under the INA.

[68] *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A) (''when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States''); 8 CFR 212.5(e)(2)(i) (''[U]pon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, *parole shall be terminated upon written notice to the alien.* . . .'' (emphasis added)).

before their parole termination date. Aliens departing the United States via land border POEs should report their departure once outside the United States via the CBP Home mobile app. Aliens should visit *https://i94.cbp.dhs.gov/home* for more information about voluntarily reporting their departure.

In implementing this approach, DHS intends to prioritize for removal those who (1) have not, prior to the publication of this notice, properly filed an immigration benefit request, with appropriate fee (or fee waiver request, if available) to obtain a lawful basis to remain in the United States (*e.g.,* adjustment of status, asylum, Temporary Protected Status, or T or U nonimmigrant status) and (2) are not the beneficiary of an immigration benefit request properly filed by someone else on their behalf (*e.g.,* petition for alien relative, fiancé petition, petition for immigrant employee), with appropriate fee (or fee waiver request, if available). Aliens who have since obtained a lawful immigration status or other basis that permits them to remain in the United States are not required to depart the United States pursuant to this notice.

Parole-based employment authorization under 8 CFR 274a.12(c)(11) automatically terminates upon (1) the expiration date specified on the employment authorization document, (2) DHS's institution of removal proceedings against the alien, or (3) a grant of voluntary departure. *See* 8 CFR 274a.14(a). Such employment authorization may also be revoked on notice consistent with the procedures in 8 CFR 274a.14(b). DHS has determined that, after termination of the parole, the condition upon which the employment authorization was granted no longer exists and thus DHS intends to revoke parole-based employment authorization consistent with those revocation on notice procedures. 8 CFR 274a.14(b).

DHS has considered the impacts on parolees who are affected by this discretionary decision to terminate their parole prior to the expiration of the parole period. DHS recognizes the costs incurred by some aliens who have been granted parole and traveled to the United States.[69] Parolees will have departed their native country; traveled to the United States; obtained housing, employment authorization, and means of transportation; and perhaps commenced the process of building connections to the community where they reside.

However, any assessment of the reliance interests of CHNV parolees must account for CHNV parolees' knowledge at the outset that (1) the Secretary retained the discretion to terminate the parole programs at any point in time, and to terminate any grants of parole at any time when, in her opinion, the purposes of such parole have been served [70]; and that (2) the initial term of parole would be limited to a maximum of two years. These clear, limiting conditions of the parole programs served to attenuate any long-term expectations and interests amongst CHNV parolees. Accordingly, DHS has taken these limiting conditions, along with CHNV parolees' knowledge of them, into consideration when weighing their reliance interests.[71]

DHS has concluded that the potential reliance interests among aliens paroled into the United States under the CHNV parole programs do not outweigh the U.S. government's strong interest in promptly removing parolees when the basis for the underlying program no longer exists. To effectuate their prompt removal, the U.S. government may in its discretion initiate expedited removal proceedings where appropriate. Expedited removal is available only when an alien has not been continuously present in the United States for at least the two years preceding the date of the inadmissibility determination. INA 235(b)(1)(iii)(II), 8 U.S.C. 1225(b)(1)(iii)(II); 8 CFR 235.3.[72] If DHS were to allow the CHNV parolee population to remain for the full duration of their two-year parole, DHS would be compelled to place a greater proportion of this population in section 240 removal proceedings to effectuate their removal, further straining the already over-burdened immigration court system discussed in Section III.1.

To the extent that current parolees have obtained housing and employment authorization, or created new ties within the community while in the United States, DHS notes these interests are qualitatively less than any reliance interests that might be attributed to the Deferred Action for Childhood Arrival (DACA) recipient population consistent with the discussion in *DHS* v. *Regents of the Univ. of Cal.*[73] In *Regents,* the Supreme Court reviewed whether DHS had appropriately considered the reliance interests of DACA recipients when rescinding DACA.[74] The reliance interests of DACA recipients, all of whom had been present in the United States for far longer than two years, included their enrollment in degree programs, the beginning of their careers, the starting of businesses, and the purchase of homes.[75] As the Court noted, these interests, though noteworthy, were not ''necessarily dispositive,'' and ''DHS may determine, in the particular context before it, that other interests and policy concerns [in rescinding DACA] outweigh any reliance interests.'' [76] For the purposes of the actions announced in this notice, DHS notes the reliance interests of those paroled under the CHNV parole programs are far less than the population in *Regents.* Further, as stated above, the reliance interests under the CHNV parole programs must take into account the express, discretionary terms of the parole program. Accordingly, the reliance interests are outweighed by the U.S. government's strong interest in promptly returning parolees when the basis for the underlying parole no longer exists.

Third parties, including employers, landlords, and others, may also have indirect reliance interests in the availability of individual CHNV parolees, but even if DHS had allowed the grants of parole to expire at the end of their designated terms, such third parties would have experienced the effects of such expiration. By providing 30 days' notice, DHS balances the benefits of a wind-down period for aliens and third parties with the exigency of promptly enforcing the law against those aliens lacking a lawful basis to remain in the United States. For the same reasons set forth above, DHS finds the U.S. government's interest in terminating these grants of parole outweigh any reliance interest of third parties.

DHS has considered the alternative of permitting CHNV participants' parole to remain in effect until the natural expiration of the parole, as DHS has in

[69] *See Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221–22 (2016) (''Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change. . . . But the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy. In explaining its changed position, an agency must also be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.'' (cleaned up)).

[70] As explained throughout this notice, the Secretary has determined that the purposes of parole under the CHNV programs have been served because, *inter alia,* the CHNV parole programs are unnecessary to achieve border security goals; the domestic impact of the CHNV parole programs was too great; and the programs are inconsistent with this Administration's foreign policy goals.

[71] *See DHS* v. *Regents of the Univ. of Cal.,* 591 U.S. 1, 32 (2020) (noting that DHS could conclude that reliance is ''unjustified in light of the express limitations'' in relevant immigration policy).

[72] *See* Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025).

[73] 591 U.S. 1 (2020).

[74] *Id.* at 31.

[75] *Id.*

[76] *Id.*

the past done with some parole terminations. *See, e.g.,* 82 FR 38926, 38927 (Aug. 16, 2017). However, DHS has opted to not pursue this route. As explained above, this would essentially foreclose DHS's ability to expeditiously remove those CHNV parolees with no lawful basis to remain in the United States. Under this alternative, CHNV parolees may begin to accrue more than two years of continuous presence in the United States, such that DHS would have to initiate section 240 removal proceedings to effectuate their removal. *See* INA 235(b)(1)(iii)(II), 8 U.S.C. 1235(b)(1)(iii)(II). As a result, the already overburdened immigration court system would be further taxed with adjudicating the section 240 removal proceedings for the pertinent CHNV beneficiary population, a result DHS finds unacceptable.

DHS has also considered the alternative of a longer than 30-day wind-down period. After due consideration, DHS has also decided not to pursue this option. As discussed above, DHS has a strong interest in preserving the ability to initiate expedited removal proceedings to the maximum extent possible for the appropriate CHNV population to prevent further straining of the over-burdened immigration court system. Any lengthening of the wind-down period will increase the likelihood that additional CHNV parolees are no longer subject to expedited removal.[77] DHS has determined that a 30-day wind-down period provides affected parties sufficient notice while also preserving DHS's ability to enforce the law promptly against those CHNV parolees lacking a lawful basis to remain in the United States. Accordingly, DHS is opting not to increase the wind-down period to more than 30 days.

VI. Federal Register Notice as Constructive Notice

This **Federal Register** notice serves as notice of the termination of the CHNV parole programs and satisfies the requirement that DHS provide written notice upon the termination of parole. *See* 8 CFR 212.5(e)(2)(i) (''. . . Upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, *parole shall be terminated upon written notice to the alien*. . . .'' (emphasis added)). For the reasons set forth above, the Secretary has concluded that neither urgent humanitarian reasons nor significant public benefit warrants the continued presence of aliens paroled under the CHNV programs and the purposes of such parole therefore have been served. This notice accordingly serves as written notice to CHNV parolees.

DHS has determined that publication of this notice in the **Federal Register** is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance. *See* 44 U.S.C. 1507; *Friends of Sierra R.R., Inc.* v. *I.C.C.,* 881 F.2d 663, 667–68 (9th Cir. 1989); *see also Fed. Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 385 (1947) (''Congress has provided that the appearance of rules and regulations in the **Federal Register** gives legal notice of their contents.'').

DHS finds **Federal Register** publication of the decision to terminate existing grants of parole to be the most practicable approach in light of the size of the affected population and potential noncompliance with change-of-address reporting requirements. *See* 8 U.S.C. 1305; 8 CFR 265.1. Because all CHNV parolees should have a USCIS online account and all processing under these parole programs took place electronically, DHS will also provide individual notice to each parolee through their USCIS online account. *Cf., e.g.,* 8 CFR 103.2(b)(19)(ii)(B) (''For applications or petitions filed electronically, USCIS will notify both the applicant or petitioner and the authorized attorney or accredited representative electronically of any notices or decisions. . . .''). This notice, and the individual notice through the USCIS online account, each independently constitute ''written notice to the alien'' under 8 CFR 212.5(e)(2)(i).

VII. Administrative Procedure Act

This notice is exempt from notice-and-comment rulemaking requirements because DHS is merely adopting a general statement of policy, 5 U.S.C. 553(b)(A). *i.e.,* a ''statement [ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' *Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)). By terminating the CHNV parole programs—which themselves constituted general statements of policy, *see, e.g.,* 88 FR at 1277—DHS is explaining how it will implement the Secretary's broad discretion for exercising her narrow parole authority. Accordingly, this notice of termination constitutes a general statement of policy and is exempt from the notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA).[78]

When an agency merely explains how it will enforce a statute or regulation by describing how it will exercise its broad enforcement discretion, as was the case with the CHNV parole programs, it is a general statement of policy. *See Lincoln,* 508 U.S. at 197. Section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A) provides the Secretary broad discretion in exercising the parole authority, with parole decisions made by the Secretary of Homeland Security ''in [her] discretion.'' The CHNV parole programs therefore were general statements of policy.

Because the CHNV parole programs constitute general statements of policy and were exempt from notice-and-comment rulemaking requirements under the APA, their termination likewise is a mere general statement of policy exempt from the notice and comment rulemaking requirements. Through the termination of the CHNV parole programs and for the reasons given, DHS is merely making a change to a previous policy statement on the exercise of its discretionary parole authority.[79] Accordingly, there is no requirement to publish notice prior to the termination's effective date, and it is therefore amenable to immediate issuance and implementation.[80]

Even if the changes were considered to be a legislative rule that would normally be subject to notice and comment rulemaking and a delayed effective date, these changes—like the implementation of the parole programs themselves[81]—pertain to a foreign affairs function of the United States, and are exempt from such procedural requirements on that basis.[82] Consistent

[77] According to OHSS analysis of data provided by USCIS, for each month from March 2025 through September 2026, there are thousands of CHNV parolees who will become ineligible for expedited removal upon the natural expiration of their two-year parole.

[78] *Cf. Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 101 (''Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule.'').

[79] *See Encino Motorcars,* 579 U.S. at 221 (''Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.'').

[80] *See* 5 U.S.C. 553(d)(2).

[81] *See* 5 U.S.C. 553(a)(1); 88 FR at 1277; 88 FR at 1253; 88 FR at 1264; 87 FR at 63516 (as modified by 88 FR 1279).

[82] *See Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (noting that foreign affairs exception covers agency actions ''linked intimately with the Government's overall political agenda concerning relations with another country''); *Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir.

with the Secretary of State's February 21, 2025 determination that ''all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States, constitute a foreign affairs function of the United States[,]'' DHS finds that these changes are connected to the entry and exit of people and thereby constitute a foreign affairs function.[83]

Moreover, although the APA does not require the agency to show that such procedures may result in ''definitely undesirable international consequences'' to invoke the foreign affairs exemption to notice-and-comment rulemaking, some courts have required such a showing,[84] and DHS can make one here. Delaying rescission of the CHNV parole programs to undertake rulemaking would undermine the U.S. Government's ability to conduct foreign policy, including the ability to shift governmental policies and engage in delicate and time-sensitive negotiations following a change in Administration. It is the view of the United States that the termination of these parole programs will fulfill important foreign policy goals that the President has repeatedly articulated and urged DHS to implement swiftly; any delay in achieving such goals is definitely undesirable.

As explained in Section III.3 of this notice, the CHNV parole programs were implemented as an integral part of negotiations with regional neighbors, including Mexico, to address unlawful migratory flows challenging immigration systems throughout the region. For instance, in announcing the Venezuela parole program, DHS explained that even if the program were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the program would be exempt from such requirements because it involves a foreign affairs function of the United States.[85] DHS cautioned that it ''will not implement the new parole process without the ability to return Venezuelan nationals who enter [unlawfully] to Mexico, and the United States' ability to execute this process thus requires the GOM's willingness to accept into Mexico those who bypass this new process and enter the United States [unlawfully] between POEs.'' DHS explained that ''initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to this unilateral U.S. action and ongoing, sensitive diplomatic engagements.'' [86] DHS noted that the program was ''not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—[but] also fully aligned with larger and important foreign policy objectives of [the prior] Administration and fits within a web of carefully negotiated actions by multiple governments.'' [87] When implementing the Cuba, Haiti, and Nicaragua parole programs, DHS invoked the foreign affairs exemption on similar grounds.[88]

Yet, as also discussed in Section III.3 of this notice, U.S. foreign policy has changed in critical respects, and DHS must expeditiously align its policies to that change. Whereas implementation of the CHNV parole programs was contingent upon the GOM making an independent decision to accept the return or removal of CHNV nationals who migrated illegally, the U.S. Government is pursuing a range of other policy initiatives that would allow DHS to return or remove CHNV nationals, including re-implementation of the Migrant Protection Protocols and improved cooperation and coordination with other countries regarding return or removal of their or third country nationals.

In the context of these complex and time-sensitive diplomatic negotiations, it would be counterproductive to retain vestiges of a foreign policy approach that the United States is no longer pursuing, even temporarily, to allow for a period of public comment about matters that implicate our foreign affairs and are ultimately within the Executive's discretion. Continuing to administer the CHNV parole programs pending notice-and-comment would adversely affect the United States' ability to pivot rapidly to a more effective approach in these negotiations and may result in an even greater number of CHNV nationals requiring removal or return. Further delay in pursuing these more effective approaches would be particularly pernicious in the context of ongoing negotiations, as discussed in section III.3 of this notice, with countries to accept the removal of illegal aliens, including inadmissible CHNV nationals.

Finally, and for the same reasons that a delay in implementing this action would result in undesirable international consequences, even if notice-and-comment and a delayed effective date were required, DHS has determined that the good cause exemptions to notice-and-comment rulemaking and the 30-day effective date apply and that the delay associated with implementing these changes through notice-and-comment rulemaking or delaying the effective date would be impracticable and contrary to the public interest. Any delay for such procedures would harm the U.S. Government's ability to timely implement the current Administration's foreign policy approach and exacerbate the challenges associated with the CHNV parole programs, as explained throughout this notice, contrary to the President's direction to protect the American people against invasion and to secure the border. Such an outcome would also be inconsistent with the fundamentally discretionary nature of DHS's parole authority.[89]

VIII. Severability

DHS intends for the decisions announced in this notice to be severable from each other and to be given effect to the maximum extent possible, such that if a court holds that any provision is invalid or unenforceable—whether in their entirety or as to a particular person or circumstance—the other provisions will remain in effect as to any other person or circumstance.[90] The various decisions in this notice are designed to function sensibly without the others, and DHS intends for them to be severable so that each can operate independently.

1980) (because an immigration directive ''was implementing the President's foreign policy,'' the action ''fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA'').

[83] U.S. Secretary of State, *Determination: Foreign Affairs Functions of the United States,* 90 FR 12200 (Feb. 21, 2025) (published Mar. 14, 2025). The Secretary of State's determination references and implements numerous Presidential actions reflecting the President's top foreign policy priorities, including Executive Order 14165. As noted above, Executive Order 14165 specifically directs the Secretary of Homeland Security to, consistent with applicable law, take all appropriate action to terminate the CHNV parole programs.

[84] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

[85] *See* 87 FR at 63516.

[86] *Id.*

[87] *Id.*

[88] *See* 88 FR at 1277 (Cuba), 88 FR at 1253–54 (Haiti), 88 FR at 1265 (Nicaragua).

[89] *See* 5 U.S.C. 553(b)(B), 553(d)(3); *see Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 754–55 (D.C. Cir. 2001) (''a situation is 'impracticable' when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required''); *see also* Executive Order 14159, 90 FR 8443 (Jan. 20, 2025) (published Jan. 29, 2025).

[90] Courts have uniformly held that the APA, 5 U.S.C. 706(2), authorizes courts to sever and set aside ''only the offending parts of the rule.'' *Carlson* v. *Postal Regulatory Comm'n,* 938 F.3d 337, 351 (D.C. Cir. 2019); *see, e.g., K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 294 (1988).

For example, DHS would intend that the termination of the CHNV parole programs be implemented immediately, even if the termination of ATAs or existing grants of parole were to be enjoined in whole or in part. This approach ensures that DHS is able to implement its policy choices, and the President's direction in Executive Order 14165, to the maximum extent possible.

IX. Paperwork Reduction Act (PRA)

This rule does not promulgate new or revise existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

Kristi Noem,

Secretary of Homeland Security.

[FR Doc. 2025–05128 Filed 3–21–25; 4:15 pm]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Finding of Mass Influx of Aliens

On January 23, 2025, the Acting Secretary of Homeland Security issued a Finding of Mass Influx of Aliens. This finding went into effect immediately (on January 23, 2025) and remained in effect for 60 days (until March 23, 2025). The Acting Secretary's finding published in the **Federal Register** on January 29, 2025. *See* 90 FR 8,399. Upon review of the current situation at the border, I am extending that finding.

The Immigration and Nationality Act (INA), at 8 U.S.C. 1103(a), provides an expansive grant of authority, stating that in the event of a mass influx of aliens off the coast of the United States or a land border, the Secretary may authorize a State or local law enforcement officer, with the consent of the officer's superiors, to perform duties of immigration officers under the INA. In turn, section 65.83 of Title 28 of the Code of Federal Regulations allows the Secretary [1] to ''request assistance from a State or local government in the administration of the immigration laws of the United States'' under certain specified circumstances. Among those circumstances are when ''[t]he [Secretary] determines that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of a State or locality.'' 28 CFR 65.83(b).

In making such a determination, the Secretary may also determine that there is an ''immigration emergency.'' The regulations define an immigration emergency as ''an actual or imminent mass influx of aliens which either is of such magnitude or exhibits such other characteristics that effective administration of the immigration laws of the United States is beyond the existing capabilities of [the Department of Homeland Security (DHS)] in the affected area or areas.'' 28 CFR 65.83(d)(1) (using identical language as 8 U.S.C. 1103(a)(10)).

Such a determination is based on ''the factors set forth in the definitions contained in'' 28 CFR 65.81. Characteristics of an influx of aliens, other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Upon review of the current data, I have determined that there continues to exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of all 50 States and that an actual or imminent mass influx of aliens is arriving at the southern border of the United States and presents urgent circumstances requiring a continued federal response. I make this finding for the reasons discussed below.

First, over the last four years, our southern border has been overrun. As noted in Proclamation 10,888, *Guaranteeing the States Protection Against Invasion,* ''[o]ver the last 4 years, at least 8 million illegal aliens were encountered along the southern border of the United States, and countless millions more evaded detection and illegally entered the United States.'').

Second, as of March 12, 2025, DHS estimates that there are likely approximately 20,000 aliens across the Southwest border waiting to illegally enter. While encounters along the southwest border declined in February 2025, historical trends over the past four years strongly indicate that without this finding, aliens are likely to resume crossing the border, and border crossing numbers are likely to rise again before DHS can gain operational control. It is precisely measures, such as this one, that have kept the numbers under control.

Third, as stated in the January 23, 2025 notice, when border crossing numbers are high, much detention capacity is required of U.S. Immigration and Customs Enforcement (ICE). Mandatory detention of aliens apprehended at the border serves important public safety and national security purposes. Aliens who have not completed this process have not been effectively vetted for criminality or national security threats. Current databases do not allow for comprehensive and rapid searching for foreign convictions or other public safety and national security risks. As a result, the fact that the numbers at the border are effectively forcing DHS to engage in catch-and-release practices is eliminating or thwarting legally mandated screenings and it is threatening public safety and national security. This does not account for so-called gotaways, of which there have been millions over the last four years, who are not screened in any manner. Without controls in place at the border to stem the influx, DHS loses its capacity to hold all aliens as required by the INA. 8 U.S.C. 1225(b). As of March 13, 2025, ICE has a detention population of 47,372, with a maximum capacity of 54,500. ICE's facilities are currently at nearly at 87% occupancy, and ICE's priority for detention space is removing aliens with criminal records, public safety risks, and national security risks. Should this finding not be extended, ICE would be hampered in this critical effort.

Fourth, an influx of aliens presents significant concerns with respect to increased criminal activity. Between FY 2017 and 2019, ICE removed 485,930 aliens with criminal convictions or pending criminal charges. However, between FY 2021 and FY 2023, ICE removed 158,931 aliens with criminal convictions or pending criminal charges. Assuming that the crime rate of foreign nationals has remained unchanged over the year, this 67% decrease (in removals) suggests that tens of thousands of criminal aliens remain in the United States. Where there is an increase in criminal aliens, there is

[1] Although the regulations reference the ''Attorney General,'' Congress has, since the publication of these regulations, transferred the authority and responsibility for administering and enforcing the immigration laws to the Secretary of Homeland Security. See Homeland Security Act of 2002 471, 6 U.S.C. 291 (abolishing the former Immigration and Naturalization Service); id. S 441, 6 U.S.C. 251 (transferring immigration enforcement functions from the Department of Justice to the Department of Homeland Security); Immigration and Nationality Act 103(a)(1), 8 U.S.C. 1103(a)(1) (''the Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens.'')

EXHIBIT A

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

[redacted]

A#: [redacted]
Account #: [redacted]

03/29/2025

Termination of Parole

Effective March 25, 2025, the U.S. Department of Homeland Security (DHS) has exercised its discretion to terminate the categorical parole programs for aliens who are nationals of Cuba, Haiti, Nicaragua, and Venezuela, and their immediate family members.

Your parole will terminate upon the earlier of (1) your original parole expiration date or (2) April 24, 2025. You should depart the United States now, but no later than the date of the termination of your parole. Failure to timely depart may have adverse immigration consequences.

As of the termination of your parole, you may be subject to expedited removal pursuant to section 235 of the Immigration and Nationality Act (INA) or removal proceedings pursuant to section 240 of the INA, either of which may result in your removal, unless you have departed from the United States or have obtained a lawful basis to remain within the United States. If you have not obtained a lawful basis to remain in the United States and do not depart the United States by the date your parole terminates, you will begin to accrue unlawful presence in the United States unless you are otherwise protected from such accrual. Accrual of more than 180 days of unlawful presence followed by departure from the United States may result in being inadmissible if you again seek admission within a certain period of time after departure.

If you are departing the United States via land, you should report your departure once outside the United States via the CBP Home mobile app. If you are having trouble reporting your departure via land, visit https://i94.cbp.dhs.gov/home for more information about voluntarily reporting your departure.

Notice of Intent to Revoke Parole-Based Employment Authorization

If you have been granted employment authorization based on parole pursuant to 8 CFR 274a.12(c)(11), and your employment authorization has not already automatically terminated as set forth in 8 CFR 274a.14(a) and is not scheduled to expire before April 24, 2025, the following applies to you:

Consistent with 8 CFR 274a.14(b), DHS provides notice of intent to revoke your parole-based employment authorization under 8 CFR 274a.12(c)(11). DHS intends to revoke your employment authorization because the condition upon which your parole-based employment authorization was granted — being paroled into the United States under section 212(d)(5)(A) of the INA — no longer exists. See 8 CFR 274a.14(b)(1)(i). Additionally, DHS has for good cause determined that your employment authorization should be revoked with the termination of your parole. See 8 CFR 274a.14(b)(1)(i).

By operation of this notice, your unexpired parole-based employment authorization will be revoked as of April 24, 2025 unless you submit countervailing evidence that you remain paroled into the United States under section 212(d)(5)(A) of the INA through the expiration date on your Employment Authorization Document by uploading your countervailing evidence in your myUSCIS online account before April 13, 2025. See 8 CFR 274a.14(b)(2).

The timely submission of countervailing evidence does not impact the termination of your parole originally granted under the Cuba, Haiti, Nicaragua, or Venezuela parole programs described above.

Any decision to revoke your employment authorization is final and no appeal shall lie from the decision to revoke employment authorization. See 8 CFR 274a.14(b)(2). If you work without employment authorization, you are in violation of the law.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Svitlana Doe, *et al.*, Plaintiffs, v. Kristi Noem, in her official capacity as Secretary of Homeland Security, *et al.*, Defendants.	Civil Action No. 1:25-cv-10495

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION (Doc. No. 70)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

REGULATIONS

FEDERAL RULES OF CIVIL PROCEDURE

FEDERAL REGISTER

INTRODUCTION

Plaintiffs are beneficiaries of discretionary parole programs for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV), under which they requested and received discretionary, temporary grants of parole, as well as supporters of or organizations providing services to parole recipients. Despite the temporary, discretionary nature of parole recipients' permission to remain in the United States, and even though they retain the ability to request a discretionary grant of parole outside those programs, they now ask the Court to compel the continuation of all parole recipients' parole terms under the programs by seeking to enjoin the CHNV program's termination. The Court should decline to entertain such extraordinary relief intruding into the Executive's exercise of discretionary immigration authority.

Even assuming Plaintiffs could establish standing to seek relief from the program's termination (they cannot) and that their claims challenging the discretionary action are reviewable under the APA (they are not), Plaintiffs cannot succeed in showing the CHNV termination is likely unlawful. The Department of Homeland Security (DHS) has "remarkably broad" statutory discretion concerning the exercise of parole authority under 8 U.S.C. § 1182(d)(5)(A). *Amanullah v. Nelson*, 811 F.2d 1, 6 (1st Cir. 1987). That statute authorizes the Secretary of Homeland Security, "in [her] discretion," to "parole" applicants for admission "temporarily under such conditions as [the Secretary] may prescribe" "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). It further provides that parole may be terminated "when the purposes of such parole shall, *in the opinion of* the Secretary of Homeland Security, have been served." *Id.* DHS's decision to terminate the CHNV program and existing grants of parole under that program is within this statutory authority and comports with the notice requirements of the statute and regulations. Additionally, given the temporary nature of CHNV

parole and CHNV parolees' pre-existing inability to seek re-parole under the program, their harms are outweighed by the harms to the public if the Secretary is not permitted to discontinue a program she has determined does not serve the public interest. Finally, the requested universal relief is at minimum overbroad, as it goes far beyond addressing the alleged harms of the parolee Plaintiffs.

BACKGROUND

The Parole Programs. Plaintiffs claim to be beneficiaries and sponsors of multiple parole programs administered by Defendants within the past several years, including the parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV). Doc. No. 25 at 12. Under the CHNV parole program, nationals of Cuba, Haiti, Nicaragua and Venezuela who met eligibility requirements, including a U.S. supporter, could be considered for discretionary advance authorization to travel to certain United States ports of entry to request discretionary consideration for parole for up to a two-year term. *Implementation of a Parole Process for Venezuelans*, 87 Fed. Reg. 63507 (Oct. 19, 2022), as amended by 88 Fed. Reg. 1279 (Jan. 9, 2023); 88 Fed. Reg. 1266 (Jan. 9, 2023) (same for Cubans); 88 Fed. Reg. 1243 (Jan. 9, 2023) (same for Haitians);88 Fed. Reg. 1255 (Jan. 9, 2023) (same for Nicaraguans). The CHNV parole programs were paused in July 2024 due to fraud concerns.[1] On October 4, 2024, DHS announced that was no re-parole process under the CHNV program. 90 Fed. Reg. at 13617 & n.62.

Factual and Procedural History. In a Federal Register Notice published March 25, 2025, DHS terminated the CHNV parole programs. *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611-01 (Mar. 25, 2025) (FRN); Doc. No. 71-1. Grants of parole under CHNV that have not already expired by April 24, 2025, will

[1] Stephen Dinan, "'Parole' program put on hold amid massive fraud," Wash. Times (Aug. 2, 2024), at https://www.washingtontimes.com/news/2024/aug/2/dhs-suspends-parole-program-amid-rampant-fraud/.

terminate on that date unless the Secretary decides to the contrary in individual cases. *Id.* at 13,611. Upon re-examination and based on DHS's experience operating them, the Secretary determined that the CHNV programs "do not serve a significant public benefit, are not necessary to reduce levels of illegal immigration, did not sufficiently mitigate the domestic effects of illegal immigration, are not serving their intended purposes, and are inconsistent with the Administration's foreign policy goals." *Id.* at 13612. To the extent that "urgent humanitarian reasons" supported any grants of parole under CHNV, "DHS believes that [such] reasons for granting parole [are] best addressed on a case-by-case basis consistent with the statute, and taking into consideration each alien's specific circumstances." *Id.* The FRN provided notice of the termination of parole for CHNV parolees. *Id.* at 13,620; *see* 8 C.F.R § 212.5(e)(2)(i).

Plaintiffs—14 aliens claiming to be beneficiaries of one the parole programs (Parolee Plaintiffs), 9 U.S. citizens or lawful permanent residents claiming to be supporting aliens in the parole programs (Supporter Plaintiffs), and one organization, the Haitian Bridge Alliance (HBA), claiming to provide services to CHNV parolees and supporters from Haiti—challenge, as relevant here, the CHNV FRN under the APA, 5 U.S.C. § 706(2). On March 27, 2025, Plaintiffs filed a "supplemental" motion to preliminarily enjoin Defendants from implementing the FRN, arguing that the FRN is contrary to 8 U.S.C. § 1182(d)(5)(A) and DHS regulations requiring written notice to terminate parole or parole-based work authorization. Doc. Nos. 70, 72.

STANDARD

"A preliminary injunction is an extraordinary and drastic remedy" that "is never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008). A plaintiff seeking a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,

and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The factors assessing harm to the opposing party and weighing the public interest "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The same standard governs a request to stay the effective date of an administrative action under 5 U.S.C. § 705. *See Nw. Immigrant Rts. Project v. U.S. Citizenship & Immigr. Servs.*, 496 F. Supp. 3d 31, 45 (D.D.C. 2020). The Court may not issue relief that is broader than necessary to remedy actual harm shown by specific Plaintiffs. *See Gill v. Whitford*, 585 U.S. 48, 73 (2018).

ARGUMENT

I. The Court Lacks Jurisdiction Over Plaintiffs' Request.

A. Plaintiffs Have not Established Standing to Seek Injunctive Relief.

Plaintiffs cannot demonstrate a concrete and particularized "injury in fact" that is "fairly ... trace[able] to the" FRN and "likely" to be "redressed" by the preliminary injunction they seek. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

First, HBA and the Supporter Plaintiffs, as third parties who are not the subject of the challenged parole termination, cannot establish standing to enjoin the FRN. "[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Lujan*, 504 U.S. at 562. Generally, a plaintiff lacks a cognizable interest in the Executive Branch's discretionary immigration enforcement decisions over others. *See United States v. Texas*, 599 U.S. 670 (2023) (finding that States, as non-regulated third parties, lacked standing to challenge immigration enforcement guidelines). Further, Congress has specifically authorized suit, and thus defined standing, for certain state officials to challenge policies concerning parole under § 1182(d)(5)(A), but has not done likewise for organizations or parole supporters. *See* 8 U.S.C. § 1182(d)(5)(C). This omission is meaningful, because "when Congress wanted to provide a right to" sue over

parole decisions, "it did so expressly." *See Nw. Airlines, Inc. v. Transp. Workers Union of Am.*, 451 U.S. 77, 92 & n.24 (1981).[2]

Organizational Plaintiff HBA's asserted injury based on its use of resources to assist Haitian parolees in response to the FRN does not overcome this standing hurdle. *See* Doc. No. 71-3 at ¶¶ 11–12. To show a concrete injury, it is not enough that "an organization diverts its resources in response to defendant's actions" even if it will "expend considerable time, energy, and resources." *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394–95 (2024) (*Alliance*). An unregulated organization must instead show that the challenged action "perceptibly impair[s]" or "interferes with" its activities by imposing an affirmative "impediment" to performing those activities. *See id.* HBA's proffered evidence does not satisfy this standard. HBA asserts that it has devoted resources to "analyz[ing] the FRN," providing information to Haitian parolees, and providing "humanitarian and legal assistance to individuals" due to the upcoming termination of their employment authorization. *See* Doc. No. 71-3 at ¶¶ 11–12. It has also updated its "educational materials" to address the FRN. *Id.* at ¶ 15. Thus, at most, HBA has voluntarily diverted its resources from conducting core activities—providing humanitarian and legal support to recent Haitian arrivals, *see id.* at ¶ 8—for one set of clients to conducting the same type of activities for the particular clients impacted by the FRN. HBA does not, and cannot, assert that the FRN actually impedes HBA's activities. And as the Supreme Court's reasoning in *Alliance* made clear, an organization cannot demonstrate standing any time

[2] The Supporter Plaintiffs, who assert no injury to themselves from the FRN, cannot establish standing based on asserted harms to parolees. *See* Doc. No. 72 at 13, 20–23. Courts only recognize standing to assert others' rights in special cases where the third-party plaintiff has "a close relationship with the person who possesses the right [and] there is a hindrance to the possessor's ability to protect his own interests." *Sessions v. Morales-Santana*, 582 U.S. 47, 57 (2017). The Supporter Plaintiffs have not asserted any hindrance to any current CHNV parolee's ability to bring her own claim. Nor can they, as several CHNV parolees have brought their own claims here.

it shifts resources in response to a policy from one set of direct-service activities to another set of similar activities in support of its mission. *See Am. Fed'n of Gov't Emps., AFL-CIO v. Ezell*, No. 25-cv-10276-GAO, 2025 WL 470459, at *2 (D. Mass. Feb. 12, 2025) (holding that union lacked standing to challenge directive to member employees despite "choosing to divert resources towards 'respond[ing] to tremendous uncertainty created by [the challenged] actions' and away from other union priorities"). To hold otherwise would impermissibly allow organizations to create standing to challenge any policy that touches on their mission by voluntarily devoting resources toward responding to the policy. *See Alliance*, 602 U.S. at 394.

The Parolee Plaintiffs also lack standing because their alleged injuries are not redressable by an injunction or stay of the FRN. Regardless of the existence of the FRN, DHS retains its statutory authority to grant or deny parole based on any urgent humanitarian reason or significant public benefit. *See* 8 U.S.C. 1182(d)(5)(A). Even under the FRN, DHS is free to exercise that statutory discretion—the FRN is clear that DHS officers may "make[] an individual determination to the contrary" of the general guideline for terminating CHNV parole as of April 24, 2025. 90 Fed. Reg. at 13612, 13618. Likewise, DHS retains its statutory discretion to terminate Plaintiffs' parole terms absent the FRN ending the CHNV program. *See* 8 U.S.C. § 1182(d)(5)(A) (Secretary may end parole when "in" her "opinion" its purposes have been served). Redressability cannot be established where a "judicial decree rendering" guidance "a nullity does nothing to change the fact that federal officials possess the same underlying" discretion without the guidance. *See United States v. Texas*, 599 U.S. 670, 691 (2023) (Gorsuch, J., concurring). Because enjoining the FRN would not eliminate the agency's underlying statutory ability to terminate parole for each CHNV parolee, 90 Fed. Reg. at 13612, redressability is lacking. *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023).

B. Section 1252(a)(2)(B)(ii) Precludes Jurisdiction.

In 8 U.S.C. § 1252(a)(2)(B)(ii), Congress precluded review of the termination of parole. That statute provides: "no court shall have jurisdiction to review . . . any other decision or action . . . the authority for which is specified . . . to be in the discretion of the . . . Secretary." The exercise of parole authority under § 1182(d)(5)(A)—which permits the Secretary of Homeland Security to, "in [her] discretion" temporarily parole an applicant for admission into the United States and to terminate that parole "when the purposes of such parole . . ., in the opinion of the Secretary of Homeland Security, have been served"—is just such a "decision or action" that is subject to the bar. *See* 8 U.S.C. § 1182(d)(5)(A). Section 1252(a)(2)(B)(ii) thus precludes jurisdiction over Plaintiffs' challenges to the decision to terminate parole, as publicized in the CHNV FRN.

Plaintiffs argue that § 1252(a)(2)(B)(ii) does not apply as they are "challenging overarching policy, not individual decisions." Doc. No. 72 at 14. This is wrong. *First*, the CHNV parole programs were explicit that those "overarching policy" judgments were entirely discretionary as well under the statute. *See, e.g.*, 88 Fed. Reg. at 1277 ("The Secretary retains the sole discretion to terminate the Parole Process for Cubans at any point …. This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights …."). *Second*, Plaintiffs present no reason why the FRN's announcement of the decision to terminate numerous CHNV parolees' existing parole terms is distinguishable from an individual decision to terminate a particular grant of parole for purposes of § 1252(a)(2)(B)(ii). *Third*, § 1252(a)(2)(B)(ii) also bars review of "overarching policy" judgments concerning how the "individual decisions" based on the reasoning in *Patel v. Garland*, 596 U.S. 328 (2022). In *Patel*, the Supreme Court held that sister subsection 1252(a)(2)(B)(i), which bars jurisdiction to review "any judgment regarding the granting of relief" under certain INA provisions bars review of "judgments of whatever kind" covered by the statute, and "not just discretionary judgments or the

last-in-time judgment," and so this provision "encompasses not just the granting of relief but also any judgment relating to the granting of relief." *Id.* at 338–39; *see Kucana v. Holder*, 558 U.S. 233, 247 (2010) (explaining that §§ 1252(a)(2)(B)(i) and (ii) cover decisions "of a like kind"). Plaintiffs' insistence that *Patel* barred only "review of a particular discretionary decision" ignores the Court's explanation that the statutory bar applied to every decision in the chain leading to that particular decision, including, as relevant to the CHNV termination, the agency's guidance related to that ultimate discretionary judgment. Similarly, Plaintiffs' reliance on *Roe v. Mayorkas*, 2023 WL 3466327 (D. Mass. Apr. 28, 2023) and *LaMarche v. Mayorkas*, 691 F. Supp. 3d 274 (D. Mass. 2023), is misplaced. *Roe* wholly failed to address the implications of *Patel* for the scope of section 1252(a)(2)(B)(ii). *See* 2023 WL 3466327, at *7. Indeed, more recent circuit court decisions have held that § 1252(a)(2)(B)(ii) bars review of DHS policies concerning discretionary adjustment adjudications. *See Thigulla v. Jaddou*, 94 F.4th 770 (8th Cir. 2024); *Cheejati v. Blinken*, 106 F.4th 388 (5th Cir. 2024); *Geda v. USCIS*, 126 F.4th 835, 846 (3d Cir. 2025). And unlike the policy decision challenged here, *Lamarche* dealt with the alleged withholding or delay of an agency decision, 691 F. Supp. 3d 274, 277 (D. Mass. 2023) ("delay is not a discretionary decision"). Finally, unlike the CHNV parole programs, the DACA program addressed in *Regents* was not based on a statute explicitly conferring discretion as required by section 1252(a)(2)(B)(ii). *See* Doc. No. 72 at 14 (citing *DHS v. Regents*, 591 U.S. 1, 17-19 (2020)).

II. Plaintiffs Are Not Likely to Succeed on the Merits Because they Cannot Obtain APA Review of Their Claims.

Threshold APA requirements likewise bar Plaintiffs' claims. *First*, Plaintiffs cannot obtain APA review because they challenge agency conduct "committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *Lincoln v. Vigil*, 508 U.S. 182, 191 (1993). The APA does not provide for review of DHS's expressly discretionary determination to end a parole process. The text of

§ 1182(d) commits decisions to grant or deny parole explicitly to the "discretion" of the Secretary of Homeland Security. 8 U.S.C. § 1182(d)(5)(A). And while the statute places restrictions on the grant of parole, including its case-by-case and humanitarian or public-interest requirements, it places absolutely no limits on the Secretary's discretion to deny or terminate parole, which she may end simply "when the purposes of such parole shall, *in [the Secretary's] opinion* . . . have been served." 8 U.S.C. § 1182(d)(5)(A) (emphasis added). The decision to terminate the CHNV parole programs involves the "complicated balancing of a number of factors which are peculiarly within [agency] expertise," including the Executive Branch's comprehensive efforts to manage foreign affairs and border security, 90 Fed. Reg. at 13616, for which there are no judicially manageable standards permitting court superintendence. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). And as discussed, the jurisdiction-stripping provision of 8 U.S.C. § 1252(a)(2)(B)(ii) likewise precludes APA review. *See* 5 U.S.C. § 701(a)(1).

Plaintiffs' only argument on this point is that "while individual parole decisions are discretionary, the Supreme Court has explicitly said that DHS's parole policies are subject to APA review." Doc. No. 72 at 14 (citing *Biden v. Texas*, 597 U.S. 785, 806-07 (2022)). What the Supreme Court *actually* stated was that DHS's exercise of its "discretion *to parole* applicants" was limited by the statute's requirement that parole be "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit" and its exercise of its discretion to *grant* parole under that framework must be reasonable and reasonably explained. *Texas*, 597 U.S. at 806 (emphasis added). The opinion does not speak to DHS's discretion *to deny* parole, *terminate* parole, or *end* a parole program, on which the statute places no restrictions. *See id*.[3]

[3] Plaintiffs also cite *Roe* and *LaMarche*. Doc. No. 72 at 15. *Roe* merely echoed the *Texas* analysis. *See* 2023 WL 3466327, at *9. *Lamarche* is inapplicable here, as it dealt with whether there is APA

Second, APA review is also unavailable here because HBA and the Supporter Plaintiffs' claims do not fall within the zone of interests of § 1182(d)(5)(A). A plaintiff "may not sue unless he falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Thompson v. N. Am. Stainless*, 562 U.S. 170, 177 (2011). This inquiry asks whether Congress intended for a particular plaintiff to invoke a particular statute to challenge agency action. *See Clarke v. Security Indus. Ass'n*, 479 U.S. 388, 399 (1987). Nothing in § 1182(d)(5)(A) evinces any concerns with the interests of organizations or supporters in assisting parolees or enforcing the statute's provisions. *See Fed'n for Am. Immigration Reform (FAIR), Inc. v. Reno*, 93 F.3d 897, 902 (D.C. Cir. 1996). Indeed, the parole statute does not even mention supporters or sponsors of parole, even though it specifically provides for suit by state officers. *See* 8 U.S.C. § 1182(d)(5)(A), (C). Thus, regardless of what role HBA or Supporter Plaintiffs have played in the CHNV programs, Congress has not indicated an intent that they could challenge actions under the parole statute. To the contrary, Congress has provided that only the aliens against whom the immigration laws are being enforced may challenge application of those laws—and then only in certain circumstances and through removal proceedings, which is strong evidence that Congress intended to preclude suit by other parties. *See, e.g.*, 8 U.S.C. §§ 1226(e); 1252(a)(2)(B)(ii), 1252(a)(5), (b)(9), (g); *U.S. v. Fausto*, 484 U.S. 439, 448 (1988).

III. Plaintiffs Are Not Likely to Succeed on the Merits of their APA Claims.

Even assuming Plaintiffs' claims are reviewable, the termination of the CHNV programs accords with the statutory and regulatory authority granted to DHS.

The INA provides "sweeping" "statutory authority" to the Secretary of Homeland Security

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review of "unreasonable delay or wholesale suspension" of parole adjudications. 691 F. Supp. 3d at 277.

in determining whether parole should be granted and when it should be terminated. *See Amanullah*, 811 F.2d at 6. Under the statute, the Secretary has authority, "in [her] discretion," to "parole" "temporarily under such conditions as [the Secretary] may prescribe," and "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled" and "his case shall continue to be dealt with in the same manner as that of any other applicant for admission[.]" 8 U.S.C. § 1182(d)(5)(A). Regulations implementing the parole authority address the mechanics of terminating parole before its expiration date, providing that "upon accomplishment of the purpose for which parole was authorized or when in the opinion of [the Secretary or her designees], neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien[.]" 8 C.F.R. § 212.5(e)(2)(i). Neither the statute nor regulations define or limit what may constitute "written notice" of termination, other than to provide that a charging document qualifies as "written notice." *See id.*

The Secretary's actions concerning CHNV parole are consistent with the statute and regulations. The Secretary determined, in her opinion, that whatever purposes parole under the CHNV programs had served, it was no longer serving those purposes, and that "neither humanitarian reasons nor public benefit" warranted continuation of parole under the program. *See generally* 90 Fed. Reg. at 13,612-17; *see also* 8 U.S.C. § 1182(d)(5)(A) (leaving to the Secretary the determination of when the purposes of parole have been served); 8 C.F.R. § 212.5(e)(2)(i) (similar). The Secretary thus published notice of that determination and its rationale in the *Federal Register* and provided electronic notice of termination to each individual parolee via their USCIS online account. *See* 8 C.F.R. § 212.5(e)(2)(i) (requiring written notice where parole is terminated prior to its expiration date); *see* 44 U.S.C. § 1507; *Camp v. U.S. Bureau of Land Mgmt.*, 183 F.3d

1141, 1145 (9th Cir. 1999) (generally, "publication in the Federal Register is legally sufficient notice to all interested or affected parties regardless of actual knowledge"); *Henderson v. Baldwin*, 54 F. Supp. 438, 440 (W.D. Pa. 1942); Doc. No. 88-1, Ex. A (USCIS notice).

Plaintiffs' arguments that these actions are contrary to law lack merit. *First*, Plaintiffs argue (Doc. No. 72 at 15-16) that the decision to terminate existing grants of parole before their expiration was based on a legally erroneous interpretation of the expedited removal statute, 8 U.S.C. § 1225(b)(1). Plaintiffs incorrectly claim that 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—the provision of the expedited removal statute that DHS cites in the FRN, and which is limited to those who cannot demonstrate two years of continuous physical presence—"does not permit subjecting the CHNV parolees to expedited removal." Doc. No. 72 at 15. This provision permits the government to use expedited removal for an alien who "has not been admitted or paroled." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). The use of the present perfect tense ("has not been . . . paroled") here reflects a "state that continues into the present." *See Turner v. U.S. Att'y Gen.*, 130 F.4th 1254, 1261–62 (11th Cir. 2025) (construing former 8 U.S.C. § 1432 and explaining that the present perfect tense can "refer to a . . . state that continues into the present"). Accordingly, an alien who was paroled in the past, but whose parole has terminated or expired, may be processed for expedited removal under § 1225(b)(1)(A)(iiii)(II).[4] This textual interpretation comports with the statutory and historical context: when parole is revoked, an alien reverts to the status he possessed prior to the grant of parole which, in the case of all CHNV parolees, is that of an applicant for admission standing at the threshold of entry. *See* 8 U.S.C. § 1182(d)(5)(A) (at end of parole, alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to

[4] Such an alien may also be processed for expedited removal as an alien "arriving in the United States" under § 1225(b)(1)(A)(i). *See also* 8 C.F.R. §§ 235.3(b)(1)(i), 1.2 ("An arriving alien remains an arriving alien even if paroled.")

the United States"); *Leng May Ma v. Barber*, 357 U.S. 185, 188-90 (1958); *Ibragimov v. Gonzales*, 476 F.3d 125, 137 (2d Cir. 2007). Moreover, Plaintiffs cannot use this lawsuit to challenge the application of expedited removal, as review of expedited removal is extremely limited and systemic challenges, if proper, may only be brought in the District Court for the District of Columbia. *See* 8 U.S.C. § 1252(a)(2)(A), (e). But even assuming this justification was somehow in error, this would not warrant disturbing DHS's decision to terminate existing grants of parole, because that decision lies within DHS's discretion and is supported by DHS's separate findings that "neither humanitarian reasons nor public benefit warrants the continued presence of aliens paroled under the CHNV programs and the purposes of such parole therefore have been served." 90 Fed. Reg. at 13,620; *see also id.* at 13,614–16 (expressing concern with expanded public benefits eligibility of certain parolees), 13,619 ("recognizing strong interest in promptly returning parolees when the basis for the underlying parole no longer exists"); *Nadal-Ginard v. Holder*, 558 F.3d 61, 69 n. 7 (1st Cir. 2009) ("We therefore need not reach the [agency's] other rationale for its decision [because if the other rationale constituted error] . . . there was no prejudice"). And DHS retains the discretion to continue to grant parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit. 90 Fed. Reg. at 13,612.

Second, Plaintiffs contend (Doc. No. 72 at 16-17) that the determination to end parole for all CHNV parolees via a single action is in violation of the parole statute's directive that such applications be granted only on a case-by-case basis. But the "case-by-case" requirement only governs grants of parole. The sole statutory requirement to terminate parole is that, "in the opinion of the Secretary," the purposes of parole have been served. 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i). There is no explicit case-by-case requirement for parole termination in either the statute or the regulations and, although the issue has not arisen with frequency, the

government is unaware of any decision imposing the requirements that govern the *granting* of a parole application on the decision to *terminate* or *revoke* parole. *See, e.g.*, *Zheng v. Napolitano*, 2009 WL 1258908, at *2 (D. Colo. May 4, 2009) (rejecting argument asserted in habeas petition that sought to "engraft[] the requirements pertaining to initial parole decisions onto parole revocation decisions"). The parole programs themselves are clear that parole terminations are entirely discretionary. *See, e.g.*, 88 Fed. Reg. 1272 (Cuba program) ("DHS may terminate parole in its discretion at any time"). The Secretary made that determination here regarding the CHNV programs, and nothing more is required under either the statute or the regulations.[5]

In any event, given that the Secretary has determined that the CHNV parole program should no longer exist because there is no longer an urgent humanitarian reason or significant public benefit to support the parole program, *see* 90 Fed. Reg. at 13,612-17, it makes sense to conclude that parole should be terminated for the aliens granted parole under that program. There is no reason to undertake a granular case-by-case assessment of whether parole should be terminated in each case when that decision, for any particular individual, follows from the decision to end the broader program. Moreover, the Secretary retains the authority not to terminate parole in individual cases for significant public benefit or urgent humanitarian reasons, and DHS retains its discretion to *grant* parole to individuals on a case-by-case basis, under the statutorily prescribed standard, notwithstanding the termination of the CHNV programs and the corresponding termination of parole granted pursuant to those programs. *See id.* at 13,612.

[5] Plaintiffs seek to avoid this conclusion by arguing inconsistently, in a brief challenging the *termination* of parole programs, that what the Secretary was doing was "neither a denial nor a termination *per se*, but rather an *en masse* alteration of the conditions" of CHNV parole. Doc. No. 72 at 17. Yet the FRN is clear on its face that the Secretary is terminating parole, which is a distinct action from setting or altering the conditions of parole. Indeed, the regulations regarding conditions of parole assume an authorized period of parole is actually in place. *See* 8 C.F.R. § 212.5(d).

Third, Plaintiffs renew their argument that termination is premised on the incorrect legal conclusion that DHS lacks the authority to implement a categorical parole program. *See* Doc. No. 72 at 17-18. This is belied by the FRN, which nowhere asserts that the CHNV programs or grants of parole are being terminated because DHS believes them to violate the parole statute. *See* 90 Fed. Reg. 13,611. DHS stated that it "believes that consideration of any urgent humanitarian reasons for granting parole is best addressed on a case-by-case basis consistent with the statute and taking into consideration each alien's specific circumstances." Doc. No. 72 at 18 (quoting 90 Fed. Reg. at 13612). But this observation does not state that a categorical consideration of humanitarian reasons or public benefit would be legally prohibited in creating a program to receive requests for parole for case-by-case consideration. Instead of Plaintiffs' false construction of DHS's rationale, the FRN exhaustively documents the reasons DHS believes these programs are no longer warranted and why their continuation would not serve the humanitarian or public-interest justifications of the statute. *See id.* at 13612–17. Thus, even assuming DHS had alternatively relied on this justification, such a reliance would be at most harmless error. *FDA v. Wages & White Lion Invs., L.L.C.*, No. 23-1038, 2025 WL 978101, at *24 (U.S. Apr. 2, 2025) (stating long-accepted rule that remand is unnecessary "when an agency's decision is supported by a plethora of factual findings, only one of which is unsound"). Ultimately, Plaintiffs point to nothing that *requires* DHS to exercise its discretion to continue to implement such a parole program or grant parole to anyone.

Fourth, Plaintiffs argue (Doc. No. 72 at 18-19) that publication in the *Federal Register* was insufficient to constitute the required regulatory notice of termination. As a document "authorized" to be published in the *Federal Register*, *see* 44 U.S.C. § 1505, publication of the notice was "sufficient to give notice of the contents of the document to a person subject to or affected by it," 44 U.S.C. § 1507; *see United States v. Maxwell*, 254 F.3d 21, 25 (1st Cir. 2001). Plaintiffs

nonetheless contend that "notice by publication is insufficient in law" merely because the regulation requires "written notice" of termination. *See* Doc. No. 72 at 19 (quoting 44 U.S.C. § 1507). But this "insufficient in law" exception, for which there is a "lack of clear precedent," *see Camp*, 183 F.3d at 1145, is not relevant here. The statute contains no notice requirements, and the relevant regulation does not specify that written notice must be accomplished by a particular means. In particular, it does not require DHS to "furnish individual notice." *Bank of Commerce v. Bd. of Governors of Fed. Res. Sys.*, 513 F.2d 164, 167 (10th Cir. 1975); *Camp*, 183 F.3d at 1145 (concluding exception applied where regulation required notice to be "sent" to certain parties).

Regardless of the applicability of 44 U.S.C. § 1507, every CHNV parolee will receive individualized notice via their USCIS online account, *see* 90 Fed. Reg. at 13,620, and this notice would independently satisfy the regulatory requirement, *cf. Aldea-Tirado v. PricewaterhouseCoopers, LLP*, 101 F.4th 99, 103-06 (1st Cir. 2024) (finding email notice sufficient). Plaintiffs' sole argument against this method of notice is that "there is seemingly no requirement that the CHNV parolees check those accounts or even [] maintain access to them." Doc. No. 72 at 19 n.11. There is likewise no *requirement* that any parolee open mail addressed to them, but the fact they failed to do so would not support a claim of insufficient notice. So, too, here; DHS is notifying parolees through accounts they created specifically to apply for parole under the CHNV program. *See* 90 Fed. Reg. at 13,620 (noting that all parolees should have such an account); *see also* 8 C.F.R. § 103.2(b)(19)(ii)(B) (providing for electronic notice to aliens and their representatives in cases where the application is filed electronically). It is reasonable to conclude that notice of termination through that same account is sufficient under the regulation.

Finally, Plaintiffs assert (Doc. No. 72 at 19-20) that DHS may not revoke work authorization without individualized notice and an opportunity to contest the revocation. For good

reason, Plaintiffs do not contest that the regulations warrant revocation; with parole being terminated the "conditions upon which [employment authorization] was granted . . . no longer exist[.]" 8 C.F.R. § 274a.14(b)(1)(i). And, although the regulation does require "written notice of intent to revoke the employment authorization" citing "the reasons indicating that revocation is warranted," 8 C.F.R. § 274a.14(b)(2), the FRN and the electronic notice meet these requirements. It is "written notice" to the alien that explains that "after termination of the parole, the condition upon which the employment authorization was granted no longer exists," 90 Fed. Reg. at 13,619. Plaintiffs additionally note that aliens are "granted a period of fifteen days from the date of service of the notice within which to submit countervailing evidence," Doc. No. 72 at 20 (citing 8 C.F.R. § 274a.14(b)(2)), but nothing in the FRN eliminates this opportunity. And the individualized notice issued to CHNV parolees via their USCIS online account expressly explains this opportunity. *See* Doc. No. 88-1. Where the basis of revocation is the termination of the parole program under which the alien had become eligible for employment authorization, however, it is questionable that any evidence could be submitted that would undercut the revocation determination.

IV. Plaintiffs Do Not Satisfy the Remaining Factors for Obtaining Injunctive Relief.

The harms the Parolee Plaintiffs assert from termination of parole—loss of "lawful status," loss of work authorization, and potential removal—do not establish the imminent irreparable injury sufficient to obtain preliminary injunctive relief. *See* Doc. No. 72 at 21–22.[6] As an initial matter,

[6] Neither the Supporter Plaintiffs nor HBA assert that they will suffer irreparable harm absent an injunction, only that others will. Doc. No. 72 at 20–23. Nor can they, as HBA's claimed diversion of resources is insufficient to establish standing, *see* supra § I(A), let alone irreparable harm. And Supporter Plaintiffs' disappointment with CHNV's termination, concern about parolees, or potential incidental monetary injury from a parolee's potential loss of employment, *see* Doc. No. 71-2 at ¶¶ 8, 11, 12, likewise do not constitute irreparable harm. *See Great Lakes Dredge & Dock Co., LLC v. Philly Shipyard, Inc.*, 2024 WL 5109416, at *8 (E.D. Pa. Dec. 13, 2024); *Mass. Correction Officers Federated Union v. Baker*, 567 F. Supp. 3d 315, 327 (D. Mass. 2021).

every parolee under the CHNV program faced these same potential harms under the terms of their parole, even before the FRN. For example, Carlos Doe's parole was already set to expire in June 2025, *see* Compl. ¶ 220, and the CHNV programs did not include a re-parole component, *supra* at 2. Moreover, each grant of parole, which provides *temporary* right to remain in the United States, was always subject to termination at DHS's discretion. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010). Parole does not convey any permanent immigration status. *See* 8 C.F.R. § 1.2.

And the potential consequence of removal is not sufficiently imminent or concrete for any of the Plaintiffs to support a finding of irreparable harm. *Winter*, 555 U.S. at 22 (irreparable harm must be "*likely* in the absence of an injunction," rather than a mere "possibility"); *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004); *Sierra Club v. Larson*, 769 F. Supp. 420, 422 (D. Mass. 1991) (irreparable harm must be "of such imminence that there is a clear and present need for relief" "before the merits are decided."). The FRN states that those with pending applications for immigration benefits or petitions filed on their behalf—like many of the Parolee Plaintiffs—will not be prioritized first for removal. 90 Fed. Reg. at 13619. If Plaintiffs are placed into § 1229a removal proceedings, they will be able to assert asylum or other claims to relief in the context of those proceedings and may avoid removal as a result. If Plaintiffs are processed for expedited removal, they will be able to assert fear claims in the context of those proceedings, and may avoid removal as a result.

In any event, the harms asserted by Plaintiffs are outweighed by the harms to the government. An injunction would limit the Administration's ability to pursue its foreign policy goals and to exercise its discretionary powers with respect to immigration, and is thus not in the public interest. *Winter*, 555 U.S. at 20; *Nken*, 556 U.S. at 435. An injunction irreparably harms the

United States by limiting the Executive's ability to exercise its discretionary authority under 8 U.S.C. § 1182(d)(5) as provided by Congress. *See Doe #1 v. Trump*, 944 F.3d. 1222, 1228 (9th Cir. 2019) (Bress, J., dissenting) (an injunction that limits presidential authority is "itself an irreparable injury"); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) (noting that "any time a State is enjoined from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury"). The government would also be harmed from pursuing its foreign policy goals, as the government has also assessed that the CHNV parole programs are inconsistent with those goals. 90 Fed. Reg. at 13612; *see also Dep't of Navy v. Egan*, 484 U.S. 518, 529 (1988) ("[F]oreign policy [is] the province and responsibility of the Executive."); *Haig v. Agee*, 453 U.S. 280, 292 (1981) ("Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention."). Most importantly, providing Plaintiffs with their requested relief would mark a severe intrusion into the core Executive function of managing the immigration system. *See Arizona v. U.S.*, 567 U.S. 387, 394–96 (2012); *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers) (warning against "intrusion by a federal court into the workings of a coordinate branch of the Government"). It would impede the Government's strong interest in being able to remove aliens from the United States who lack the ability to obtain more permanent status. *See* Doc. 71-1 at 10 (90 Fed. Reg. at 13619). An injunction could compel DHS "to place a greater proportion of this population in section 240 removal proceedings to effectuate their removal, further straining the already over-burdened immigration court system." *Id.*

V. At Minimum, Any Relief Must be Limited and Subject to Bond.

Even if Plaintiffs were entitled to injunctive relief or a stay of administrative action—they are not—the relief they seek is overbroad. Under settled constitutional and equitable principles, the Court may not issue relief that is broader than necessary to remedy actual harm shown by

specific Plaintiffs. *Gill*, 585 U.S. at 73. Plaintiffs here lack any basis for universal relief from the FRN. Even if HBA had standing to seek injunctive relief—it does not, *supra* § I(A)—any relief could at most address Haitian nationals in the geographic areas HBA serves. And class certification is not appropriate for the reasons argued in response to Plaintiffs' supplemental motion for class certification. To the extent Plaintiffs are entitled to any relief, such relief must be limited to the individual named Plaintiffs. *Baxter v. Palmigiano*, 425 U.S. 308, 310 n. 1 (1976)); *Nat'l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1371 (9th Cir.1984). Additionally, even assuming the Court agrees with Plaintiffs that the FRN is contrary to law because it provides them with insufficient notice of the termination, then the Court should—at most—issue relief isolated to any claimed notice deficiencies consistent with the FRN's severability clause, 90 Fed. Reg. at 13621, rather than enjoining the entire FRN. For all these reasons, the Court should deny universal relief, whether in the form of a stay of agency action or an injunction.

If this Court issues any injunctive relief, it should impose a bond requirement, *see* Fed. R. Civ. P. 65(c). It should also deny Plaintiffs' overly burdensome requested weekly reporting on compliance. Plaintiffs offer no evidence to rebut the presumption that Defendants' officers will perform their duties in accordance with applicable law, which includes court orders. *See United States v. Chem. Found.*, 272 U.S. 1, 15 (1926).

CONCLUSION

For these reasons, the Court should deny a preliminary injunction.

Dated: April 8, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2025, I electronically filed this memorandum with the Clerk of the Court for the United States Court of for the District of Massachusetts by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

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APPEAL

United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:25-cv-10495-IT

Doe et al v. Noem et al
Assigned to: Judge Indira Talwani
Case in other court: USCA - First Circuit, 25-01384
Cause: 05:702 Administrative Procedure Act

Date Filed: 02/28/2025
Jury Demand: None
Nature of Suit: 899 Other Statutes: Administrative Procedures Act/Review or Appeal of Agency Decision
Jurisdiction: U.S. Government Defendant

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/28/2025	1	COMPLAINT *CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF* against Pete R. Flores, Kristi Noem, Kika Scott, Donald J. Trump, Caleb Vitello Filing fee: $ 405, receipt number AMADC-10866188 (Fee Status: Filing Fee paid), filed by KYLE VARNER, WILHEN PIERRE VICTOR, Haitian Bridge Alliance, SVITLANA DOE, MAKSYM DOE, MARIA DOE, ALEJANDRO DOE, ARMANDO DOE, ANA DOE, CARLOS DOE, OMAR DOE, SANDRA MCANANY. (Attachments: # 1 Civil Cover Sheet, # 2 Category Form)(Freedman, John) (Entered: 02/28/2025)
02/28/2025	2	MOTION for Leave to Appear Pro Hac Vice for admission of Esther H. Sung, Karen C. Tumlin, Hillary Li, Laura Flores-Perilla, Brandon Galli-Graves, Daniel B. Asimow Filing fee: $ 750, receipt number AMADC-10866190 by KYLE VARNER, WILHEN PIERRE VICTOR, Haitian Bridge Alliance, SVITLANA DOE, MAKSYM DOE, MARIA DOE, ALEJANDRO DOE, ARMANDO DOE, ANA DOE, CARLOS DOE, OMAR DOE, SANDRA MCANANY. (Attachments: # 1 Exhibit CERTIFICATE OF ESTHER H. SUNG IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND PRACTICE PRO HAC VICE, # 2 Exhibit CERTIFICATE OF KAREN C. TUMLIN IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND PRACTICE PRO HAC VICE, # 3 Exhibit CERTIFICATE OF HILLARY LI IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND PRACTICE PRO HAC VICE, # 4 Exhibit CERTIFICATE OF LAURA FLORES-PERILLA IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND PRACTICE PRO HAC VICE, # 5 Exhibit CERTIFICATE OF BRANDON GALLI-GRAVES IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND PRACTICE PRO HAC VICE, # 6 Exhibit CERTIFICATE OF DANIEL B. ASIMOW IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AND PRACTICE PRO HAC VICE) (Freedman, John) (Entered: 02/28/2025)
03/03/2025	3	ELECTRONIC NOTICE of Case Assignment. Judge Indira Talwani assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Paul G. Levenson. (JAM) (Entered: 03/03/2025)

03/03/2025	4	Summons Issued as to Pete R. Flores, Kristi Noem, Kika Scott, Donald J. Trump, Caleb Vitello. **Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service.** (JAM) (Entered: 03/03/2025)
03/03/2025	7	Judge Indira Talwani: ELECTRONIC ORDER entered granting 2 Motion for Leave to Appear Pro Hac Vice Added Esther H. Sung, Karen C. Tumlin, Hillary Li, Laura Flores-Perilla, Brandon Galli-Graves, and Daniel B. Asimow. **Attorneys admitted Pro Hac Vice must have an individual PACER account, not a shared firm account, to electronically file in the District of Massachusetts. To register for a PACER account, go the Pacer website at https://pacer.uscourts.gov/register-account. You must put the docket number under ADDITIONAL FILER INFORMATION on your form when registering or it will be rejected.** Pro Hac Vice Admission Request Instructions https://www.mad.uscourts.gov/caseinfo/nextgen-pro-hac-vice.htm. A Notice of Appearance must be entered on the docket by the newly admitted attorneys. (SEC) (Entered: 03/03/2025)
03/03/2025	8	Judge Indira Talwani: ORDER re 5 *Ex Parte* Motion to Proceed Under Pseudonym. See attached. (SEC) (Entered: 03/03/2025)
03/10/2025	9	AFFIDAVIT OF SERVICE Executed by Wilhen Pierre Victor, Carlos Doe, Maksym Doe, Svitlana Doe, Ana Doe, Maria Doe, Sandra McAnany, Haitian Bridge Alliance, Omar Doe, Alejandro Doe, Kyle Varner, Armando Doe. U.S. Attorney's Office for the District of Massachusetts served on 3/6/2025, answer due 5/5/2025. Acknowledgement filed by Wilhen Pierre Victor; Carlos Doe; Maksym Doe; Svitlana Doe; Ana Doe; Maria Doe; Sandra McAnany; Haitian Bridge Alliance; Omar Doe; Alejandro Doe; Kyle Varner; Armando Doe. (Freedman, John) Modified on 3/11/2025 to reflect correct answer due date (SEC). (Entered: 03/10/2025)
03/10/2025	10	NOTICE of Appearance by H. Tiffany Jang on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Jang, H.) (Entered: 03/10/2025)
03/10/2025	11	NOTICE of Appearance by John A. Freedman on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Freedman, John) (Entered: 03/10/2025)
03/10/2025	12	NOTICE of Appearance by Esther Sung on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Sung, Esther) (Entered: 03/10/2025)
03/10/2025	13	NOTICE of Appearance by Laura Flores-Perilla on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Flores-Perilla, Laura) (Entered: 03/10/2025)

03/10/2025	14	NOTICE of Appearance by Karen C. Tumlin on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Tumlin, Karen) (Entered: 03/10/2025)
03/10/2025	15	NOTICE of Appearance by Brandon Galli-Graves on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Galli-Graves, Brandon) (Entered: 03/10/2025)
03/12/2025	16	NOTICE of Appearance by Daniel B Asimow on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Asimow, Daniel) (Entered: 03/12/2025)
03/13/2025	17	MOTION for Leave to Appear Pro Hac Vice for admission of Justin B. Cox Filing fee: $ 125, receipt number AMADC-10890788 by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Affidavit CERTIFICATE OF JUSTIN B. COX)(Freedman, John) (Entered: 03/13/2025)
03/13/2025	18	Judge Indira Talwani: ELECTRONIC ORDER entered granting 17 Motion for Leave to Appear Pro Hac Vice Added Justin B. Cox. **Attorneys admitted Pro Hac Vice must have an individual PACER account, not a shared firm account, to electronically file in the District of Massachusetts. To register for a PACER account, go the Pacer website at https://pacer.uscourts.gov/register-account. You must put the docket number under ADDITIONAL FILER INFORMATION on your form when registering or it will be rejected.** Pro Hac Vice Admission Request Instructions https://www.mad.uscourts.gov/caseinfo/nextgen-pro-hac-vice.htm. A Notice of Appearance must be entered on the docket by the newly admitted attorney. (SEC) (Entered: 03/13/2025)
03/13/2025	19	MOTION for Leave to File Excess Pages *[Expedited Relief Requested]* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/13/2025)
03/14/2025	20	Judge Indira Talwani: ELECTRONIC ORDER allowing Plaintiffs' Motion for Leave to Exceed Page Limit 19 . Plaintiffs' memorandum shall include a table of contents and table of authorities which need not be counted toward the 30-page limit. (SEC) (Entered: 03/14/2025)
03/14/2025	21	NOTICE of Appearance by Hillary Li on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Li, Hillary) (Entered: 03/14/2025)
03/17/2025	22	AMENDED COMPLAINT *FOR DECLARATORY AND INJUNCTIVE RELIEF* against Pete R. Flores, Kristi Noem, Kika Scott, Donald J. Trump, Todd Lyons, filed by Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Svitlana Doe,

		Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany.(Freedman, John) (Entered: 03/17/2025)
03/17/2025	23	Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Text of Proposed Order)(Freedman, John) (Entered: 03/17/2025)
03/17/2025	24	EXHIBIT re 23 Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action INDEX OF EXHIBITS IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Exhibit 1 Declaration of Alejandro Doe, # 2 Exhibit 2 Declaration of Ana Doe, # 3 Exhibit 3 Declaration of Armando Doe, # 4 Exhibit 4 Declaration of Carlos Doe, # 5 Exhibit 5 Declaration of Maksym Doe, # 6 Exhibit 6 Declaration of Maria Doe, # 7 Exhibit 7 Declaration of Omar Doe, # 8 Exhibit 8 Declaration of Svitlana Doe, # 9 Exhibit 9 Declaration of Sandra McAnany, # 10 Exhibit 10 Declaration of Kyle Varner, # 11 Exhibit 11 Declaration of Wilhen Pierre Victor, # 12 Exhibit 12 Declaration of Valentin Rosales Tabares, # 13 Exhibit 13 Declaration of Adolfo Gonzalez Jr, # 14 Exhibit 14 Declaration of Marim Doe, # 15 Exhibit 15 Declaration of Teresa Doe, # 16 Exhibit 16 Declaration of Rosa Doe, # 17 Exhibit 17 Declaration of Aleksandra Doe, # 18 Exhibit 18 Aleksandra Doe Notice of Interview Cancellation by USCIS Redacted, # 19 Exhibit 19 Declaration of Andrea Doe, # 20 Exhibit 20 Fed Reg. Notice U4U April 27, 2022 - NC, # 21 Exhibit 21 Fed. Reg. Notice Venezuelan parole process Oct. 19, 2022 - NC, # 22 Exhibit 22 Fed. Reg. Notice Updates to Venezuelan parole process Jan 9, 2023 - NC, # 23 Exhibit 23 Fed. Reg. Notice re Cuban parole process Jan 9, 2023 NC, # 24 Exhibit 24 - Fed. Reg. Notice re Haitian parole process Jan 9, 2023 NC, # 25 Exhibit 25 Fed. Reg. Notice re Nicaraguan parole process Jan 9, 2023 NC, # 26 Exhibit 26 Fed. Reg. Notice re Colombian FRP NC, # 27 Exhibit 27 Fed. Reg. Notice re Ecuadorian FRP - NC, # 28 Exhibit 28 Fed. Reg. Notice re Guatemalan FRP NC, # 29 Exhibit 29 Fed. Reg. Notice re Honduran FRP NC, # 30 Exhibit 30 - Fed. Reg. Notice re Salvadoran FRP NC, # 31 Exhibit 31 - Fed. Reg. Notice re Change to Haitian FRP NC, # 32 Exhibit 32 - Fed. Reg. Notice re Change to Cuban FRP NC, # 33 Exhibit 33 - Fed. Reg. Notice re Haitian FRP NC, # 34 Exhibit 34 - Fed. Reg. Notice re Cuban FRP NC, # 35 Exhibit 35 - Fed. Reg. Notice re CAM NC, # 36 Exhibit 36 Sung Declaration, # 37 Exhibit 37 History of Parole Statute, # 38 Exhibit 38 CATO Inst. Categories of parole of INA, # 39 Exhibit 39 Decl of Yael Schacher, # 40 Exhibit 40 Decl of Eric Schwartz, # 41 Exhibit 41 Decl of Morton Halperin, # 42 Exhibit 42 Rogers Decl, # 43 Exhibit 43 2001-06-15 Bo Cooper INS Memo on Parole, # 44 Exhibit 44 Update on Form 1-134A USCIS, # 45 Exhibit 45 CBP Carrier Liaison Program notice of 1-24-25, # 46 Exhibit 46 USCIS Message to CHNV Parolee, # 47 Exhibit 47 USCIS Message to Ukrainian Parolee re: TPS, # 48 Exhibit 48 - USCIS Message to MPIP applicant, # 49 Exhibit 49 USCIS Message to U4U Parolee, # 50 Exhibit 50 Fee Schedule G-1055 USCIC)(Freedman, John) (Entered: 03/17/2025)
03/18/2025	25	MEMORANDUM in Support re 23 Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action* filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/18/2025)

03/18/2025	26	Judge Indira Talwani: ELECTRONIC ORDER entered: Under Fed.R.Civ.P. 65(a), the court "may issue a preliminary injunction only on notice to the adverse party." Plaintiffs' Emergency Motion for Preliminary Injunction 23 includes a certificate of service certifying that "this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF)." As no attorney for Defendants has entered an appearance in this action, filing through ECF is insufficient to give Defendants notice of Plaintiffs' motion. Plaintiffs shall serve their motion 23 , supporting papers 24 , 25 , and this Order on Defendants pursuant to Fed.R.Civ.P. 5(a) and shall promptly file proof of such service with this court. Any opposition to Plaintiffs' request for emergency relief shall be filed no later than 72 hours from such service. A hearing shall be set by the clerk upon Plaintiffs' filing of proof of service. (SEC) (Entered: 03/18/2025)
03/18/2025	27	*NOTICE OF* Errata by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany to 24 Exhibit,,,,,,,,,,,,, *TO EMERGENCY MOTION FOR PRELIMINARY INJUNCTION*. (Attachments: # 1 Exhibit (Amended) Exhibit 19 to Plaintiffs' Motion for Preliminary Injunction) (Freedman, John) (Entered: 03/18/2025)
03/18/2025	28	AFFIDAVIT OF SERVICE Executed by Wilhen Pierre Victor, Marim Doe, Carlos Doe, Maksym Doe, Adolfo Gonzalez, Jr., Svitlana Doe, Ana Doe, Andrea Doe, Maria Doe, Sandra McAnany, Haitian Bridge Alliance, Omar Doe, Valentin Rosales Tabares, Alejandro Doe, Rosa Doe, Aleksandra Doe, Kyle Varner, Teresa Doe, Armando Doe. U.S. Attorney's Office for the District of Massachusetts served on 3/18/2025, answer due 4/8/2025. Acknowledgement filed by Wilhen Pierre Victor; Marim Doe; Carlos Doe; Maksym Doe; Adolfo Gonzalez, Jr.; Svitlana Doe; Ana Doe; Andrea Doe; Maria Doe; Sandra McAnany; Haitian Bridge Alliance; Omar Doe; Valentin Rosales Tabares; Alejandro Doe; Rosa Doe; Aleksandra Doe; Kyle Varner; Teresa Doe; Armando Doe. (Freedman, John) (Entered: 03/18/2025)
03/19/2025	29	ELECTRONIC NOTICE Setting Hearing on Motion 23 Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action* : Motion Hearing set for 3/24/2025 11:00 AM in Courtroom 9 (In person only) before Judge Indira Talwani. (CAM) (Entered: 03/19/2025)
03/19/2025	30	NOTICE of Appearance by Joseph A. Darrow on behalf of Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts (Darrow, Joseph) (Entered: 03/19/2025)
03/19/2025	31	Consent MOTION for Leave to File Excess Pages *In Defendants' Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction* by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts. (Attachments: # 1 Proposed Order)(Darrow, Joseph) (Entered: 03/19/2025)
03/20/2025	32	Judge Indira Talwani: ELECTRONIC ORDER allowing Defendants' Consent Motion for Leave to File Excess Pages 31 . Defendants are granted leave to file a memorandum in opposition to Plaintiffs' motion for preliminary injunction of up to 30 pages. The memorandum shall include a table of contents and table of authorities which need not be counted toward the 30-page limit. (SEC) (Entered: 03/20/2025)
03/20/2025	33	MOTION for Leave to Appear Pro Hac Vice for admission of Laura Shores, Anwen Hughes, Sarah Elnahal, Robert Stout Filing fee: $ 500, receipt number AMADC-10902779 by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe,

		Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Exhibit A - Certificate of Laura Shores, # 2 Exhibit B - Certificate of Anwen Hughes, # 3 Exhibit C - Certificate of Sarah Elnahal, # 4 Exhibit D - Certificate of Robert Stout)(Jang, H.) (Entered: 03/20/2025)
03/20/2025	34	Judge Indira Talwani: ELECTRONIC ORDER entered granting 33 Motion for Leave to Appear Pro Hac Vice Added Laura Shores, Anwen Hughes, Sarah Elnahal, and Robert Stout. **Attorneys admitted Pro Hac Vice must have an individual PACER account, not a shared firm account, to electronically file in the District of Massachusetts. To register for a PACER account, go the Pacer website at https://pacer.uscourts.gov/register-account. You must put the docket number under ADDITIONAL FILER INFORMATION on your form when registering or it will be rejected.** Pro Hac Vice Admission Request Instructions https://www.mad.uscourts.gov/caseinfo/nextgen-pro-hac-vice.htm. A Notice of Appearance must be entered on the docket by the newly admitted attorneys. (SEC) (Entered: 03/20/2025)
03/20/2025	35	NOTICE of Appearance by Laura Scott Shores on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Shores, Laura) (Entered: 03/20/2025)
03/20/2025	36	NOTICE of Appearance by Elissa Fudim on behalf of Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts (Fudim, Elissa) (Entered: 03/20/2025)
03/21/2025	37	Amicus Curiae APPEARANCE entered by Anagha Sundararajan on behalf of State of New York, et al.. (Sundararajan, Anagha) (Entered: 03/21/2025)
03/21/2025	38	Supplemental MOTION to Proceed under Pseudonym by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Text of Proposed Order)(Freedman, John) (Entered: 03/21/2025)
03/21/2025	39	MEMORANDUM in Support re 38 Supplemental MOTION to Proceed under Pseudonym filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/21/2025)
03/21/2025	40	NOTICE of Appearance by Justin Cox on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Cox, Justin) (Entered: 03/21/2025)

03/21/2025	41	EXHIBIT re 23 Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action Index of Exhibits for Defendants' Opposition to Plaintiffs' Motion for a Preliminary Injunction* by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts. (Attachments: # 1 Exhibit Memorandum from Benjamine Huffman, # 2 Exhibit Email from Jennifer Higgins, # 3 Exhibit Memorandum from Andrew Davidson, # 4 Exhibit Declaration of Kika Scott, # 5 Exhibit USCIS Historic Processing Times)(Darrow, Joseph) (Entered: 03/21/2025)
03/21/2025	42	MEMORANDUM in Opposition re 23 Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action* filed by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts. (Darrow, Joseph) (Entered: 03/21/2025)
03/21/2025	43	Judge Indira Talwani: ELECTRONIC ORDER: Upon consideration of the Plaintiffs' Supplemental Motion to Proceed Under Pseudonym 38 , pending further court order, (1) the new Doe Plaintiffs are granted leave to proceed in this matter under pseudonyms; and (2) all parties shall submit pleadings, briefing and evidence either (a) using the new Doe Plaintiffs' pseudonyms instead of their real names and other personally identifying information or (b) by redacting the new Doe Plaintiffs' names and other personally identifying information. Plaintiffs' request for a jointly-agreed upon protective order is denied without prejudice. Counsel for all parties shall comply with Local Rule 7.1(a)(2), which requires counsel to confer and attempt in good faith to resolve or narrow the issue before a motion is filed. Plaintiffs may refile their motion as: (a) a request for entry of a jointly-agreed protective order if an agreement is reached; or (b) a request for entry of Plaintiffs' proposed protective order if no agreement is reached. Either way, the motion shall include a proposed protective order. (SEC) (Entered: 03/21/2025)
03/21/2025	44	MOTION for Leave to File *Amicus Brief* by State of New York, et al.. (Attachments: # 1 Exhibit Proposed Memorandum of Amici States, # 2 Text of Proposed Order Proposed Order)(Sundararajan, Anagha) (Entered: 03/21/2025)
03/21/2025	45	NOTICE by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany *Regarding Federal Register Notice Terminating the Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV)* (Attachments: # 1 Exhibit A)(Freedman, John) (Entered: 03/21/2025)
03/21/2025	46	MOTION to Certify Class by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit DECLARATION OF JOHN A. FREEDMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION, # 3 Exhibit DECLARATION OF KAREN C. TUMLIN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION, # 4 Exhibit DECLARATION OF ANWEN HUGHES IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION)(Freedman, John) (Entered: 03/21/2025)
03/21/2025	47	MEMORANDUM in Support re 46 MOTION to Certify Class filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/21/2025)

03/21/2025	48	NOTICE of Appearance by Brian Ward on behalf of Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts (Ward, Brian) (Entered: 03/21/2025)
03/24/2025	49	Judge Indira Talwani: ELECTRONIC ORDER **allowing** 44 MOTION for Leave to File Amicus Brief; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (SEC) (Entered: 03/24/2025)
03/24/2025	50	AMICUS BRIEF filed by State of New York, et al. *Leave to file granted on March 24, 2025*. (Sundararajan, Anagha) (Entered: 03/24/2025)
03/24/2025	51	Amicus Curiae APPEARANCE entered by Anagha Sundararajan on behalf of State of New York, et al.. (Sundararajan, Anagha) (Entered: 03/24/2025)
03/24/2025	62	Electronic Clerk's Notes for proceedings held before Judge Indira Talwani: Motion Hearing held on 3/24/2025 re 23 Emergency MOTION for Preliminary Injunction *and Stay of Administrative Action* filed by Teresa Doe, Maria Doe, Kyle Varner, Armando Doe, Ana Doe, Alejandro Doe, Svitlana Doe, Adolfo Gonzalez, Jr., Andrea Doe, Omar Doe, Haitian Bridge Alliance, Marim Doe, Valentin Rosales Tabares, Maksym Doe, Aleksandra Doe, Sandra McAnany, Rosa Doe, Carlos Doe, Wilhen Pierre Victor. Case called. Court heard argument from counsel. Any motion for leave to file a 2nd amended complaint due 3/28/2025. Counsel shall confer and if possible, submit an agreed-upon schedule or a status report. Motion taken under advisement. Counsel to file an agreed-upon motion for protective order. Further hearing to be set for the morning of April 7, 2025. (Court Reporter: Robert Paschal at rwp.reporter@gmail.com.)(Attorneys present: Laura Flores-Perilla, Esther Sung, Karen C. Tumlin, Justin Cox, John A. Freedman, H. Tiffany Jang, Anwen Hughes (to file appearance), Brian Ward) (GAM) (Entered: 03/27/2025)
03/25/2025	52	MOTION for Leave to Appear Pro Hac Vice for admission of Stephen J. Yanni Filing fee: $ 125, receipt number AMADC-10911426 by State of New York, et al.. (Attachments: # 1 Affidavit Affidavit of Stephen Yanni for Admission Pro Hac Vice)(Sundararajan, Anagha) (Entered: 03/25/2025)
03/25/2025	53	NOTICE of Appearance by Anwen Hughes on behalf of Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany (Hughes, Anwen) (Entered: 03/25/2025)
03/26/2025	54	Joint MOTION for Protective Order *Concerning Doe Plaintiffs' PII* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Exhibit A)(Freedman, John) (Entered: 03/26/2025)
03/26/2025	55	STATUS REPORT *(JOINT)* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/26/2025)

03/26/2025	56	Judge Indira Talwani: ELECTRONIC ORDER entered granting 52 Motion for Leave to Appear Pro Hac Vice Added Stephen J. Yanni. **Attorneys admitted Pro Hac Vice must have an individual PACER account, not a shared firm account, to electronically file in the District of Massachusetts. To register for a PACER account, go the Pacer website at https://pacer.uscourts.gov/register-account. You must put the docket number under ADDITIONAL FILER INFORMATION on your form when registering or it will be rejected.** Pro Hac Vice Admission Request Instructions https://www.mad.uscourts.gov/caseinfo/nextgen-pro-hac-vice.htm. A Notice of Appearance must be entered on the docket by the newly admitted attorney. (SEC) (Entered: 03/26/2025)
03/26/2025	57	Judge Indira Talwani: ORDER entered granting 54 Motion for Protective Order. See attached Stipulated Protective Order Concerning Confidential Doe PII (Talwani, Indira) (Entered: 03/26/2025)
03/26/2025	58	Judge Indira Talwani: ELECTRONIC ORDER: the court has considered the Joint Status Report 55 and sets the following briefing schedule, which takes into account this court's trial schedule:1. The court anticipates addressing the pending Motion for Preliminary Injunction and Stay of Administrative Action 23 and Motion to Certify Class 46 , as currently filed (excluding consideration of claims relating to the Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV program"), individuals paroled in pursuant to that program, or parole sponsorships pursuant to that program). Defendants shall file their opposition to the Motion to Certify Class 46 as currently filed (excluding consideration of claims relating to the CHNV program, individuals paroled in pursuant to that program, or parole sponsorships pursuant to that program), no later than April 4, 2025. The court will hold a hearing on both motions (excluding consideration of claims relating to the CHNV program, individuals paroled in pursuant to that program, or parole sponsorships pursuant to that program) at 10:00 a.m. on April 7, 2025. 2. Plaintiffs shall promptly file their anticipated Motion to Amend the Complaint to address the issuance of the recently published Federal Register Notice, entitled "Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans," 90 Fed. Reg. 13,611 (March 25, 2025).3. Plaintiffs shall file their anticipated Supplemental Motion for Preliminary Injunction and Stay of Administrative Action and Supplemental Motion to Certify Class as to claims relating to the CHNV program, individuals paroled in pursuant to that program, or parole sponsorships pursuant to that program by March 27, 2025. Defendants shall file any oppositions to these supplemental motions no later than April 8, 2025. The clerk will set a hearing on these supplemental motions for April 10, 2025, at 3:00 p.m. (Talwani, Indira) (Entered: 03/26/2025)
03/26/2025	59	MOTION for Leave to File *Second Amended Complaint (Unopposed)* by Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Exhibit - Second Amended Complaint, # 2 Exhibit - Second Amended Complaint (Redline Copy))(Freedman, John) (Entered: 03/26/2025)
03/26/2025	60	MEMORANDUM in Support re 59 MOTION for Leave to File *Second Amended Complaint (Unopposed)* filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr.,

		Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/26/2025)
03/27/2025	61	Judge Indira Talwani: ELECTRONIC ORDER: Good cause shown, Plaintiffs' Unopposed Motion for Leave to File Second Amended Complaint 59 is GRANTED. Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (SEC) (Entered: 03/27/2025)
03/27/2025	63	ELECTRONIC NOTICE of Hearings (See Order at docket entry 58 re 55): Hearing set for 4/7/2025 10:00 AM in Courtroom 9 (In person only) before Judge Indira Talwani. Hearing set for 4/10/2025 03:00 PM in Courtroom 9 (In person only) before Judge Indira Talwani. (GAM) Modified on 4/14/2025 to correct docket reference (GAM). (Entered: 03/27/2025)
03/27/2025	64	Supplemental MOTION *(Second Supplemental Motion to Proceed Under Pseudonym)* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Attachment A - Proposed Order, # 2 Attachment B - Federal Register Notice (90 FR 13611), # 3 Attachment C - Lucia Doe Decl., # 4 Attachment D - Miguel Doe Decl., # 5 Attachment E - Daniel Doe Decl., # 6 Attachment F - Gabriela Doe Decl.)(Freedman, John) (Entered: 03/27/2025)
03/27/2025	65	MEMORANDUM in Support re 64 Supplemental MOTION *(Second Supplemental Motion to Proceed Under Pseudonym)* filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/27/2025)
03/27/2025	66	Transcript of Motion Hearing held on March 24, 2025, before Judge Indira Talwani. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Robert Paschal at rwp.reporter@gmail.com. Redaction Request due 4/17/2025. Redacted Transcript Deadline set for 4/28/2025. Release of Transcript Restriction set for 6/25/2025. (DRK) (Entered: 03/27/2025)
03/27/2025	67	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (DRK) (Entered: 03/27/2025)
03/27/2025	68	AMENDED COMPLAINT *SECOND AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF* against Pete R. Flores, Todd Lyons, Kristi Noem, Kika Scott, Donald J. Trump, filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez,

		Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany.(Freedman, John) (Entered: 03/27/2025)
03/27/2025	69	Judge Indira Talwani: ELECTRONIC ORDER: granting Plaintiffs' Second Supplemental Motion to Proceed under Pseudonym 64 . Plaintiffs seek "a supplement to the March 3, 2025 and March 21, 2025 Orders (Doc. Nos. 8 , 43) permitting certain plaintiffs to proceed in this litigation using pseudonyms to protect their identities from public disclosure." Pending further court order, (1) new Plaintiffs identified as Lucia Doe, Miguel Doe, Daniel Doe, and Gabriela Doe are granted leave to proceed in this matter under pseudonyms; and (2) all parties shall submit pleadings, briefing and evidence either (a) using the new Doe Plaintiffs' pseudonyms instead of their real names and other personally identifying information or (b) by redacting the new Doe Plaintiffs' names and other personally identifying information. The court orders further that the reference to "Doe Plaintiffs" in the Stipulated Protective Order Concerning Confidential Doe PII 57 includes the new Doe Plaintiffs. (SEC) (Entered: 03/27/2025)
03/27/2025	70	Emergency MOTION for Preliminary Injunction *AND STAY OF DHS'S EN MASSE TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Text of Proposed Order)(Freedman, John) (Entered: 03/27/2025)
03/27/2025	71	EXHIBIT re 70 Emergency MOTION for Preliminary Injunction *AND STAY OF DHS'S EN MASSE TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE INDEX OF EXHIBITS* by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Exhibit 1: Federal Register Notice 90 FR 13611, # 2 Exhibit 2: Norma Lorena Dus Declaration, # 3 Exhibit 3: Haitian Bridge Alliance Declaration)(Freedman, John) (Entered: 03/27/2025)
03/27/2025	72	MEMORANDUM in Support re 70 Emergency MOTION for Preliminary Injunction *AND STAY OF DHS'S EN MASSE TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE* filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/27/2025)
03/27/2025	73	Supplemental MOTION to Certify Class by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Attachments: # 1 Text of Proposed Order)(Freedman, John) (Entered: 03/27/2025)
03/27/2025	74	MEMORANDUM in Support re 73 Supplemental MOTION to Certify Class filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma

		Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 03/27/2025)
03/28/2025	75	NOTICE of Appearance by Stephen J. Yanni on behalf of State of New York, et al. (Yanni, Stephen) (Entered: 03/28/2025)
03/31/2025	76	NOTICE of Appearance by Katherine J. Shinners on behalf of Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump (Shinners, Katherine) (Entered: 03/31/2025)
04/01/2025	77	MOTION for Order by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts.(Ward, Brian) Modified event type on 4/1/2025 (SEC). (Entered: 04/01/2025)
04/01/2025	78	Opposition re 77 MOTION for Order *to Provide Identifying Information for the Individual Plaintiffs* filed by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 04/01/2025)
04/02/2025	79	Judge Indira Talwani: MEMORANDUM AND ORDER entered. For the foregoing reasons, Defendants' Motion for an Order to Provide Identifying Information for the Individual Plaintiffs [Doc. No. 77] is DENIED. No later than April 5, 2025, Plaintiffs shall disclose their identities to this court under seal to facilitate a recusal check. **IT IS SO ORDERED.**(SEC) (Entered: 04/02/2025)
04/02/2025	80	MOTION FOR PUBLIC TELEPHONE ACCESS by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany. (Freedman, John) (Entered: 04/02/2025)
04/03/2025	81	NOTICE by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany re 79 Memorandum & ORDER, *Notice of True Identities of Doe Plaintiffs* (Freedman, John) (Additional attachment(s) added on 4/3/2025: # 1 *SEALED* Exhibit A) (SEC). (Entered: 04/03/2025)
04/04/2025	82	Judge Indira Talwani: ELECTRONIC ORDER denying Plaintiffs' Motion for Telephone Access 80 . See Local Rule 83.3. (GAM) (Entered: 04/04/2025)
04/04/2025	83	NOTICE by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany *of Defendants' Actions regarding U4U* (Attachments: # 1 Exhibit A)(Sung, Esther) (Entered: 04/04/2025)
04/04/2025	84	NOTICE by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela

		Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany *Notice of Supplemental Authority* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Sung, Esther) (Entered: 04/04/2025)
04/04/2025	85	MEMORANDUM in Opposition re 46 MOTION to Certify Class filed by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump. (Shinners, Katherine) (Entered: 04/04/2025)
04/05/2025	86	Response by Kristi Noem, Caleb Vitello, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts to 83 Notice (Other), *Response to Plaintiffs' Notice Of Defendants' Actions Regarding U4U*. (Darrow, Joseph) (Entered: 04/05/2025)
04/06/2025	87	Response by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts to 84 Notice (Other), *Response to Plaintiffs' Notice of Supplemental Authority*. (Darrow, Joseph) (Entered: 04/06/2025)
04/07/2025	96	Electronic Clerk's Notes for proceedings held before Judge Indira Talwani: Hearing held on 4/7/2025. Case called. Court heard argument from counsel. Hearing continued to 4/10/2025 at 03:00 PM in Courtroom 9 (In person only) before Judge Indira Talwani. (Court Reporter: Robert Paschal at rwp.reporter@gmail.com.) (Attorneys present: Justin Cox, Laura Flores-Perilla, John A. Freedman, Anwen Hughes, H. Tiffany Jang, Hillary Li, Esther Sung, Karen C. Tumlin, Brian Ward) (GAM) (Entered: 04/14/2025)
04/08/2025	88	EXHIBIT re 70 Emergency MOTION for Preliminary Injunction *AND STAY OF DHS'S EN MASSE TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE* by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump. (Attachments: # 1 Exhibit A - USCIS Notice of Termination)(Shinners, Katherine) (Entered: 04/08/2025)
04/08/2025	89	MEMORANDUM in Opposition re 70 Emergency MOTION for Preliminary Injunction *AND STAY OF DHS'S EN MASSE TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE* filed by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts. (Darrow, Joseph) (Entered: 04/08/2025)
04/08/2025	90	Opposition re 73 Supplemental MOTION to Certify Class filed by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump. (Shinners, Katherine) (Entered: 04/08/2025)
04/09/2025	91	NOTICE of Appearance by Rayford A. Farquhar on behalf of Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts (Farquhar, Rayford) (Entered: 04/09/2025)
04/10/2025	92	Transcript of Hearing held on April 7, 2025, before Judge Indira Talwani. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Robert Paschal at rwp.reporter@gmail.com. Redaction Request due 5/1/2025. Redacted Transcript Deadline set for 5/12/2025. Release of Transcript Restriction set for 7/9/2025. (DRK) (Entered: 04/10/2025)
04/10/2025	93	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (DRK) (Entered: 04/10/2025)

04/10/2025	94	Electronic Clerk's Notes for proceedings held before Judge Indira Talwani: Hearing held on 4/10/2025. Court hears argument from the parties; Court takes the matter under advisement. (Court Reporter: Robert Paschal at rwp.reporter@gmail.com.)(Attorneys present: Freedman, Hughes, Sung, Jang, Li, Cox, Tumlin, Flores-Perilla for plaintiffs; Ward for defendants) (TRM) Modified on 4/13/2025, to correct judge's name (GAM). (Entered: 04/11/2025)
04/13/2025	95	NOTICE by Kyle Varner, Wilhen Pierre Victor, Haitian Bridge Alliance, Andrea Doe, Valentin Rosales Tabares, Marim Doe, Adolfo Gonzalez, Jr., Aleksandra Doe, Teresa Doe, Rosa Doe, Svitlana Doe, Maksym Doe, Miguel Doe, Lucia Doe, Daniel Doe, Gabriela Doe, Norma Lorena Dus, Maria Doe, Alejandro Doe, Armando Doe, Ana Doe, Carlos Doe, Omar Doe, Sandra McAnany *of Defendants' Actions Regarding "Notice of Parole Termination" sent to Parolees & Non-Parolees* (Sung, Esther) (Entered: 04/13/2025)
04/14/2025	97	Judge Indira Talwani: ORDER entered granting 70 in part PLAINTIFFS' EMERGENCY MOTION FOR A STAY OF DHS'S EN MASSE TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE. The court grants emergency relief as follows: 1. The Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025), is hereby STAYED pending further court order insofar as it revokes, without case-by-case review, the previously granted parole and work authorization issued to noncitizens paroled into the United States pursuant to parole programs for noncitizens from Cuba, Haiti, Nicaragua, and Venezuela (the "CHNV parole programs") prior to the noncitizen's originally stated parole end date. 2. All individualized notices sent to noncitizens from Cuba, Haiti, Nicaragua, and Venezuela via their USCIS online account notifying them that their parole is being revoked without case-by-case review pursuant to the Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025), are also STAYED pending further court order. See attached Memorandum and Order.(Talwani, Indira) (Entered: 04/14/2025)
04/14/2025	98	Judge Indira Talwani: ORDER entered granting in part 73 Motion to Certify Class. See attached Order Granting Class Certification. (Talwani, Indira) (Entered: 04/14/2025)
04/17/2025	99	Judge Indira Talwani: ELECTRONIC ORDER: Plaintiff has filed two notices regarding recent emails. See Notice 83 ; Notice 95 . The first notice reports that emails, dated April 3, 2025, with the subject line "Notice of Termination of Parole," were received by Plaintiff Maksym Doe and others who have been paroled into the United States pursuant to the Uniting for Ukraine ("U4U") program, directing them that their parole would terminate 7 days from the date of the notice. See [83-1]. Defendants responded that the emails referenced in that notice were sent in error and that "U4U parolees were not intended to receive this message." See Response 86 . Plaintiffs' second notice reports that Defendants have continued sending the "Notice of Termination of Parole" email [83-1] to an unknown number of parolees, including paroles under the Operation Allies Welcome ("OAW") program. Defendants shall notify the court by 2 p.m. on April 18, 2025, whether emails entitled "Notice of Termination of Parole," have been sent en masse to parolees who entered the United States under any other programs identified in Plaintiffs' Second Amended Complaint 68 , including the OAW program, and, if so, whether those parolees also were not intended to receive this message. (SEC) (Entered: 04/17/2025)
04/18/2025	100	NOTICE OF APPEAL as to 97 Order on Motion for Preliminary Injunction,,,, 98 Order on Motion to Certify Class by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump. Fee Status: US Government.

		NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. **Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 5/8/2025. (Shinners, Katherine) (Entered: 04/18/2025)**
04/18/2025	101	RESPONSE TO COURT ORDER by Kristi Noem, Caleb Vitello, Pete R. Flores, Todd Lyons, Kika Scott, Donald J. Trump, U.S. Attorney's Office for the District of Massachusetts re 99 Order,,,,, . (Darrow, Joseph) (Entered: 04/18/2025)
04/18/2025	102	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 100 Notice of Appeal. (MAP) (Entered: 04/18/2025)
04/18/2025	103	USCA Case Number 25-1384 for 100 Notice of Appeal, filed by Caleb Vitello, Kristi Noem, Pete R. Flores, Kika Scott, Todd Lyons, Donald J. Trump. (MAP) (Entered: 04/18/2025)

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EXHIBIT A

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

January 20, 2025

MEMORANDUM FOR: Caleb Vitello
Acting Director
U.S. Immigration and Customs Enforcement

Pete R. Flores
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection

Jennifer B. Higgins
Acting Director
U.S. Citizenship and Immigration Services

FROM: Benjamine C. Huffman
Acting Secretary

SUBJECT: Exercising Appropriate Discretion Under Parole Authority

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Congress granted to the U.S. Department of Homeland Security (DHS) authority to parole certain otherwise inadmissible aliens into the United States when, in the discretion of the Secretary of DHS, doing so either provides a significant public benefit to the American public or permits the United States to respond to an urgent humanitarian need.

Authority to grant parole is discretionary and may be exercised only on a case-by-case basis by immigration officers in the employ of DHS. When in the opinion of the Secretary of DHS the purposes of an alien's parole have been served, the alien must be returned to the custody of DHS and the alien's case must be dealt with in the same manner as any other case for admission to the United States involving an alien found inadmissible.

The Secretary of DHS's parole authority is set forth in 8 U.S.C. § 1182(d)(5). The statutory language and context make it abundantly clear that it is a *limited use* authority, applicable only in a very narrow set of circumstances. Congress retained its authority to legislatively determine which categories of aliens are admissible or inadmissible to the United States, while simultaneously providing DHS with the operational flexibility to deal with extraordinary situations including, but not limited to: inadmissible aliens with emergency medical conditions and the temporary entry of otherwise inadmissible aliens coming to the United States whose presence is required in legal proceedings as a defendant or witness.

Although parole is a discretionary authority to be exercised in narrow circumstances and only on a case-by-case basis, it has been repeatedly abused by the Executive Branch over the past several

decades in ways that are blatantly inconsistent with the statute. Most important, the parole statute does not authorize categorical parole programs that make aliens presumptively eligible on the basis of some set of broadly applicable criteria.

Furthermore, 8 U.S.C. § 1182(d)(5)(B) limits the circumstances under which an alien who is a refugee as defined in 8 U.S.C. § 1101(a)(42) may be paroled into the United States. This means it is generally unlawful to parole into the United States aliens with pending applications for refugee status filed abroad, and aliens found to have *prima facie* asylum claims who are being allowed into the United States to await adjudication of those claims. The sole exception to this bar is when the Secretary of DHS determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than admitted as a refugee.

It is evident that many current DHS policies and practices governing parole are inconsistent with the statute.

Therefore, I order the following:

(1) Within sixty (60) days of the date of this order, the Director of U.S. Immigration and Customs Enforcement; the Commissioner of U.S. Customs and Border Protection; and the Director of U.S. Citizenship and Immigration Services are directed to:
   a. Compile a list of all instructions, policies, procedures, rules, and regulations pertaining to parole;
   b. Review all such instructions, policies, procedures, rules, and regulations and determine, in consultation with the DHS General Counsel, which are not strictly in accord with the text and structure of 8 U.S.C. § 1182(d)(5);
   c. Formulate a plan for phasing out any such instructions, policies, procedures, rules, and regulations, accompanied by a proposal and timeline for any necessary public notices to be published pursuant to the terms of the Administrative Procedure Act or any other applicable law;
   d. Provide the Secretary of DHS with a report summarizing the results of the following reviews and inquiries.

(2) Pending the review contemplated by paragraph (1), DHS Components have discretion to pause, modify, or terminate any parole program described in paragraph (1) to the extent:
   a. The policy was not promulgated pursuant to the procedural requirements of the Administrative Procedure Act or any comparable scheme;
   b. The DHS Component can do so in a manner that protects any legitimate reliance interests; and
   c. Doing so is otherwise consistent with applicable statutes, regulations, and court orders.

The purpose of this memorandum is to ensure that all future actions taken by DHS with regard to the exercise of the parole authority are consistent with law and within the scope of DHS's authority. Having said that, should any court disagree with the interpretation of the parole statute articulated in this memorandum, I clarify that I am also implementing this policy as a matter of my discretion to deny parole in any circumstance.

EXHIBIT B

From:	Higgins, Jennifer B
To:	Meckley, Tammy M; DeNayer, Larry C; Nolan, Connie L; Valverde, Michael; Lotspeich, Katherine J; Kim, Ted H; Maxwell, Rebecca M (Becca); Knafla, Susan J
Cc:	Scott, Kika M; Calkins, Aaron L; Deshommes, Samantha L; johndmilesuscisdh (Vendor); Selby, Cara M; Lotspeich, Katherine J; Puchek, Elizabeth A (Beth)
Subject:	Securing Our Borders EO and Parole Processing
Date:	Thursday, January 23, 2025 4:54:41 PM

Colleagues,

Pursuant to the Executive Order issued Jan. 20. 2025 titled *Securing Our Borders*, and in accordance with Acting Secretary Huffman's memorandum dated Jan. 20, 2025, which directs ICE, CBP, and USCIS to conduct a review of DHS policies and practices governing parole, **please ensure effective immediately that your staff do not make any final decisions** (approval, denial, closure) or issue a travel document or I-94 for any initial parole or re-parole application, petition, motion, or other request, for the following parole programs, processes, or types:

- Uniting for Ukraine (U4U),
- Re-parole of Afghan nationals paroled under Operations Allies Welcome (OAW),
- Family Reunification Parole (FRP) Processes, including legacy Cuban Family Reunification Parole Program (CFRP) cases,
- Central American Minors (CAM),
- Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV),
- International Entrepreneur Parole,
- Parole of Western Hemisphere nationals interviewed for refugee status in Safe Mobility Offices (WHP), and
- Certain former members of the Mojahedin-e-Khalq (MeK) reparole,

This instruction does not include requests for advance parole, non-categorical Form I-131 Humanitarian Parole requests, or government referrals for parole filed and adjudicated on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

We will provide additional information when available.

Thank you,

Jennifer

EXHIBIT C

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

February 14, 2025

Memorandum

FROM: Andrew Davidson, ANDREW J DAVIDSON Digitally signed by ANDREW J DAVIDSON Date: 2025.02.14 12:08:38 -05'00'
Acting Deputy Director, U.S. Citizenship and Immigration Services

TO: Connie Nolan, Associate Director, Service Center Operations
Michael Valverde, Associate Director, Field Operations
Ted Kim, Associate Director, Refugee, Asylum and International Operations
Tammy Meckley, Associate Director, Immigration Records and Identity Services
Rebecca Maxwell, Chief (A) Administrative Appeals Office

SUBJECT: **Administrative Hold on All USCIS Benefit Requests filed by Parolees Under the Uniting for Ukraine (U4U) Process, Processes for Haitians, Cubans, Nicaraguans, and Venezuelans (CHNV) Process, or Family Reunification Parole (FRP) Process**

Purpose: This memorandum authorizes an immediate USCIS-wide administrative hold on all pending benefit requests filed by aliens who are or were paroled into the United States under the U4U, CHNV, or FRP processes pending the completion of additional vetting flags in ELIS to identity any fraud, public safety, or national security concerns.

Background: USCIS' authority to exercise the parole power stems from the Immigration and Nationality Act (INA) section 212(d)(5)(A), which states that parole is available "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."

Over the previous two years, the U.S. Department of Homeland Security (DHS) has implemented processes through which Ukrainians, Cubans, Haitians, Nicaraguans, Venezuelans, and nationals of other countries, and their immediate family members, could request to travel to the United States to seek parole.[1] Under the U4U, CHNV, and FRP processes, potential beneficiaries with a confirmed

[1] Implementation of a Parole Process for Cubans, 88 FR 1266 (Jan. 9, 2023); Implementation of a Change to the Parole Process for Cubans, 88 FR 26329 (Apr. 28, 2023). Implementation of a Parole Process for Haitians, 88 FR 1243 (Jan. 9,

U.S.-based supporter may be considered, on a case-by-case basis, for advanced authorization to travel to an interior U.S. port of entry to seek a discretionary grant of parole for urgent humanitarian reasons or significant public benefit. The processes are initiated when a U.S.-based potential supporter files a Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through myUSCIS for each beneficiary they seek to support. The potential supporter is vetted by USCIS and if the potential supporter passed vetting checks and is determined by USCIS as able to financially support the beneficiary, USCIS confirms the Form I-134A.

In July 2024, USCIS suspended parts of the CHNV processes after a USCIS Fraud Detection and National Security (FDNS) Directorate preliminary assessment identified potential concerns related to fraudulent supporter requests, during an internal review of the U4U and CHNV processes (or, as the report stated, the "UCHNV" process). An Interim Staff Report of the Committee on the Judiciary and Subcommittee on Immigration Integrity, Security, and Enforcement, titled "The Biden-Harris Administration's CHNV Parole Program Two Years Later: A Fraud-Ridden, Unmitigated Disaster," indicates, in part, that Forms I-134A filed by potential supporters under the CHNV processes included social security numbers, addresses, and phone numbers that had been used hundreds of times and, in some cases, were filed used biographical information for individuals who are deceased. Roughly 100,948 Forms I-134A were filed by 3,200 "serial" supporters, defined as a supporter whose biographical data appeared on 20 or more Forms I-134A. The report also found that nearly 1,000 Form I-134A applications provided Social Security numbers of confirmed dead people. Meanwhile, 100 physical addresses for potential supporters were used at least 124 times on over 19,000 Forms I-134A. Upon further investigation, fraud was confirmed in some of these cases, while it was not in others.[2] Further, the identified potential concerns related to fraudulent supporter requests exposed serious vulnerabilities in USCIS' vetting process not only for potential supporters but also for potential beneficiaries. There were instances identified where certain beneficiaries were not fully vetted by CBP and were the subject of national security or public safety information that was not properly assessed prior to parole by CBP. Therefore, benefit requests filed by aliens who are or were paroled under any of these categorical parole programs need further review to determine the level of fraud and the possible involvement of beneficiaries.

On January 20, 2025, the President issued Executive Order (EO) 14165, Securing our Borders, requiring DHS to terminate all categorical parole programs that are contrary to law or policy, including the parole program known as CHNV.[3] The President also issued EO 14161, Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats,

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2023); Implementation of a Change to the Parole Process for Haitians, 88 FR 26327 (Apr. 28, 2023). Implementation of a Parole Process for Nicaraguans, 88 FR 1255 (Jan. 9, 2023). Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022); Implementation of Changes to the Parole Process for Venezuelans, 88 FR 1279 (Jan. 9, 2023)). Implementation of a Family Reunification Parole Process for Colombians, 88 FR 43591 (July 10, 2023); Implementation of a Family Reunification Parole Process for Ecuadorians, 88 FR 78762 (Nov. 16, 2023); Implementation of a Family Reunification Parole Process for Salvadorans, 88 FR 43611 (July 10, 2023); Implementation of a Family Reunification Parole Process for Guatemalans, 88 FR 43581 (July 10, 2023); Implementation of a Family Reunification Parole Process for Hondurans, 88 FR 43601 (July 10, 2023); Implementation of Changes to the Cuban Family Reunification Parole Process, 88 FR 54639 (Aug. 11, 2023); Implementation of Changes to the Haitian Family Reunification Parole Process, 88 FR 54635 (Aug. 11, 2023); Implementation of the Uniting for Ukraine Parole Process (Apr. 27, 2022).

[2] For additional details on the fraud found in the CHNV parole process, see Interim Staff Report of the Committee on the Judiciary and Subcommittee on Immigration Integrity, Security, and Enforcement (November 20, 2024).

[3] *See*, Securing Our Borders, Executive Order 14165, 90 FR 8467, 8468 (Jan. 20, 2025) available at (last viewed Jan. 28, 2025).

requiring DHS to identify all resources that may be used to ensure that all aliens seeking admission to the U.S., or who are already in the U.S., are screened and vetted to the maximum degree possible and re-establish a uniform baseline for screening and vetting standards and procedures, consistent with the uniform baseline that existed on January 19, 2021, that will be used for any alien seeking a visa or immigration benefit of any kind.[4]

Currently, fraud information and public safety or national security concerns are not being properly flagged in USCIS' adjudicative systems. The procedures that the parolees under these categorical parole programs underwent may not constitute screening and vetting to the maximum degree possible or comport with the uniform baseline for screening and vetting standards and procedures that existed on January 19, 2021, both of which are required per EO 14161.

Due to the potential fraud trends already identified for supporter fraud by FDNS in their initial review of the U4U and CHNV processes, the implication of beneficiary participation in the supporter fraud, and the explicit instruction to DHS to screen and vet aliens seeking immigration benefits to the maximum degree possible, USCIS is pausing the adjudication of benefit requests filed by aliens who are or were paroled into the United States under the U4U, CHNV, or FRP processes to ensure that these benefit requests are being reviewed with the appropriate screening and vetting standards and procedures as set out in EO 14161.

Recommendation/Decision: Accordingly, USCIS will immediately place an administrative hold on all benefit requests filed by aliens who are or were paroled into the United States under the U4U, CHNV, or FRP processes, pending the completion of the required screening and vetting in ELIS to identify any fraud, public safety, or national security concerns.

Any case subject to this administrative hold with a litigation need may only be lifted from the hold on a case-by-case basis, in a subsequent memo to file, with approval by the USCIS Director or USCIS Deputy Director. This case-by-case requirement must be followed even when aliens are member of a class that is subject to injunction, settlement agreement, or other court order. Once USCIS completes a comprehensive review and evaluation of the in-country population of aliens who are or were paroled into the United States under these categorical parole programs, USCIS may issue a subsequent memo lifting this administrative hold.

C.C. John Miles, Chief Counsel (A)
Susan Knafla, Associate Director (A), Fraud Detection and National Security

[4] *See*, Protecting the United States from Foreign Terrorists and Other National Security and Public Safey Threats, 90 FR 8451 (Jan. 29, 2025) (last viewed Feb. 4, 2025).

EXHIBIT 1

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., Plaintiffs, *– versus –* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al., Defendants.	**Civil Action No.: 1:25-cv-10495-IT**

DECLARATION OF ALEJANDRO DOE

I, Alejandro Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Diriamba, Nicaragua, in May 2000. I am a national of Nicaragua.

2. I currently live in Gainesville, Georgia. I have lived in Gainesville since I entered the United States.

3. I entered the United States under the parole process for Nicaraguans, a component of the CHNV parole processes announced on January 6, 2023. My cousin—a U.S. citizen who lives in Washington—sponsored me through the program. I received travel authorization on May 15, 2024, and arrived in the United States on July 29, 2024. After spending hours at inspection at the airport, officers granted me a temporary two-year stay in the United States. I received work authorization pursuant to my parole in September 2024.

4. I fled Nicaragua because of the physical danger my family faced and the untenable economic reality.

5. In 2018, demonstrators in several Nicaraguan cities began protests against social security reforms decreed by President Daniel Ortega that raised income and payroll taxes while reducing pension benefits. The demonstrations—mostly involving elderly individuals, university students, religious leaders, and other activists—were immediately and heavily oppressed, and government and pro-government militia and security forces used live ammunition on protestors. Dozens of people were killed and scores injured in the initial days. After only a few months, the death toll reached upwards of three hundred. Countless others were imprisoned.

6. Despite my fear, I attended marches with my family and friends, aware of the risks but determined to speak out for the lives lost and the injustices suffered. However, the Nicaraguan government eventually linked my family to the protests, actively persecuting my uncle and cousins. One day, government actors illegally raided my grandmother's house looking for them, but after an unsuccessful search, abducted my father from her home instead. All along the way to prison, they violently interrogated him, beating him in the ribs.

7. Once there, prison staff continued to torture him. They would beat and psychologically abuse him, telling him that they were going to kill him and that he would never leave the prison. In the three days he spent in prison, the guards provided him food on only two occasions.

8. When the government released my father, he was labeled an opponent of the regime, and our family decided we needed to leave the country. We felt we had no other option. When the United States announced the parole process for Nicaragua, my cousin, a U.S. citizen, submitted an application to sponsor my father. In August

2023, my father lawfully entered the U.S. with parole status. In 2024, my siblings and I followed him, also having been sponsored and having received parole status.

9. In Nicaragua, the sociopolitical and economic situation makes it very difficult to earn a living wage. I held various jobs to provide for myself and my family, working as a tattoo artist and a street vendor. Together between these jobs, I averaged about $500 per month.

10. I also studied Integral Communication Design at Universidad Politécnica de Nicaragua (Polytechnic University of Nicaragua). However, my school was one of the epicenters of the 2018 protests and subsequent governmental repression, and I was unable to return to school for some time. The government eventually seized control of my university, stripping its legal registration and renaming it to bring it under government management and control. By that point, I needed to work full-time to provide for myself and my family and I was not able to finish my studies.

11. When I arrived in the U.S., it took some time to adapt to the many differences between Nicaragua and Georgia, including the food, climate, and the length of day. In Nicaragua, the length of day does not change much throughout the year given its proximity to the equator—the sun sets between 5:00–6:00pm. But when I arrived in Gainesville, the sun did not set until around 9:00pm. It also gets much colder in Gainesville. Nonetheless, the community in Gainesville is very welcoming and united.

12. After I received work authorization in September 2024, I found work the following month producing marble bathroom panels. I have learned this trade since arriving in the United States.

13. I first heard rumors about the termination of the CHNV parole processes toward the end of January, including that existing grants of parole could be revoked. This made me feel extremely worried about my family's safety and wellbeing. It was my goal to save as much money as possible while in the United States to have a better chance of success in Nicaragua upon our return.

14. We are good people looking for a better future. We strive to follow the legal avenues to travel to the United States, even at great personal and financial sacrifice. My family sold many of our possessions to make the trip to the United States. But I found a sponsor for parole, I paid for my own flight, and I waited to work in the United States until I had work authorization. I pay taxes. I am self-sufficient here, and pay for everything I need, including my own rent each month.

15. After all my family's sacrifice and efforts to follow the law, the prospect of having our parole cancelled, losing work authorization, and being subject to deportation feels like a betrayal. It would be devastating. We would lose everything we have worked so hard to achieve, and we would likely be forced to break apartment leases we have entered into, rendering us homeless. Because of this fear, my family and I have been sharing our bank account passwords with one another in case anything were to happen.

16. I am afraid to leave my apartment. I have heard rumors and seen news of immigration officials showing up at jobsites, and while I was granted parole, I feel like I am in limbo and could be swept up in an enforcement action. Because I have to work to survive, however, I cannot afford to stay home from work. I am also

Catholic, and frequently attend religious services, but I have been staying home recently due to this fear.

17. On January 21, 2025, I submitted an application for asylum (Form I-589) based on my family's political persecution to United States Citizenship and Immigration Services, and on February 7, 2025, I traveled to Atlanta, Georgia to provide biometrics. Knowing I had a chance of asylum gave me some small degree of hope in the face of a sudden parole termination.

18. That is, until I learned the Trump administration also indefinitely paused processing all immigration applications from individuals who entered the U.S. pursuant to parole. This came as a gut punch. We are overwhelmed—parole and asylum were the only avenues that could keep my family safe. If we are no longer permitted to remain in the U.S., we would have to look for alternatives to go somewhere else, because we cannot safely return to Nicaragua.

19. For years, the Nicaraguan government has kept a close eye on individuals who apply for asylum in other countries, as it views those people as political dissidents. What's more, the Parliament loyal to the Ortega-Murillo dynasty recently engaged in law reform legalizing the banishment and denial of entry or exit to people deemed to be critics of Nicaragua, including Nicaraguan citizens. It is my understanding that thousands of individuals have been already stripped of their nationality and exiled, and I am aware of various individuals granted humanitarian parole in the United States that have been denied reentry into Nicaragua in the past few weeks. I am worried about what will happen if we are deported and cannot

reenter Nicaragua, or what will happen to my family given my family's history of political persecution by the State.

20. Maintaining my parole status and continuing with my asylum application is critical for me, my family, and the community we are a pad of. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our applications for immigration benefits processed, as they should be.

21. I am willing to serve as a class representative on behalf of those who am similarly situated to me.

22. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the indefinite pause on the processing of immigration applications benefits.

23. For all of the above reasons, however, I fear having my real name become public in this lawsuit. I fear that if the U.S. government knows that I am participating, it will retaliate against me and my family and deport us all to Nicaragua. I fear that if we are deported, the Nicaraguan government will retaliate against us in turn as parolees, as asylum-seekers, and as a family previously designated by the government as "defectors" and "traitors." If I am not permitted to use a pseudonym in this lawsuit, I will likely decide not to participate. I cannot risk my safety and that of my family.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Gainesville. Georgia on February 28, 2025.

[redacted]

ALEJANDRO DOE

CERTIFICATE OF INTERPRETATION AND TRANSCRIPTION

I, Brandon Galli-Graves, certify that I am fluent in English and Spanish, that I am competent to interpret between these languages, and that I transcribed the foregoing between English and Spanish accurately. I further certify that I provided a translation of the foregoing to Alejandro Doe in Spanish and that he affirmed that it is true and correct.

Executed: 2/28/2025

Brandon Galli-Graves

EXHIBIT 2

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., Plaintiffs, *– versus –* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al., Defendants.	**Civil Action No.: 1:25-cv-10495-IT**

DECLARATION OF ANA DOE

I, Ana Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Diriamba, Nicaragua in February 1993. I am a national of Nicaragua.

2. I currently live in Gainesville, Georgia. I have lived here for about a year, since arriving in the United States and receiving parole under parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV").

3. I currently live with my husband, Armando Doe, in Gainesville. Armando is also a Nicaraguan national and has also received parole through the CHNV parole processes. My husband and I live in the same area as some cousins, including Carlos Doe, and my brothers, including Alejandro Doe, and my father, all of whom are Nicaraguan nationals and are here in the United States through CHNV parole. I have other family members who have CHNV parole too, like my sister, her child and husband who live in a different state.

4. Since arriving to the United States on CHNV parole, my husband and I have been able to work and contribute to the local community. I obtained my work

authorization in April 2024. My first employer in the United States was a company that makes trailers. Currently I work for a company that supplies personal protective equipment to my former employer, where I am in charge of handling our inventory system, adding and transferring products within the system, and supporting our warehouse's needs. There was a lot to learn when I first arrived, but I've since learned a lot and I've been able to improve my English while on the job. My husband and I both work full time.

5. Apart from work, my husband and I lead a very normal and peaceful life here. We attend a local church as often as we can. We enjoy exercising when we can and leading a healthy lifestyle. We recently purchased a car to help us navigate life and work here, and we are working to establish good credit here too. On the weekends, when we have free time, we like to enjoy ourselves, including getting together with my brothers and father to enjoy a nice meal together. There is also a large Latino community in our area that has been welcoming, and we have settled into our life here in the United States well.

6. The life we have begun to create here in the United States looks very different compared to our lives back in Nicaragua. Everything started to deteriorate in 2018, when the social security reforms by President Ortega were announced, which would negatively impact a lot of people in the community. Looting in supermarkets became more common, which made it hard to find food. Many protests against this reform and the government began happening on a regular basis, and the police would come to these protests and take away as many protestors as possible, many times in violent ways.

7. While I was in college finishing up my studies in computer engineering, in 2018, I met Armando in Nicaragua. As a student I participated with other university friends in peaceful protests that were happening at my university regarding issues with the Nicaraguan government. I remember that during my time as a student I lived near another university, and there were several protests around that university that resulted in people sustaining serious injuries at the hands of the government, and at a certain point it was no longer safe for me to remain living near the school because of the ways these demonstrations were met with violence by the police and militia. At the time, my husband was a government employee and was not allowed to participate in protests, but we supported each other as the situation in Nicaragua grew more intense. We got married in April 2023.

8. Around July 2018, the police and pro-government militia entered the area where my family lived, as they were actively looking for my uncle. While looking for my uncle, the police raided my grandmother's house. My uncle was not there at the time, but the police arrested my father who was there and put him in jail. He spent about three to four days in jail, where they interrogated him about my uncle's whereabouts and physically beat him. All I could do was hope for his release. Eventually he was released, but our family remained people of interest in the police and government's eyes due to our last name, which is widely known by the government as being anti-government, and our family connection to our uncle and cousins.

9. While still in Nicaragua, in 2020, Armando worked as a web designer for a digital media platform that publishes commentaries on politics and the government in

Nicaragua. At a certain point, the police found and took hostage some of his co-workers at the company, simply because they took some water to some women who had been protesting a hunger strike. Eventually, once they were released, they left the country for their own safety. Although Armando's role was not very high profile, he remained fearful that he could be discovered by the Nicaraguan government, since the government had already identified the organization as being against the government.

10. The danger in Nicaragua for me and my family felt as if it was all just closing in on us, making it necessary for us to leave the country for our own safety and security. Armando and I began researching legal pathways to immigrate for our safety. That is why when the CHNV parole processes were announced and we learned about this path, it became a light of hope for me, my husband, and my family.

11. My cousin, who is a U.S. citizen living in Washington, is my sponsor under CHNV parole. During one of her visits to Nicaragua in May 2023, while visiting her father and my uncle who at the time was sick with cancer, she told us more about the CHNV parole and agreed to support us as our sponsor. This came as such a relief for me and my family, as we were actively looking for ways to lawfully leave the country for quite some time but there were no viable options for us.

12. We quickly moved to gather all the necessary documents and information needed for the application and process. My U.S. citizen cousin started the process and submitted the application to sponsor Armando and I in September 2023. I was approved to travel to the United States in December 2023, and I arrived in the

United States and was granted parole in February 2024. My parole expires in February 2026.

13. I first heard the announcement about the government's termination of the CHNV parole processes from the news. This came as a shock to us, and we became concerned that the government would revoke existing grants of parole. It was very rough news for us to hear, because I, my husband, and my family members still have time remaining on our parole. We thought that because we went through this lawful process to get parole in 2023, we would be protected for the full parole period. Now, we are left with uncertainty of what is to come.

14. My entire family is nervous about the possibility of our parole being terminated. We do not know what is going to happen. The possibility of having to return to Nicaragua is nerve-wracking, as the situation has not improved there, and my family and I remain targets there. And there is no guarantee I would even be let back into Nicaragua given the state of the country, leaving me and my family stranded and vulnerable in some other country. This possibility is devastating and leaves me with fear.

15. My husband, brothers, father, and I have been talking about this scary possibility of having our parole revoked. We try to remain in constant communication with one another. We are also saving all the money we can through work to prepare for this and what could come — and we are even making sure we all know each other's banking information in case one of us needs to access each other's funds in case of an emergency.

16. If my parole status is revoked, I will no longer be eligible to work and provide for myself, my husband, and my family. Specifically, my mother, who still lives in Nicaragua, relies on us to send her money to support her. As one of her main supporters, if my parole was revoked and I was no longer able to work or no longer had an income, I would no longer be able to provide for my mother and support her.

17. Maintaining my parole status is crucial for me, my husband, and my family to live a stable life free from danger, violence, and persecution, which we all face a serious risk for if we are removed and sent back to Nicaragua. And without work authorization, I will no longer be able to provide for myself, my husband, or my mother who remains in Nicaragua.

18. Last month, in January 2025, my husband and I submitted an application for asylum (Form I-589) to the United States Citizenship and Immigration Services ("USCIS"). I am listed as a derivative under my husband's asylum application. I applied for asylum because I fear that I will be persecuted due to my and my family's well-known political beliefs against the current governmental regime. My father, uncle, and cousin, Carlos, have been persecuted in the past, and my father was imprisoned by the Nicaraguan government before. The government knows where we live in Nicaragua. I do not doubt that my family and I will face the same grave dangers we once did if we are forced to return to Nicaragua.

19. I recently heard the news about the government's indefinite pause on processing immigration applications of people who entered the United States under CHNV parole. This includes me and my husband, who have both applied for asylum and

whose applications are pending. We did not expect that this would happen at all – – we thought we did everything right in terms of coming here on parole and then submitting an asylum application in order to seek additional protection from the dangers we face in our country. It is frustrating to think that this indefinite pause on processing my asylum application could cut off our access to this protection for an indefinite period of time, including our ability to obtain work authorization through the asylum application process, allowing us to continue working in the United States after our parole expires and while we wait for a decision on our asylum applications.

20. We have no guarantees in terms of our security in Nicaragua if we are forced to return there, while at the same time there is no guarantee we would even be let back into Nicaragua. So, without parole and the ability to continue pursuing asylum, our futures will be left up in the air, and we will be vulnerable and without security.

21. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our applications for immigration benefits processed, as they should be.

22. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

23. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the indefinite pause on the processing of immigration applications benefits.

24. While I believe in the importance of defending the CHNV parole processes, I am afraid of using my real name in this lawsuit. Specifically, I fear that if my real name were to be made public in this lawsuit, I could be retaliated against by the U.S. government and Nicaraguan government. I fear the possibility that if my name were public in this case and the U.S. government discovered I was going against them in this lawsuit, I could be subject to retaliation and deported, despite my pending asylum case. And if I were forced to return to Nicaragua because of the termination of my CHNV parole status, I am afraid that the Nicaraguan government could retaliate against me and my family again, and I could become a target for the Nicaraguan government due to my family's name and my connection to my uncle and cousin, whom the government was actively searching for.

25. Also, if my name were to be public, I fear that my other family members, like my sister, her husband, and her child, could be identified and targeted too, both by those who are here in the United States and hold anti-immigrant views, and in Nicaragua if she and her family are forced to return, given our family's name and the fact that the Nicaraguan government has targeted our family before.

26. For these reasons, I am respectfully asking the court to allow me to proceed as plaintiff in this lawsuit under a pseudonym, to protect myself and my family.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Gainesville, Georgia on 2/28/2025.

Ana Doe

CERTIFICATE OF INTERPRETATION AND TRANSCRIPTION

I, Emily Martin, certify that I am fluent in English and Spanish, that I am competent to interpret between these languages, and that I transcribed the foregoing between English and Spanish accurately. I further certify that I provided a translation of the foregoing to Ana Doe in Spanish and that she affirmed that it is true and correct.

Executed: 2/28/2025

Emily Martin

EXHIBIT 3

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., Plaintiffs, *– versus –* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al., Defendants.	**Civil Action No.: 1:25-cv-10495-IT**

DECLARATION OF ARMANDO DOE

I, Armando Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Managua, Nicaragua in May 1993. I am a national of Nicaragua.

2. I currently live in Gainesville, Georgia. I have lived in Gainesville since I arrived in the United States one year ago through the parole processes for nationals of Cuba, Haiti, Nicaragua and Venezuela ("CHNV").

3. I live with my wife, Ana Doe, who is from Nicaragua and also traveled to the U.S. on CHNV parole. Several other members of my wife's family live near us in Gainesville and came to the U.S. on CHNV parole.

4. I met Ana several years ago in Managua. We eventually got married in April 2023.

5. Prior to marrying, Ana and I had been thinking about leaving Nicaragua for a while. The sociopolitical situation in Nicaragua is not good and there are a lot of factors contributing to the insecurity there. Food is very expensive, and salaries are low, which makes it very difficult to survive. There were also many security concerns related to my work in Nicaragua.

6. My interaction with the government began in 2014 when I started my professional internship at the Nicaraguan Institute of Territorial Studies (INETER). That same year, I was hired as part of the IT department. Initially, it seemed like a promising professional opportunity, but I soon realized the tensions that came with working for a public institution under the current authoritarian regime.

7. From the beginning, it was clear that neutrality or disagreement with the government's stance was not tolerated. We were forced to participate in pro-government marches and events. Failing to comply with these obligations could cost you your job. Many of us feared retaliation and felt trapped in a system where we had no voice and no option to refuse.

8. In 2018, everything changed, and the situation became unsustainable when the government ignored a fire in a crucial natural reserve and rejected international aid to control it. This, combined with the announcement of increased social security contributions, sparked widespread discontent. On April 18, a peaceful protest was initiated, marking the beginning of a brutal government crackdown.

9. My wife, Ana, who was then a close friend, actively participated in these marches. On at least one occasion, she was in grave danger due to the violent repression by the National Police and pro-government groups. These experiences strengthened our bond, as we both shared the fear and uncertainty of living in a country where expressing an opinion contrary to the regime could cost you your life.

10. In 2018, when the social conflict in Nicaragua reached its peak, Ana was a direct witness to the repression her family suffered at the hand of the regime. In July 2018, Ana's grandmother's house was raided by the police in search of "stolen goods,"

but this was only an excuse for the police to look for her uncle. Ana's uncle was not there at that moment, so the police arrested Ana's father instead. Ana's father was accused of being connected to anti-government protestors. During the time her father was imprisoned, Ana used her social media to denounce her father's disappearance, which quickly gained the support of many people who shared her message, and the denouncement went viral on Twitter.

11. Ana's father was released a few days later, but there were many consequences of the arrest. Her father was labeled as a "defector" and "traitor" by government supporters, and his family was systematically harassed and persecuted. Many members of Ana's family were forced to leave the country. This experience left emotional scars on Ana and solidified our constant fear of living in a country where expressing an opinion can cost you your life.

12. In 2020, I started working for a digital media company founded by friends who had actively participated in the protests. Initially, my role was to develop the website and edit articles and columns. The company's mission is to democratize information and change the culture of politics in Nicaragua and the region at large. Over time, my involvement expanded to projects with other media outlets that documented electoral irregularities and government abuses.

13. Both media outlets frequently conduct investigations and publish reports that are critical of the Ortega government. One report publicized the number of people that did not vote in Nicaragua and, by doing so, directly challenged the accuracy of the government's report regarding the election.

14. Nicaraguan government officials made frequent posts on social media accusing the digital media company for whom I worked of publishing false information. In Nicaragua, it is not uncommon for the police to look for and interrogate people who speak out against the government. In 2019, various employees of the company I worked for were imprisoned for taking water to women who were protesting by hunger strike. This is when the company was labeled as an anti-government platform. Around a month and a half later, and after considerable international pressure, the Nicaraguan government released the four individuals from jail. Due to safety concerns, all four individuals left Nicaragua and fled to other countries after this incident.

15. Everyone who worked at our digital media company had to take precautions to ensure that their identities would not be discovered. All of the employees, except for one coworker and myself, were located outside of Nicaragua. I worked from home, used a virtual private network ("VPN"), and took security measures so that I could not be located. I could not tell anyone where I worked or whom I worked for because I feared that I would be put in jail.

16. Ana and I started living together in 2022. Living together was a relief, but it also meant constant concern for our safety, as we still feared the government discovering my involvement in anti-government projects. In my neighborhood, most residents were staunch supporters of the ruling party, and to this day, they remain so. Living in an area surrounded by people so committed to the regime heightened our fear. We knew that if at any point they discovered my work with anti-government organizations, the consequences would be severe for me and my family.

17. I heard about the possibility to travel to the United States through the CHNV parole processes from friends and family. Many people saw it as a good option because the process of applying for a U.S. visa is very complicated and slow. I was interested in applying for parole because it was a legal way to travel to the U.S. and the process was not as time intensive as other immigration processes like applying for a U.S. visa. I knew that I would need someone to sponsor me, so I decided to speak with family members living in United States to see if they would be willing to be my sponsor.

18. Ana's cousin, a U.S. citizen, lives in Washington state. Ana's cousin was visiting family in Nicaragua in May 2023, and Ana and I decided to talk to her about sponsoring us for parole. Ana's cousin agreed to be our sponsor and submitted her application to sponsor us for CHNV parole in September 2023. Three months later, in December 2023, I was approved to travel to the United States, and in February 2024, Ana and I traveled to the United States. Upon arrival we were granted two years of parole. My parole expires in February 2026.

19. I received my work permit in April 2024 and started working at a company in Gainesville that makes tractor trailers. I work installing axles in the Post Painting Assembly (PPA) area. It is hard work, but time goes by quickly.

20. Ana and I like living in Gainesville. The people are very warm and friendly, and there are many people from Central America. It was an easy adjustment since my wife's father and other family members were already here. We had a lot of help and support, and I feel like things have fallen into place for us. We are both working,

and we have started our savings and have also been building our credit. We would like to buy a house in the future.

21. We enjoy living an active lifestyle and taking care of ourselves. Life can be fast here, so we focus on our health. We like working out together, cooking healthy meals, and spending time outdoors.

22. I first heard that CHNV parole was being terminated in late January 2025. Information spread very quickly on social media and on Nicaraguan news outlets, and I saw an article in the *New York Times* about it as well. We also started to hear reports of immigration officials being in the area and making arrests.

23. After hearing that the CHNV parole processes were ending, I felt stressed and anxious that Ana's and my grants of parole could be revoked. It felt like we were just getting started here and now our wings were getting clipped. Ana and I made so many sacrifices to come to the United States, including leaving my parents, our home, our pets, and our jobs behind. Everything is happening very quickly. One day we were talking about buying a house, and the next day we were talking about what it would mean if we had to leave. It has been very difficult, and it seems very unfair to be told that after only one year, we can't be here anymore. We made the decision to leave Nicaragua through CHNV parole thinking that we were going to have more time.

24. Ana and I started talking and trying to figure out what to do. We are trying to prepare ourselves psychologically for what may happen. If our parole is terminated and we are deported, it is important for us to recoup some of the financial

investments that we've made, so we have discussed selling our car and our other belongings before we have to leave, if it comes to that.

25. Maintaining my parole status is critical for me and my family. It has given me a chance to establish myself and start a new life. The salary I earn at my job allows me to help my family in Nicaragua and build my own savings. I often send money to my parents in Nicaragua to help pay for medical appointments and for living expenses, especially since they are caring for my pets. My parole status has also allowed me time to apply for asylum, which is critical for my safety.

26. If my parole status is revoked, I will no longer be eligible to work and provide for my family. If I am unable to work here, I will be forced to return to my country where I risk facing persecution by the Nicaraguan government.

27. In January 2025, I submitted an application for asylum to USCIS, and in February 2025, I traveled to Atlanta, Georgia to attend my biometrics appointment. I applied for asylum because I am scared to return to Nicaragua, and a grant of asylum would offer my wife and I more long-term protection since our parole will expire next year.

28. Two weeks ago, we heard on the news that the United States government plans to indefinitely pause processing all immigration applications filed by people who came to the United States on CHNV parole. This would mean that mine and Ana's asylum applications are not going to be reviewed for this indefinite period of time. If my parole is terminated, and I am not permitted to continue with my asylum application, I will be completely without protection.

29. I feel like this is very unfair and inhumane. I believe that Ana and I have a right to seek asylum especially since the situation in Nicaragua is dangerous for us. If I am forced to return to Nicaragua, the Nicaraguan government may become aware of my work for the digital media company that it targeted, and I would not be safe. I believe I would be interrogated and imprisoned.

30. After hearing the news regarding the pause on processing immigration applications, I feel very uncertain about our future. It would be very risky to attempt to return to Nicaragua knowing that things have not changed there. If Ana and I were to return to Nicaragua we would be stripped of our citizenship and imprisoned. Those who remain in Nicaragua live under constant surveillance and persecution, and those who have returned have faced arbitrary detentions, torture, and threats. The people I know have not considered returning to Nicaragua out of fear of retaliation. I also believe that it is likely that we would be denied entry to the country. If I am not allowed to pursue asylum in the United States and not allowed to return to Nicaragua, I would be in complete limbo.

31. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our applications for immigration benefits processed, as they should be.

32. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

33. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all

harmed by the indefinite pause on the processing of immigration applications benefits.

34. For related reasons, I am very nervous about publicly using my real name in this lawsuit. I am afraid that if the U.S. government knows that I am participating they will retaliate against me and my family and will deport us all to Nicaragua. If I were to get deported, I would no longer be able to continue with my asylum application, which is very important for my own safety. I am also concerned that the Nicaraguan government could learn about my involvement in this lawsuit and discover the story I am telling about the terrible conditions in the country and how it is unsafe for people who speak out against the government. If I end up being deported to Nicaragua, I fear that I will be targeted for retaliation by the government. If I am not permitted to use a pseudonym in this lawsuit, I will likely decide not to participate. I can't risk my safety and that of my family.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Gainesville, Georgia on 2/27/2025.

[redacted]

Armando Doe

CERTIFICATE OF INTERPRETATION AND TRANSCRIPTION

I, Emily Martin, certify that I am fluent in English and Spanish, that I am competent to interpret between these languages, and that I transcribed the foregoing between English and Spanish accurately. I further certify that I provided a translation of the foregoing to Armando Doe in Spanish and that he affirmed that it is true and correct.

Executed: 2/28/2025

Emily Martin

EXHIBIT 4

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., Plaintiffs, *– versus –* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al., Defendants.	**Civil Action No.: 1:25-cv-10495-IT**

DECLARATION OF CARLOS DOE

I, Carlos Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Jinotepe, Nicaragua in May 2000. I am a national of Nicaragua.

2. I currently live in Gainesville, Georgia. I have lived in Gainesville since 2023 when I arrived in the United States after receiving parole under parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV"). I live with my brother and one of my cousins, who are both here in the United States with CHNV parole. My uncle and four other cousins—which include Ana, Armando (Ana's husband), Alejandro, and another cousin of mine—also reside in the United States with CHNV parole, and they all live in Gainesville, too.

3. After obtaining my work authorization in October 2023, I began working at a company dealing in trailers, where I learned how to weld and solder. I have also worked providing food delivery services and in home renovations. I currently work for a manufacturing plant where I'm continuing my work as a welder and solderer. I have learned a lot through these jobs and have improved my English significantly.

4. I have created a community here in Gainesville, made new friends, and created new social circles. I like to practice Jiu Jitsu and Mixed Martial Arts and have made several friends through the sport. I have also made friends through my past jobs, and I remain in contact with many of them. In the social circles that I am part of, I have met Latino, Black, and white Americans and they have all treated me with respect. Many of these people have also helped me with finding work. I have had a good experience living here in the United States, and I have found the communities here have a lot of love and respect for one another.

5. My life in Nicaragua was very different to the life I have now in the United States. I fled Nicaragua because it became politically unstable, and the government was persecuting my family. In 2018 as a university student, I became involved in protests against the government. Other protests in my city broke out until the government came to my city and assassinated about 32 people and more than 50 people disappeared. The army, with help from some neighbors of mine, later identified me as being involved in the protests and being against the government. Soldiers and police officers then came to my house several times with death threats against me and my family. My father and I decided we had to flee our hometown and go into hiding. While in hiding we received anonymous calls and more death threats. Most recently in 2021, military soldiers visited my mother's house, where my mother and little brother currently live, and they told her that they will imprison my father and I for treason if they ever find us.

6. When the CHNV parole processes were first announced, my father informed me about these parole processes, but I also heard about it in the news. A family member

of mine was able to sponsor me through CHNV parole. I was approved to travel to the United States in May 2023, and I arrived in the United States and was granted parole in June 2023. My parole expires in June 2025.

7. I first heard the announcement about the Trump administration ending the CHNV parole processes from both the news and my U.S. citizen cousin who lives in Washington who has sponsored my four other cousins through CHNV parole. Along with the end to the processing of new applications, I heard that it was a possibility that existing grants of parole would be revoked as well.

8. When I heard about the possibility of my parole being terminated, I became extremely worried and scared about being deported. I'm also scared to lose my work authorization in the United States if my parole is terminated. My mother and little brother living in Nicaragua depend on me financially. I also financially support my sister, who lives in Costa Rica at the moment. I'm scared to be deported and left with nothing. My family would suffer significant hardship if my parole status were revoked, not only financially but also emotionally and psychologically.

9. Since learning about the government's termination of CHNV parole, I have been trying to prepare for the worst outcome. I have taken some cash out from my savings account in preparation. If I am deported, I hope someone can send me my savings so that I can have something. I also have copies of all my personal documents and immigration filings in case I lose access to all of these important documents.

10. Maintaining my parole status is critical for maintaining my safety, and the safety of my family who remain in Nicaragua. I fear the Nicaraguan government is still after

me and my dad and I fear for our lives if we were to return. If I return to Nicaragua, I also fear I will not be able to provide for my family who depend on me financially.

11. Last month, in January 2025, I submitted an application for asylum (Form I-589) to United States Citizenship and Immigration Services ("USCIS"). I have an appointment with USCIS on March 4, 2025. I applied for asylum because I fear that I will be persecuted by the Nicaraguan government based on my anti-governmental political beliefs and their previous attempts to persecute my father and I when we lived in Nicaragua.

12. I recently learned that the government has indefinitely paused the processing of immigration benefit applications filed by people who came to the United States with parole, like CHNV parole. This means that there is an indefinite pause in the processing of my asylum application. Seeking asylum while here in the United States under parole was the only avenue I had to secure a more secure legal status, and to obtain work authorization through my asylum application, which would allow me to continue working after my parole expires and while I wait for my asylum case to be decided.

13. Now, on top of worrying about the government's termination of CHNV parole and the potential revocation of my parole status, I am very worried and anxious about this indefinite pause on the processing of my asylum application. If I am without protection from parole and my asylum application is paused indefinitely, I feel that I am more at risk of being without a legal status, without work authorization, and of being deported back to the danger and persecution I fled from in Nicaragua in the first place.

14. This all feels very unjust to me. My cousins and I are working hard, paying taxes, and engaging with and contributing to our local communities. My cousins and I have been doing well in the United States and to take away our parole under CHNV and indefinitely freezing our asylum applications, which was our only other option to seek legal protection here in the United States, is just not right.

15. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our applications for immigration benefits processed, as they should be.

16. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

17. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the indefinite pause on the processing of immigration applications benefits.

18. With all of this being said, I am afraid of using my real name in this lawsuit. Specifically, I fear that if my real name were to be made public in this lawsuit, I could be retaliated against by the Nicaraguan and U.S. government. In Nicaragua, I fear that I am still a wanted man for my anti-government political views. I fear that the Nicaraguan army will follow through with the death threats made against me and my father. The possibility of being imprisoned for treason is also still a threat. I also fear that if my name were made public in this case and the U.S.

government discovered I was going against them in this lawsuit, I could be subject to retaliation and deported, despite my pending asylum case.

19. For these reasons, I am respectfully asking the court to allow me to proceed as plaintiff in this lawsuit under a pseudonym, to protect myself and my family.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Gainesville, Georgia on 2/27/2025.

Carlos Doe

CERTIFICATE OF INTERPRETATION AND TRANSCRIPTION

I, Elia Gil Rojas, certify that I am fluent in English and Spanish, that I am competent to interpret between these languages, and that I transcribed the foregoing between English and Spanish accurately. I further certify that I provided a translation of the foregoing to Carlos Doe in Spanish and that he affirmed that it is true and correct.

Executed: 2/28/2025

Elia Gil Rojas

Elia Gil Rojas

EXHIBIT 19

(Amended)

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., *Plaintiffs*, v. Kristi Noem, et al., *Defendants*.	C.A. No: 1:25-cv-10495-IT

DECLARATION OF ANDREA DOE

I, Andrea Doe, upon my personal knowledge, hereby declare as follows:

1. I am a citizen of Nicaragua. I was born in the Department of Carazo in Nicaragua in 1991.
2. I currently live in Mount Airy, Maryland, with my husband, Rafael Doe, and our two young children, Isaias and Francisco Doe.
3. My husband Rafael was a political prisoner in Nicaragua before the United States government flew him to this country on February 9, 2023. He was jailed for his opposition to the regime of Daniel Ortega and sentenced to over 20 years in prison. The Nicaraguan government held him under terrible conditions and he suffered physical and mental torture.

4. Our separation was terribly hard on our children and me. It wasn't just that I missed my husband terribly and that the children missed their father—the Nicaraguan police were also surveilling our house and harassing me. Police vehicles would station themselves in front of our house, and when we visited my husband at the penitentiary where he was being held, police agents would be waiting for us at the corner until we got on the bus. It was terrifying for the children.
5. After four long years of this, the Nicaraguan government abruptly released 222 political prisoners, among them Rafael. The Ortega regime agreed to release them on the condition that the United States take them. Before any of us knew what was happening, Rafael and 221 of our imprisoned compatriots had been pulled out of prison and were on a flight to the United States.
6. He and the others in the same situation were brought into the United States through parole.
7. I was so relieved that Rafael was out of prison and safe in the United States, but his departure left me and our children in a very unsafe situation in Nicaragua.
8. A kind American whom Rafael had gotten to know through another passenger on the flight out of Nicaragua sponsored me and the children to be reunited with him here in Maryland. He sponsored us through the program the United States government had set up for Cubans, Haitians, Nicaraguans, and Venezuelans to apply for humanitarian parole to the United States.
9. We were all reunited in Maryland in the summer of 2023. Rafael found volunteer lawyers to represent him in applying for asylum, and he included the children and me in his application.

10. Rafael found a job with a company that installs vinyl on vehicles for use as publicity, and the same company then hired me as well after I received my work permit. We have rented an apartment. Our children have settled in; they are both attending elementary school and have made friends. We felt happy and well-integrated into our new community.

11. The news that the U.S. government was canceling the Nicaraguan parole program and suspending processing of any immigration applications the children and I have filed or may file in the future, has come as a great shock. The children and I are included in Rafael's application for asylum, which is pending. Our safety and our future depend on the protection asylum would give us.

12. If the children and I could not get our asylum application adjudicated and were deprived of that path to safety in the United States, it would be a disaster for us, individually and as a family. The Nicaraguan government saw me visiting Rafael in prison. They were watching our house. They know that I am his wife. If I were forced to go back to Nicaragua now I would be detained and the government would take my children away. When I was trying to leave in 2023, I was held up for two hours at the airport in Managua, they took my passport and those of the children and pulled me out of line. They finally let us go, but it was frightening.

13. Rafael would not want us to face such danger on our own, but if he went back to Nicaragua he would be detained immediately. And he could not return to Nicaragua even if he wanted to: when it expelled him and the other passengers on the February 9 flight to the United States, the regime of Daniel Ortega also stripped them of their Nicaraguan

citizenship. As a result, Rafael is now stateless, and until his application for asylum is approved, he has no access to documentation that would allow him to travel anywhere.

14. We were welcomed here in Maryland and we have felt happy here. We have been working very hard to build a future for our family. These recent decisions by the U.S. immigration authorities are causing us great anxiety. Rafael came to this country under circumstances over which he had no control at all, because the Nicaraguan government decided to expel him and the United States government flew him and the others here to keep them safe. The U.S. government told the passengers on this flight to use this Nicaraguan parole program to apply for reunification with their family members who were left behind in Nicaragua, and that is what Rafael did, with help from the community here.
15. I am participating in this lawsuit so that I and my children and others who are in the same position can have our applications for immigration benefits processed in a normal way.
16. I am asking that my husband and children and I allow us to appear under pseudonyms in the court filings. We have a pending asylum application, and we have security concerns with respect to the Nicaraguan government, but I am also worried now about the consequences for our lives here in the United States if we are known to be plaintiffs in this lawsuit. There has been a lot of ugly talk about immigrants recently, and I do not want my family to be targeted for abuse that we really have done nothing to deserve. My family and I are very grateful for U.S. government's help in getting Rafael released from his unjust sentence in Nicaragua, for bringing him here, and for helping us reunite after our long separation. We just want to make sure we can continue living and working here in safety and that our application for asylum is processed normally.

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

Signed at Mount Airy, Maryland,
on March 16, 2025.

_____
Andrea Doe

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., *Plaintiffs*, v. Kristi Noem, et al., *Defendants*.	C.A. No: 1:25-cv-10495-IT

DECLARATION OF ANDREA DOE

Yo, Andrea Doe, según mi conocimiento personal, declaro lo siguiente:

1. Soy ciudadana de Nicaragua. Nací en el departamento de Carazo, Nicaragua, en 1991.

2. Actualmente vivo en Mount Airy, Maryland, con mi esposo, Rafael Doe, y nuestros dos hijos pequeños, Isaías y Francisco Doe.

3. Mi esposo, Rafael, fue preso político en Nicaragua antes de que el gobierno de Estados Unidos lo trasladara a este país el 9 de febrero de 2023. Fue encarcelado por su oposición al régimen de Daniel Ortega y condenado a más de 20 años de prisión. El gobierno nicaragüense lo mantuvo en condiciones terribles y sufrió tortura física y mental.

4. Nuestra separación fue terriblemente dura para nuestros hijos y para mí. No solo extrañaba muchísimo a mi esposo, y a mis hijos a su padre, sino que la policía nicaragüense también vigilaba nuestra casa y me daba asedio. Vehículos policiales se estacionaban frente a nuestra

casa, y cuando visitábamos a mi esposo en la penitenciaría donde estaba detenido, los agentes nos esperaban en la esquina hasta que subíamos al autobús. Fue aterrador para los niños.

5. Después de cuatro largos años de esto, el gobierno nicaragüense liberó abruptamente a 222 presos políticos, entre ellos Rafael. El régimen de Ortega accedió a liberarlos con la condición de que el gobierno de los Estados Unidos los aceptara. Antes de que ninguno de nosotros supiera lo que estaba sucediendo, Rafael y 221 de nuestros compatriotas encarcelados habían sido sacados de la cárcel y estaban en un vuelo a Estados Unidos.

6. A él y a los demás en la misma situación los dejaron entrar a Estados Unidos con "parole."

7. Sentí un gran alivio de que Rafael estuviera fuera de la cárcel y a salvo en Estados Unidos, pero su partida nos dejó a mí y a nuestros hijos en una situación muy insegura en Nicaragua.

8. Un amable estadounidense a quien Rafael había conocido a través de otro pasajero en el vuelo de salida de Nicaragua nos patrocinó a mí y a los niños para que nos reuniéramos con él aquí en Maryland. Nos patrocinó a través del programa que el gobierno de Estados Unidos había establecido para que cubanos, haitianos, nicaragüenses y venezolanos solicitaran permiso humanitario para entrar en Estados Unidos.

9. Nos reunimos en Maryland en el verano de 2023. Rafael encontró abogados voluntarios que lo representaran en la solicitud de asilo y nos incluyó a los niños y a mí en su solicitud.

10. Rafael encontró trabajo en una empresa que instala vinilos publicitarios en vehículos, y la misma empresa me contrató también después de recibir mi permiso de trabajo. Hemos alquilado un apartamento. Nuestros hijos se han adaptado; ambos asisten a la escuela primaria y tienen amigos. Nos sentimos felices y bien integrados en nuestra nueva comunidad.

11. La noticia de que el gobierno de Estados Unidos cancelaría el programa de "parole" humanitario nicaragüense y suspendería el procesamiento de cualquier solicitud de inmigración

que los niños y yo hayamos presentado o podamos presentar en el futuro ha sido una gran sorpresa. Los niños y yo estamos incluidos en la solicitud de asilo de Rafael, que está pendiente. Nuestra seguridad y nuestro futuro dependen de la protección que nos brindaría el asilo.

12. Si mis hijos y yo no lográramos que se aprobara nuestra solicitud de asilo y nos privaran de esa vía hacia la seguridad en Estados Unidos, sería un desastre para nosotros, individualmente y como familia. El gobierno nicaragüense me vio visitando a Rafael en prisión. Vigilaban nuestra casa. Saben que soy su esposa. Si me obligaran a regresar a Nicaragua ahora, me detendrían y el gobierno me quitaría a mis hijos. Cuando intentaba irme en 2023, me retuvieron dos horas en el aeropuerto de Managua; me quitaron el pasaporte y el de los niños, y me sacaron de la fila. Finalmente nos dejaron ir, pero fue aterrador.

13. Rafael no querría que corriéramos ese peligro solos, pero si regresara a Nicaragua, sería detenido de inmediato. Y no podría él regresar a Nicaragua aunque quisiera: cuando lo expulsaron a él y a los demás pasajeros del vuelo del 9 de febrero a Estados Unidos, el régimen de Daniel Ortega también les quitó la ciudadanía nicaragüense. Como resultado, Rafael ahora es apátrida y, hasta que se apruebe su solicitud de asilo, no tiene acceso a la documentación que le permita viajar a ningún lugar.

14. Nos recibieron bien aquí en Maryland y nos sentimos felices. Trabajamos duro para construir un futuro para nuestra familia. Estas recientes decisiones de las autoridades migratorias estadounidenses nos causan gran ansiedad. Rafael llegó a este país en circunstancias que escapaban a su control, porque el gobierno nicaragüense decidió expulsarlo y el gobierno de Estados Unidos los trajo aquí en avión, junto con los demás, para mantenerlos a salvo. El gobierno estadounidense les indicó a los pasajeros de este vuelo que usaran este programa de

"parole" para los nicaragüenses para solicitar la reunificación con sus familiares que se quedaron en Nicaragua, y eso fue lo que hizo Rafael, con la ayuda de la comunidad de aquí.

15. Participo en esta demanda para que yo mis hijos y otras personas en la misma situación podamos tramitar nuestras solicitudes de beneficios migratorios de forma normal.

16. Solicito que mi esposo, mis hijos y yo nos permitan aparecer bajo seudónimos en los documentos judiciales. Tenemos una solicitud de asilo pendiente y tenemos preocupaciones de seguridad con respeto al gobierno nicaragüense, pero también me preocupan las consecuencias para nuestras vidas aquí en Estados Unidos si se nos descubre como demandantes en esta demanda. Últimamente se ha hablado mucho de los inmigrantes de forma bien fea, y no quiero que mi familia sea víctima de abusos que realmente no hemos hecho nada para merecer. Mi familia y yo estamos muy agradecidos por la ayuda del gobierno estadounidense para liberar a Rafael de su injusta condena en Nicaragua, por traerlo aquí y por ayudarnos a reunirnos después de nuestra larga separación. Solo queremos asegurarnos de que podamos seguir viviendo y trabajando aquí con seguridad y de que nuestra solicitud de asilo se tramite normalmente.

Declaro bajo pena de perjurio que las declaraciones anteriores son verdaderas y correctas según mi leal saber y entender.

Firmado en Mount Airy, Maryland, el 16 de marzo de 2025.

_____

Andrea Doe

CERTIFICATE OF TRANSLATION

I, Shala Gafary, am competent to translate from Spanish to English, and certify that the translation of **Declaration of Andrea Doe** is true and accurate to the best of my abilities.

Date: 3/17/2025

Shala Gafary
Human Rights First
121 West 36th Street
PMB 520
New York, NY 10018
212-845-5247
gafarys@humanrightsfirst.org

ATTACHMENT C

to Plaintiffs' Second Supplemental Motion to Proceed Under Pseudonym

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al. Plaintiffs, – *v* – KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al. Defendants	Civil Action No.: 1:25-cv-10495-IT

DECLARATION OF LUCIA DOE

I, Lucia Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Caracas, Venezuela in 1980. I am a national of Venezuela.
2. I currently live in St. Augustine, Florida. I have lived in St. Augustine since I came to the United States through the parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV") eight months ago in July 2024.
3. Before coming to St. Augustine, I lived with my mom in Merida, Venezuela. When the parole process for Venezuelans was announced in 2022, I heard about it on the news and later spoke to my sister, Plaintiff Norma Lorena Dus ("Lorena"), about the process. Lorena is a U.S. citizen and lives in West Stockbridge, Massachusetts and she is my sponsor for CHNV parole.
4. I decided to leave Venezuela due to the difficulty my family was having financially. I never wanted to leave Venezuela and live abroad, but unfortunately the situation in Venezuela is unsustainable. In Venezuela, I lived with my mom in Merida. I helped provide for them financially, but the salary I earned working was never sufficient to provide for even basic needs like food, rent, and clothing.

5. In Venezuela, I was employed as the Director of Children's Ministries at a local Christian church in Merida. I have a bachelor's degree in Christian Education from the Universidad Teologica del Caribe (Theological University of the Caribbean) in Saint Just, Puerto Rico. I worked for 12 years at the church and loved my job. However, my salary at the church was around $60 per month, which was not nearly enough to cover our most basic expenses, which were around $500 per month. This was a very typical monthly salary in Merida where I lived. Since no one can live on a salary this low, most people were always looking for side jobs and new income streams. My mom and I were not able to survive on the money I made working at the church, so we had to rely on financial assistance from my siblings living abroad. Thanks to my siblings, we were able to survive and have enough money for food and rent.
6. When I learned about the opportunity for CHNV parole, I talked with Lorena about the possibility of her sponsoring me so that I could go to the U.S. to work and help our family. I felt like there was more to life than the way I was living in Venezuela, and that I shouldn't have to work that hard to just survive.
7. Lorena submitted an application to sponsor me for CHNV parole in December 2022. I was excited when I was approved to travel to the United States in May 2024, and I traveled from Venezuela to Colombia, and then from Colombia to St. Augustine, Florida in July 2024.
8. When I arrived in Florida, U.S. immigration officials reviewed my documents and granted me parole until July 2026. I quickly applied for a social security number and a work permit, and my documents arrived in August 2024.

9. I decided to live in St. Augustine rather than near my sister in Massachusetts because, from a previous trip I made to Florida when I was studying in Puerto Rico, I already had several friends living and working in St. Augustine. I thought it would be easier to find work there and I also needed access to public transportation since I do not have a car. My sister lives in a rural part of Massachusetts and I knew if I lived there, it would be much harder to find a job and get transportation to and from work.
10. I have adapted easily to living in St. Augustine. I am renting a room from a friend and after receiving my work permit, I was hired by a cleaning company. I work cleaning apartments, condominiums, houses, schools, and businesses and I can either ride my bike or take the bus to work. I like to ride my bike around town, and I also enjoy going to the beach. I regularly attend a local Christian evangelical church and hope to get more involved in their ministries.
11. Around the beginning of February, I heard about the possibility of my parole being terminated from the news and social media. I was immediately alarmed and started feeling like I was in a moment of crisis.
12. On March 21, 2025 I heard that the CHNV parole process had been terminated and that the remaining time I had on my parole is being revoked. I am very worried that I will now be here in the U.S. without papers, as that was never part of my plan. I do not want to be in the U.S. without a legal status. I am worried about being deported back to Venezuela and tarnishing my immigration record in a way that does not allow me to come back in the future.
13. From the initial outset of applying for parole my plan has always been to use my full two years of parole to work, financially support my parents, and save money for my future. I

also want to pay my sister back for the money she has spent covering my expenses related to my parole, including my work permit and transportation to the United States. I want to stay here for the remainder of time I have left on my parole. It seems very unfair to be in limbo and at risk of being deported when I made many sacrifices to come here legally.

14. If I were to have to return to Venezuela now, there would be many economic implications. I would not have sufficient money to pay back the money I owe to my sister. I would also be returning to Venezuela with very little savings, which would make my future there very uncertain. It would also mean less help for my family and a greater financial burden on my brothers and sisters. If I do have to return, I will need to find a job and it is very difficult to find work in Venezuela if you are older than 40 years old, as people assume that you will not be as productive. Thinking about having to return right away gives me anxiety.
15. Since learning of the possible termination of my parole I have been saving money in case I need to purchase a last-minute plane ticket to return to Venezuela. This is my priority right now and I am trying not to spend money on anything extra.
16. I am participating in this lawsuit so that I, along with other individuals who are in the same position, are allowed to stay in the United States for the remainder of the time that we have left on our parole.
17. I am willing to serve as a class representative on behalf of those who are similarly situated to me.
18. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class

representative means. I want to help everyone in my situation because we are all harmed by the revocation of parole.

19. I am scared to go back to Venezuela and fearful of what the Venezuelan government will do if they see the parole stamp on my passport when I re-enter the country. I have heard many stories of the government interrogating Venezuelans who have returned home after seeking parole or asylum in other countries. Many Venezuelan citizens who have returned have been forced to pay money to military officials at the border in order to be allowed to return to Venezuela, and others have had their passports confiscated or have ended up imprisoned. I have also heard of people disappearing after they have been arrested. I am afraid of the Venezuelan government retaliating against me in this way.

20. I want to use a pseudonym in this litigation because I am afraid of retaliation by the Venezuelan government. The government closely monitors social media and news reports. I have seen reports that government officials interrogate and imprison anyone who speaks out against the government or discusses the difficulties of living in Venezuela. I am afraid of them knowing that I left Venezuela to come to the U.S. on parole and that I am participating in this lawsuit. I try very hard not to talk about politics publicly, but I am implicated by truthfully stating what is going on in Venezuela and saying that I don't feel safe there. I believe that if I use my real name, the government will target me. If I am not able to participate in this litigation using a pseudonym, I may consider not participating at all.

21. While I don't want to be in the United States without legal status and jeopardize my ability to come back legally in the future, I also don't want to be retaliated against and

singled out for removal. I am fearful that if I use my real name I may be targeted and deported.

22. Maintaining my parole status is critical for me and my family. It is the only opportunity I have to better my life.

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I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in St. Augustine, Florida on March 25, 2025

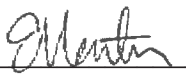
[redacted]

Lucia Doe

CERTIFICATE OF INTERPRETATION AND TRANSCRIPTION

I, Emily Martin, certify that I am fluent in English and Spanish, that I am competent to interpret between these languages, and that I transcribed the foregoing between English and Spanish accurately. I further certify that I provided a translation of the foregoing to Lucia Doe in Spanish and that she affirmed that it is true and correct.

Executed: 3/25/2025



Emily Martin

ATTACHMENT

to Plaintiffs' Second Supplemental Motion to Proceed Under Pseudonym

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs*, *v.* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, *Defendants.*	Case No.: 1:25-cv-10495-IT

DECLARATION OF MIGUEL DOE

I, Miguel Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Diriamba, Nicaragua, on November 7, 2002. I am a national of Nicaragua.
2. I currently live in Gainesville, Georgia. I have lived in Gainesville since I entered the United States.
3. I entered the United States with my brother, Alejandro Doe, under the parole process for Nicaraguans, a component of the CHNV parole processes announced on January 6, 2023. My cousin, a U.S. citizen who lives in Washington, sponsored me through the program. I received travel authorization in May 2024, and arrived in the United States on July 29, 2024. After spending time at inspections at the airport, officers granted me a temporary two-year stay in the United States. I received work authorization pursuant to my parole in September 2024.
4. My U.S. citizen cousin was the first in our family to learn about the CHNV parole processes. She informed my father, and I became aware of them around July or August of 2023, when my father explained the process to me and that he would be traveling to the

United States through the parole process for Nicaraguans. Eventually, my siblings and I followed him. I traveled with my brother, Alejandro Doe.

5. I decided to come to the United States because it seemed like an incredible opportunity. In Nicaragua, I began university studies in 2020, studying nutrition at UNAN-Managua (National Autonomous University of Nicaragua). I studied off-and-on throughout the next three years, but due to COVID- and program-related impediments, I was unable to complete my studies. When COVID spread through Nicaragua, my school closed for some time. When classes resumed, however, the University had made changes to the curriculum and course requirements, and many of the classes I had taken had changed names. In my transcript, it showed I had not taken the courses, and I was forced to retake them. Shortly after, the University told me I could not continue in my second year of study because many of the classes I needed overlapped with the times of other courses I needed. I felt the University could have accommodated me. Instead, they returned me to my first year of study and reclassified me accordingly.
6. Because I was not progressing, I decided to pause my university studies and work for a time. A year later, I returned to school. I did not have the resources to attend a private university, so I returned to UNAN-Managua, but unfortunately, things had not improved there. Classes were always getting cancelled; one month, I only had five classes. I decided I could better spend my time working.
7. I worked for a time in a fast-food restaurant, but the restaurant closed, leaving me without a job. Around December 2023, I became an electrician's assistant, but there were problems with the business. They did not pay us, and the project did not continue. In 2024, I found a job working in construction, which I enjoyed, but it was only temporary.

8. When the opportunity for parole came along, I spent a long time considering it, especially given that I would be leaving not only my friends and community I grew up in, but also my mother with whom I lived and whom I helped take care of. Ultimately, I decided I could best help my family and my own future by coming to the U.S. I was excited to work hard in the United States for two years, save up and invest money, and improve my future as well as my family's.
9. My experience in the U.S. has been better than I hoped. After receiving my work authorization, I found a good job quickly. In Nicaragua, it is very hard to find work, let alone work that pays decent wages. I currently work full-time producing marble panels. Outside of work, I enjoy spending time with my family.
10. I first started to hear rumors of a potential end to the CHNV parole processes on social media. Around this same time, I began seeing videos on the news and social media about immigration raids and deportations. It was hard to distinguish the extent of what was happening amid so much chaos, so I tried not to get too worried about it all. But around the beginning of February, my U.S. citizen aunt confirmed to me and my family that the Trump administration would be ending CHNV parole.
11. Since then, everything has felt uncertain. I've heard about raids and deportations happening in my own town, Gainesville, which has hit the community hard. On March 21, I learned about the publication of the Federal Register notice that will officially terminate the CHNV parole process and revoke my parole. This news makes me fearful for my safety. Neither I nor my family has done anything wrong, but we have felt forced to keep a low profile, avoiding going out whenever possible. I also follow networks that

post about where people have seen ICE, and I try my best to avoid those locations. Living this way has impacted my daily life and makes me worry about the future.

12. I came to this country with the idea that the United States is the land of opportunity—a place where one could get ahead. I came through a legal process. I have done everything the U.S. government has asked, caused no trouble, and I have contributed to the United States. So I could not believe when I learned that the Trump administration is not only cancelling the parole processes, but revoking people's parole as well, leaving us without legal status and work authorization. I never expected this could happen.
13. I never planned on staying in the U.S. indefinitely. My mother remained in Nicaragua alone when I left, and I need to help take care of her. My family has limited resources in Nicaragua. But I have only been in the U.S. for a matter of months, far less than the time the U.S. government initially approved me for parole. I came to this country to work and to be a contributing member of society. I was granted legal permission to be here, but from one day to the next the government has changed its mind, stating that I am now here illegally. This is unjust and unfair.
14. I wish the administration would think through what their actions will do to people. Parole benefits not only parolees, but the United States. We are not bad people, and we are not looking for trouble. We are just here to work and help our families. Families suffer when they're deported.
15. I am worried about what will happen to my own family if we are deported to Nicaragua. Since the 2018 protests in Nicaragua, there is no freedom of expression. Even displaying a Nicaraguan flag can get you imprisoned. If you enter the country as a deportee, you are looked down on by the public loyal to the ruling regime, and you must go through a long,

involved interview process with government officials—the government assumes you are against it.

16. I am heavily weighing my options. I have not accomplished what I hoped to in the U.S. in my short time here, but if I stay in the country undocumented, I could have bigger problems to deal with. I was previously considering filing for asylum given my family's history of political persecution, even though it would make me a bigger target for my own government if I were to be deported. But now even that option has been taken away from me. It feels like an untenable situation, and one that could have been avoided if the U.S. government had kept its word.
17. Defending CHNV parole from termination, maintaining my status and work authorization, and having the opportunity to file for other immigration relief I am eligible for are vital for me. I am participating in this lawsuit so that I, along with other individuals who are in the same position, may be protected from the Trump administration's actions.
18. I am willing to serve as a class representative on behalf of those who are similarly situated to me.
19. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the cancellation of our parole status and work authorization, and the indefinite pause on the processing of immigration applications benefits.
20. For all of the above reasons, however, I fear having my real name become public in this lawsuit. I fear that if the U.S. government knows that I am participating, it will retaliate

against me and my family and deport us all to Nicaragua. I fear that if we are deported, the Nicaraguan government will retaliate against us in turn as parolees, as asylum-seekers, and as a family with a history of State political persecution. If I am not permitted to use a pseudonym in this lawsuit, I will likely decide not to participate. I cannot risk my safety and that of my family.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Gainesville, Georgia on March 24, 2025.

Miguel Doe

CERTIFICATE OF INTERPRETATION AND TRANSCRIPTION

I, Elia Gil Rojas, certify that I am fluent in English and Spanish, that I am competent to interpret between these languages, and that I transcribed the foregoing between English and Spanish accurately. I further certify that I provided a translation of the foregoing to Miguel Doe in Spanish and that he affirmed that it is true and correct.

Executed: 3/24/2025

Elia Gil Rojas

Elia Gil Rojas

ATTACHMENT E

to Plaintiffs' Second Supplemental Motion to Proceed Under Pseudonym

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs*, *v.* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, *Defendants.*	Case No.: 1:25-cv-10495-IT

DECLARATION OF DANIEL DOE

I, Daniel Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Delmas, Haiti in October 1992. I am a national of Haiti.
2. I currently live in Orlando, Florida. I have lived here since I first arrived in the United States and received parole under the parole processes established for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV") in 2024.
3. I have many family members who have had sponsors apply for them through CHNV parole and have pending sponsorship applications, like my wife and three-year old daughter, who are still in Haiti. I also have a brother, an uncle, and a few cousins who are also in Haiti with pending sponsorship CHNV applications.
4. I married my wife in August 2019, and our daughter was born three years later in 2022.
5. Life in Haiti was becoming increasingly worse for me and my family starting around 2022. In 2022, our neighborhood—which was originally a nice and peaceful place to live—came under the control of a gang, and there were multiple incidents where the gang controlling this neighborhood would attack and kidnap people living in the neighborhood.

One time, while my wife was pregnant with our daughter, the gang broke into our neighbor's house, where they physically attacked the husband of the household and kidnapped his wife. This incident caused my wife great stress and triggered us to flee that neighborhood for our own safety. So, we moved into a new neighborhood within the same city, about 10 miles away from our old neighborhood.

6. Our new neighborhood was also controlled by a gang, but they were not known for attacking innocent civilians, so we weren't as concerned about our safety. However, this all changed when another gang attacked the police station near this new neighborhood, killing some police officers there and destroying the police station. Now, there are no police forces in this neighborhood, making it much more dangerous and civilians more vulnerable to attacks by gangs. My wife and daughter currently still live in this area.
7. While in Haiti, I worked as a court interpreter for foreigners, and sometimes I worked as an interpreter for the U.S. Embassy, the Haitian National Police, and the Catholic Relief Services. At least twice, in 2023 and early 2024, while going to work, I was followed by people on motorcycles. As a result, I had to go to work in different cars and change the way I moved around the city. These people on motorcycles even drove by our house one time. I believe these people were part of a gang tracking my whereabouts and my family. Another time, in 2023, some people we do not know told my wife to "be careful." My wife and I considered this as a warning that people, likely gangs, were watching us and tracking our whereabouts to target us and possibly kidnap us, likely because of my work as a court interpreter and work with the U.S. Embassy.
8. All of these incidents made it clear for my wife and I that we needed to seek safety outside of Haiti, for ourselves and our young daughter. I first heard about the CHNV

parole processes when they were announced in early 2023, as it was all over the news and many people were talking about when it first came out.

9. In early 2023, a friend of my father's offered to sponsor me through CHNV parole. Unfortunately, because this friend had already sponsored several of their family members under CHNV, they could only afford to sponsor one more person. My father's friend submitted the sponsorship application for me in April 2023. In late 2023, my wife and I learned about Welcome.US, and we decided to search for a sponsor through a matching process hosted by Welcome.US because my other application was taking a while and we preferred to be sponsored together as a family so we could get parole as a family. We were matched with a sponsor through Welcome.US, and subsequently our Welcome.US sponsor submitted a sponsorship application for me, my wife, and our daughter in early January 2024. About a week later, in mid-January 2024, I received travel authorization to come to the United States through my father's friend's sponsorship application of me. While it was an extremely difficult decision to make, my wife and I decided that I should proceed with coming to the United States on parole. I arrived in the United States and was subsequently granted parole in February 2024. My parole expires in February 2026.
10. When I first came to the United States on CHNV parole, it required some adjustments to the new culture and way of life here, but I have been able to adapt and become part of a community here. I joined a local Haitian church in my area, and I try and surround myself with family that I have here in the Orlando. Although I remain in contact with my wife and daughter every day, it is very hard to be apart from them for so long, so having family and a community here helps.

11. Once I obtained work authorization in March 2024, I found work to support myself while also supporting my wife and daughter back in Haiti. I first found a job as a tutor in reading and math for children. Currently, I work as an English as a Secondary Language ("ESL") teacher at two different schools in the area with adult students who are immigrants or are here in the United States on a student visa. Beyond my work, I have many goals for myself to expand my skills here in the United States. In October 2024, I obtained my license as a life insurance agent in the state of Florida. I am also interested in financial investments, so I am currently taking classes to learn more about this area and hopefully obtain a license in this area too. I am also looking for ways I can certify myself as an interpreter here in Florida, so I can continue my interpretation work here in the United States.
12. I have also partnered with a friend of mine here in the United States to start a company where we promote education for Haitian immigrants who have recently arrived in the United States. We host free online classes, three times a week, for these individuals, where we educate Haitian immigrants on U.S. culture, teach English, and provide updates on the latest immigration policies affecting the Haitian immigrant community. I personally know about the struggles involved when navigating the language barrier in a new country, so using my experiences and skills to provide this support for other Haitian immigrants in my community is important to me.
13. On Friday, March 21 I learned about the publication of the Federal Register notice that will terminate the CHNV parole processes. At first, when reading about these plans, I was shocked. Now I have no idea what I can do about this now that this has become a reality. My wife and daughter are still in Haiti, and the most important thing for me is to get them

here with me in the United States, in a safe place. But now with CHNV being terminated and the government refusing to review any pending CHNV applications, this seems impossible.

14. My wife currently isn't working in Haiti and is taking care of and raising our daughter, so I am my family's main financial support, and they rely on me. With my parole and work authorization terminated, I won't be able to provide for my wife and daughter in Haiti. If I am without parole, I am also afraid of being sent back to Haiti because the conditions in Haiti have not improved, and if I returned, I would be a target given our past experiences in Haiti and the fact that I would be returning to Haiti after having been in the United States on parole.

15. My wife and I have been discussing and trying to prepare for the end of the CHNV parole process. She is very concerned about what is going on here in the United States. We have discussed the possibility of moving to Canada, where I have family. But we are unsure of a way to do this, and moving there would require me to start from zero all over again.

16. I have had to do a lot through the CHNV parole process, and I have followed all the steps and procedures to obtain parole. With the situation my family and I faced in Haiti, things felt hopeless, but when I was granted parole, I suddenly had hope that there will be better days ahead for me and my family. But now things just feel hopeless again. All of this causes me a lot of stress, and I can't sleep well at night knowing that my situation here is unstable, and my family continue to remain in bad conditions in Haiti with no hope of being able to come here with parole. It has been a hard situation for me to handle.

17. I received Temporary Protected Status ("TPS") in September 2024. It was originally valid until February 2026, but I recently learned that the government has ended TPS early,

making my TPS valid until August 2025 instead. I also have not applied for asylum yet, but I was planning to at some point while here on parole. I have not done so yet because I was waiting for my wife and daughter come to the United States through CHNV parole before I applied. But now with the processing of immigration applications like asylum applications filed by parolees like me indefinitely paused, this does not seem like a viable option for me anymore.

18. With my TPS status in flux, maintaining my parole status is important for me and my family's future to live in a safe place where we can be together as a family and where my wife and I can raise our daughter. Without CHNV parole, my wife and daughter will remain vulnerable in Haiti where the situation has not improved for them. And with my parole revoked, I fear that I will be removed back to Haiti where I would face the same dangers as I did before and be unable to financially support my wife and daughter and build a better future for us.
19. I am participating in this lawsuit so that I, along with other individuals who are in the same position, are allowed to stay in the United States for the remainder of the time that we have left on our parole.
20. I am willing to serve as a class representative on behalf of those who are similarly situated to me.
21. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the revocation of parole.

22. I believe participating in this lawsuit is an important way I can help my Haitian community, but I still have fears of using my real name in this lawsuit. I fear that if my name and identity is known, I could be threatened or targeted by individuals here in the United States who are anti-immigrant and/or side politically with the Trump administration. I also fear that I could be retaliated against by the U.S. government through deportation if the U.S. government knows I am going against them in this lawsuit, especially because of my status. Lastly, I fear that if my name is used in this lawsuit, this could cause harm to me in Haiti, if I am deported back to Haiti, and my family who remain in Haiti. Specifically, we could be targeted by gangs if they learn about my participation in this lawsuit and about the fact that I have been in the United States for over a year on parole. But this fear is even more real for my wife and daughter, who remain in Haiti and could be easily targeted by gangs now and in the immediate future if my name is disclosed in this case and gangs are able to connect me by name to my wife and daughter.
23. For these reasons, I am respectfully asking the court to allow me to proceed as plaintiff in this lawsuit under a pseudonym, to protect myself and my family in Haiti.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Orlando, Florida on 3/25/2025.

[redacted]

Daniel Doe

EXHIBIT 9

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs,* v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, *Defendants.*	Case No.: 1:25-cv-10495-IT

DECLARATION OF SANDRA MCANANY

I, Sandra McAnany, upon my personal knowledge, hereby declare as follows:

1. I was born in 1967 in La Crosse, Wisconsin. I am a United States citizen.
2. I currently live in La Crosse, Wisconsin. I work in procurement. I have five sons and fourteen grandchildren that range from ages one to twenty-one. My grandchildren are an important part of my life, and I spend as much time as I can with them, taking them hiking and on trips. Outside of work, I do volunteer photography for various nonprofits in the La Crosse area and for organizations abroad in Honduras, Colombia, and Burundi. While volunteering for On the Ground International in Colombia in February 2023, I saw many people leaving Venezuela and walking along the highways. This experience has stayed with me and inspired me to look for a way to support people from Venezuela in particular.
3. I am the sponsor for seventeen individuals who were approved to come to the United States and were granted parole under the parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV"). I also have pending applications for CHNV sponsorship for four other individuals, who are all Cuban. I learned of the CHNV parole

processes when I read an article about Kyle Varner and his sponsorship of dozens of people through CHNV. CHNV seemed like an incredible legal pathway for people to come to the United States with the support of U.S. citizens. I felt like becoming a sponsor would be a great opportunity for me to not only support and help these people and families in need, but also contribute to the United States, a country that I love. I reached out to Mr. Varner. At first, I intended to sponsor only one or two people, but as I started connecting with people and hearing their stories, I felt compelled to sponsor more. I spent a significant amount of time talking to people, getting to know them, and understanding the support they needed, in addition to the time and effort I put into completing and submitting CHNV sponsorship applications.

4. My religious convictions and commitment to caring about others motivate me to welcome and support these immigrants in need. As a Christian, I strongly believe that we should treat others like we want to be treated, no matter the color of their skin or their nationality. I believe that if more people helped each other, the world would be a better place. When my children were younger, they had friends who were undocumented whom I came to know and relate to. We lived in Norwalk, Wisconsin for a period of time, where we saw U.S. Immigration and Customs Enforcement ("ICE") carry out an immigration raid in the community on a weekend. It was heartbreaking. As we watched out our window, ICE agents moved in and took immigrants away. During the raid, two of my children, who were seven and nine at the time, told me that they needed to go warn their friends so they could keep them safe. This is the kind of empathy with which I lead my life and which I am proud to have instilled in my children.

5. When I was considering sponsoring people through the CHNV processes, I was especially drawn to helping families reunite. For many of the beneficiaries I sponsored, I was drawn to their resilience in the face of challenges in their home country, their dedication to working hard for their families, and their commitment to giving back to their communities.

6. Fifteen of the people I sponsored are nationals of Venezuela, and two are nationals of Nicaragua. All of them arrived in the United States between September and December 2023, and all were approved for two-year parole periods. To my knowledge, most of my parole beneficiaries have pending asylum applications.

7. My beneficiaries include four mothers with young children and one father with a teen son who, only because of the CHNV parole processes, have been able to reunite with family members already in the United States, and six adults without children. They seek not only stability for their families but also safety from persecution and violence in their countries of origin. One of these parents is a mother of two young kids whose husband was diagnosed with cancer while she was in Venezuela. Her grant of CHNV parole allowed her to be reunited with him in the U.S. and care for him while he went through treatment. All my beneficiaries have settled into their communities in the United States, received work authorization, and are working at least one job, if not more. I am so proud that they are all committed to supporting themselves.

8. When the people I sponsored received approval to travel to the United States and started planning for their travel, I provided advice and resources, including flight recommendations and guidance on navigating the U.S. airport system. I paid for some of them to take online English classes through Express Yourself while they were waiting for

approval. After they arrived and were granted parole in the United States, I helped many of them get settled. Most of them already had housing lined up, but I helped make sure that the locations were safe and stable for them. Only one family, a parent and son pair, needed a place to stay temporarily, so they lived with me for a little over a year while the parent got a work permit and found a job. I drove them three hours to Milwaukee to get the work permit, which also involved paying for a hotel and food along the way. Over the course of the year, it was beautiful to see both of them get on their feet and become integrated into our local community. The parent now has two jobs, and they have moved into their own place. They are able to go to church safely, which is something they couldn't do in their home country. My grandchildren have also met them and learned the importance of humanitarian parole through their story.

9. I helped beneficiaries with their job searches as well, including proofreading resumes and helping them understand employment requirements. I helped parents research local schools for their kids and understand what they needed to do to enroll them. I assisted them in enrolling in English classes, and I helped pay some of their initial cell phone plans. Additionally, several of the people I have sponsored arrived in United States during the winter, and they did not have any winter clothes. I provided several families with winter clothing or money to buy it themselves. Finally, I provided emotional support to many of my beneficiaries as they navigated a new country and time away from their families in Venezuela or Nicaragua. It has been a blessing to be a part of making these families' lives tangibly better. I am grateful that the CHNV parole processes gave me a way to live out my religious convictions in a meaningful way.

10. On January 21, 2025, the morning after President Trump's inauguration, I first learned of President Trump's express intent to terminate the CHNV parole process when my friend sent me an article about it. Soon after, I saw news reporting that the Trump administration paused processing of new CHNV applications and could revoke existing parole applications previously granted. Immediately, I became extremely anxious and worried about the people and families I sponsored who are in the U.S., what might happen to them if the Trump administration revoked their parole applications, and the many people whose applications may now never be adjudicated. I quickly contacted my beneficiaries to make sure that they knew what happened and had the latest information on how they might be impacted. I also made sure that my beneficiaries in the U.S. knew their rights when they interact with immigration officers and reminded them to carry documentation of their parole status whenever they left home. Understandably, many of my beneficiaries have expressed fear and anxiety at the prospect of losing their parole status while their applications for other immigration protections remain pending. Some are trying to find additional jobs so that they can save more money to support their families.
11. On February 19, I saw news reporting that the Trump administration had taken further steps to harm CHNV parolees by initiating a pause on processing requests for immigration benefits submitted by CHNV parolees. This horrified me and the people I sponsored who have applied for protections in the U.S., including asylum and Temporary Protected Status, because of the dangers they would face upon returning to their countries of origin.
12. Since January 21, I have had trouble sleeping through the night because I worry about my beneficiaries, especially the children who will be impacted by the termination of the

CHNV parole process. As a sponsor, I have heard their stories about the difficult and dangerous life in their countries of origin, the risks taken to enroll in the CHNV parole program and legally enter the United States, the efforts to make a new life in the United States, and the chilling prospect of having to return to their countries of origin. A few of my beneficiaries have become like family to me. We talk frequently, and we have built a support network with other CHNV sponsors and beneficiaries. If they lose their parole status and become subject to deportation, I may never see them again, and the possibilities of the harm they would suffer would haunt me.

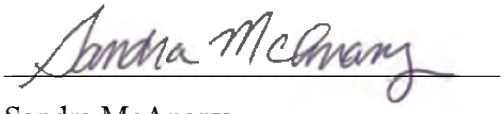
13. I am also concerned about the four Cuban people for whom my applications remain pending but may now never be adjudicated. It is frustrating to have put time and effort into their applications for the CHNV parole process only for a new administration to pause their applications indefinitely. The effect of the administration's pause, however, is more concerning as it means that these individuals will now continue to face the challenges of living in Cuba. I understand that daily life in Cuba is extremely difficult under the Communist government. For example, my beneficiaries often struggle to make enough money to pay for food for themselves and their families. Also, food shortages due to government failures are a common experience in Cuba. Making matters worse, frequent power outages make it difficult to keep the food they do have fresh. I applied for them to come to the United States through CHNV parole to reunite them with family already here or to earn money to support their families in Cuba. One of the beneficiaries that I applied for needs to work to help her parent pay for critical cancer treatment. Another is the parent of two young children and struggles to access medical care for their family in Cuba. This beneficiary has lost jobs in Cuba in the past for speaking out against

the government and fears being arrested if he continues to speak out. These people that I have sponsored admire the democracy of the United States and want to experience the freedoms that are supposed to come with it.

14. To me, the loss of CHNV parole is not only the loss of these relationships with amazing people and families that I have met and spent time and resources supporting, but it is a loss of the American dream. The CHNV parole process was a safe, legal pathway through which U.S. citizens could welcome immigrants into their communities. The beneficiaries complied with the rules for the CHNV parole process set forth by the U.S. government, including a rigorous application and vetting process. Now, the Trump administration is turning its back on them and seeks to terminate the legal process by which these individuals have entered the United States, deprive them of immigration benefits, and ultimately, deport them to their countries of origin. After investing significant time and effort to sponsor these amazing, resilient people and to help them become thriving, contributing members of their communities, the idea that all of that could be taken away from us is heartbreaking. That is not the American dream that so many of us have worked so hard for, and it contradicts the very reason why I was so eager to become a sponsor in the CHNV parole process.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in La Crosse, Wisconsin on March 13, 2025.



Sandra McAnany

EXHIBIT 10

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs,* v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, *Defendants.*	Case No.: 1:25-cv-10495-IT

DECLARATION OF KYLE VARNER

I, Kyle Varner, upon my personal knowledge, hereby declare as follows:

1. I was born in 1984 in Glendora, California. I am a United States citizen.
2. I currently live in Spokane, Washington. I am a physician at Providence Holy Family Hospital in Spokane. In my personal capacity, I have been involved in supporting liberal and libertarian movements in Venezuela, including Vente Venezuela and Movimiento Libertario de Venezuela, for many years. I have also traveled to various countries in Latin America, including doing global health work at the Venezuelan border. I have seen first-hand the challenges faced by people in poverty in Venezuela. When I learned about the parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV"), I knew I needed to get involved with that as well. It seemed too good to be true, a pathway through which U.S.-based sponsors could support people to come to the United States and help them start a new chapter of their lives here.
3. Between October 2022 and June 2023, I submitted applications to sponsor 79 individuals under the CHNV parole processes. Forty-eight of the applications were approved, and forty-three of those individuals are still in the United States now. Currently, two of them

have active parole status in the United States. The rest have applications for other kinds of immigration relief that have either been approved or are still pending. At least 31 have pending applications for asylum, TPS, or other immigration relief. I also have 32 other pending applications for CHNV sponsorship. All the people I have sponsored are Venezuelan, except for two – one Cuban individual and one Nicaraguan individual – whose applications are still pending. The first beneficiaries to arrive in the United States arrived in November 2022.

4. The people I have sponsored are individuals I already knew through my activism with the Venezuelan political movements, family members of individuals I already knew, or individuals who reached out to me on Facebook. As the CHNV process was rolling out, I posted on Facebook that I would be open to sponsoring people, and I received such an overwhelming response that I had to take the post down. Of the people who reached out to me on Facebook, I was drawn to the stories of people who were either stuck in Mexico or Central America with nowhere to go, or who described compelling asylum cases.
5. My beneficiaries include a son who was only able to pay for his mother's life-saving cancer treatment because he came to the United States and got a job here; a daughter who has been supporting her father and grandmother through her job here; and a mother and her young son who stayed with my parents for about eight months when they first arrived. My parents see the boy as their own grandchild now, and he calls them his grandparents. They still enjoy spending time together, including going fishing.
6. I identify as a Libertarian, and I strongly believe that immigration is the most important civil rights issue of our time. I feel that there is something fundamentally and morally wrong with treating people differently and giving them fewer rights simply because they

were not born in this country. At the core of this is a belief that people should have the ability to move freely and build their lives without restriction. My commitment to immigration advocacy and supporting immigrants in multiple capacities are an expression of my political beliefs, which are rooted in these fierce moral convictions.

7. Therefore, I am deeply committed to this parole process, and I have put countless hours of my time and untold resources into supporting the people I sponsored. I did the financial calculations immediately to determine how many people I could sponsor given my financial situation, and then I set about sponsoring as many as possible. First, it took me many hours to fill out all the applications. I would work during the day, then stay up late at night doing applications. One night, I even stayed up the entire night completing sponsorship forms. The first four applications that I submitted were approved very quickly. After that, we were waiting for a while on the others, so I contacted my Congressional representative's office multiple times to ask for their assistance in expediting the applications.

8. When the people I sponsored received approval to travel to the United States, I bought plane tickets for most of them. For some, I bought plane tickets twice because, when Texas and other states filed suit to terminate the CHNV parole processes, I contacted all my beneficiaries who had been granted parole and asked them if we could move up their travel date. I wanted to ensure they traveled before the court did anything to affect the process. That required buying a new plane ticket for a lot of people. Fortunately, they were all able to arrive safely in the United States.

9. After my beneficiaries arrived in the United States, I continued to provide support and provided significant amounts of resources to them to help them get settled quickly and

securely. Many of the people I sponsored lived with me for some period of time at first. I had twenty-five people in my house at one point. But I helped them find other safe housing, including co-signing some leases. I also rented properties I own to many of them, charging them reduced rates, helping pay for utilities, and providing favorable terms like no security deposit and month-to-month tenancy, which allowed them to be free of a fixed-term contract. At some points when I was waiting for sponsorship applications to be granted, I kept properties that I own vacant so that beneficiaries could live there when they were approved for parole. Often times this meant I missed out on renting it to other renters.

10. I also paid for most of my beneficiaries' work permit applications, which cost $410 each, and, after they got their work permit, I helped them with job applications. I bought SIM cards for their phones and helped many of them enroll in community college ESL (English as a Second Language) courses. For those who did not know how to drive, I taught a few to drive and found volunteers to help others learn. Finally, as a physician, I was able to help provide free medical care for minor health conditions, so they wouldn't have to go to the hospital. I helped translate and summarize Spanish-language medical records from Venezuela as well, so they could maintain continuity of care in the United States when they found providers. I essentially put my life on hold for about two years to provide for and support the people I sponsored through the CHNV parole processes. I wanted to make sure they were on solid footing as soon as possible, which would serve as a launching pad for their lives here and allow them to support their families and other loved ones.

11. I first got confirmation that the Trump administration was going to terminate the CHNV parole processes when my beneficiaries started messaging me, asking me what they should do and telling me how scared they were. I then read news reporting that processing of new CHNV applications had been terminated, and that existing grants of parole could be revoked. It was heartbreaking. Over the last few years, both my parents and I have gotten to know my beneficiaries well. I have connected with all of them and supported them as they navigated settling in a new country and the difficulties that come with that. If they become deportable, I may never see them again, and it is scary to think about what challenges and danger lie back in Venezuela if they were forced to go back.
12. Additionally, I am concerned about the individuals I have sponsored whose applications are now pending indefinitely. I put a lot of time and effort into understanding their stories and submitting their applications, and it is truly unfair that they are being deprived of a safe, legal pathway to the United States. Daily life in Venezuela, Nicaragua, and Cuba is not only challenging, but dangerous. I am very familiar with conditions in Venezuela in particular, and I know that my beneficiaries whose applications are now paused will continue to struggle with low wages and extreme poverty, violence and crime, and government systems that are not able to support the people that rely on them.
13. On February 19, I read news reporting that the administration was pausing processing of immigration benefits requests submitted by people who had come to the United States through the CHNV parole processes. Many of my beneficiaries who are in the United States have pending applications for asylum, TPS, or other immigration relief because it is unsafe for them to return to their countries of origin. If those applications are not adjudicated, they will be gravely harmed, not only because they will be deprived of the

right to access the U.S. immigration system in a fair and just way, but also because they could be forced to return to countries where it is dangerous and unsustainable for them.

14. I also put my own time and money into helping my beneficiaries apply for their affirmative immigration protections. I made sure that everyone knew that applying for asylum was an option and that they needed to do it within a year of arrival. In some cases, I lent money to help pay for lawyer fees. I helped many of them compile documents, recommended certified translator services, allowed them to use my printer and scanner, and connected and recommended them to attorneys. This time and money that I have put in will be lost if my beneficiaries' applications are not adjudicated.

15. To help the people I have sponsored who are in the U.S. prepare for the possibility that their parole could be revoked, I held meetings to teach people about their rights. I told my beneficiaries to memorize my phone number in case they are detained, and to give me any contact information I may need for their families or other loved ones. I told them to make plans for their kids in the event that they are detained. I have spent a lot of time educating my in Spokane beneficiaries and others in the immigrant community that it is not safe to travel to the adjoining state of Idaho, and that they should generally avoid rural areas because of anti-immigrant sentiment. It has been difficult explaining the concerns of anti-immigrant violence to people who came to the USA believing that this would be a place where they would be safe.

16. I have spent a lot of time researching alternative options for where people can go, and I'm trying to put some money away to be able to hire lawyers for people. I have also spent a lot of time just talking to my beneficiaries as they process this tremendous betrayal and

have to re-plan their lives and think through the huge implications this has for them. I have been trying to be as supportive as I can be.

17. Serving as a CHNV parole sponsor is by far the most important thing I have done in my life. I put so much time, money, and heart into supporting the people I have sponsored, including those whose applications are still pending, because I wanted to see them build a life here, be successful, and then be able to pay it forward and help their families and other people in their communities. It is very frustrating to have put a lot of time and money and effort into a process that the government is now reversing course on. My beneficiaries and I followed all the rules laid out by the government, and I worked hard to make sure that the people I sponsored had a strong start in a new country. It is difficult to see all that effort go to waste if the government goes back on its word and starts trying to deport them.
18. If the beneficiaries who are here lose their status and their work authorization, they will not be able to support themselves or their families, and they won't realize their full potential. I will definitely need to put more time and resources into making sure they have a place to live, including waiving rent for those who are renting properties of mine, and that they don’t go hungry. I would never tell someone that I helped bring to the United States, “sorry, at this point, you’re on your own.” I would do everything I can to continue supporting them.
19. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our sponsorship applications for CHNV parole processed, as they should be.

20. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

21. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the indefinite pause on the processing of sponsorship applications for CHNV parole.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Spokane, Washington on March 13, 2025.

Kyle Varner

EXHIBIT 11

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*,

Defendants.

Case No.: 1:25-cv-10495-IT

DECLARATION OF WILHEN PIERRE VICTOR

I, Wilhen Pierre Victor, upon my personal knowledge, hereby declare as follows:

1. I was born in Haiti in 1967. I arrived in the United States in August 1996 and became a U.S. citizen on October 10, 2002.
2. I currently live in Woburn, Massachusetts. I have lived in Woburn since 2013. I have three siblings who live in Massachusetts as well. I am employed as a Licensed Practical Nurse ("LPN") in a local nursing home.
3. Along with my two children (a 28-year-old daughter and a 17-year-old son), I live with my brother, his wife, and her three children (ages 7, 13, and 16), all of whom are from Haiti and came to the United States under the Cuba, Haiti, Nicaragua, Venezuela ("CHNV") humanitarian parole processes.
4. My brother and his family were approved to travel to the United States under CHNV parole in May 2024. His wife and her children arrived in the United States in June 2024, and my brother arrived shortly after in July 2024. All were granted two years of parole upon entry to the United States.

5. In addition, I have applied to sponsor my niece (age 13), who is the daughter of my brother currently in the United States, as well as my cousin (age 50), for CHNV parole. Both are currently in Haiti, and their parole applications remain pending.
6. I applied for a green card for my brother in 2007, and it remains pending. We are still waiting for U.S. Citizenship and Immigration Services ("USCIS") to schedule an interview for him. As my brother's green card application remained pending when the CHNV parole processes began, I decided to apply for CHNV parole for him and his family
7. My brother is ineligible to apply for Temporary Protected Status ("TPS"), having arrived in the United States after the cutoff date. He does plan to apply for asylum.
8. I first learned about the CHNV parole processes from news reports that described how people were applying to bring their family members experiencing dangerous conditions to the United States. My family and I were so excited to hear about it. Finally, there was a safe, legal pathway for my family members in Haiti to come to the U.S.
9. I spent significant time and effort into gathering documentation for, filling out, and submitting the applications for my family members, and after my brother and his family received approval to travel to the U.S., I pooled money with other family members to pay for their airfare from Haiti. I also prepared my home to accommodate five additional people to live with me and my two children.
10. It was extremely urgent for my brother, his wife, and their children to leave Haiti given the political and socioeconomic conditions there. In my family's experience, Haiti does not currently have any meaningful law enforcement or government oversight, meaning people in Haiti live in a mostly lawless state, in constant danger of falling victim to

violent crimes such as murders and kidnappings. Kidnapping for ransom also frequently occurs in Haiti.

11. Additionally, my brother had searched for a job in Haiti for over thirteen years, but he was unsuccessful. His wife also did not have good employment prospects while in Haiti. While there, she sold things for a small business, but she did not make enough money to feed or care for their family. She and my brother relied on money from other family members to get by.

12. If forced to return to Haiti, my brother's wife's children would also not be able to receive a proper education, as they would not be able to attend school consistently there. When they were back in Haiti, there was often gang violence, including gunfire, in the streets of where they lived, which prevented them from going outside at all. My brother's wife's children often could not go outside to attend school for up to a week due to the violence.

13. The conditions in Haiti that led to my brother and his family's departure for the United States have persisted for a long time and were the reason I submitted a green card application on his behalf in 2007—nearly twenty years ago. The situation in Haiti has only worsened since then.

14. Because of the conditions in Haiti, my brother is very concerned and anxious about the possibility of having to return there because the region he previously lived in is now even more dangerous than before, having been evacuated by residents and replaced with gangs. He cannot imagine what life there would be like if he, his wife, and her three young children were forced to return. I was so relieved that my brother and his family were able to come to the U.S. through CHNV parole and be safe here, especially because of their young children. When my sister and I met them at the airport, we felt so much

happiness, relief, and joy. The last time I saw my brother in person was in 2001 when I returned to Haiti after our mother passed away, so we were finally reunited after more than 20 years. My brother had been waiting for so long to come to the United States, and I feel blessed to be able to provide for them here and be a good sister to my brother and aunt to his children.

15. My brother and his family have adjusted well to life in the United States, and they are actively engaged in their local community. My brother quickly got a job working in the kitchen of a nursing home, and his wife has been actively searching for a job. They both attend English classes and go to church regularly, and their children are attending school. In his free time, my brother helps me around the house, including with yardwork and clearing snow. It has been wonderful to have him around, not only because he helps out and supports me, but because we are finally reunited as a family after so long.

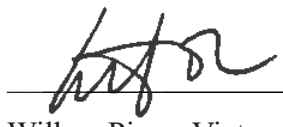
16. When I heard that the CHNV process was going to be terminated and that my brother and his family's parole status could be terminated early, I was shocked. If their parole were terminated before their expected expiration date in 2026, my brother and his family would be forced to return to unpredictable, dangerous, possibly life-threatening, conditions in Haiti. They would also lose the ability to apply for asylum in the United States. We do not know how to even start making plans for this possibility, because it is simply impossible to plan for life in Haiti given the unstable political and socioeconomic conditions there, but we do know that it would be devastating. We followed all the rules that the government laid out for us to bring our families to safety here, and it feels like a major betrayal if the Trump administration ends their parole early and then tries to deport them.

17. Additionally, I heard that the administration is pausing processing of immigration relief requests for people who have come to the United States under CHNV parole, which could include my brother. This means my brother could be forced to forfeit his pending green card application ***over seventeen years*** after I filed the application on his behalf. This would be deeply unjust given how long we have been waiting on his application.
18. I am also very concerned about how the end to the CHNV parole process is affecting my niece and cousin, whose applications are now on pause indefinitely. My niece, who is my brother's child and only 13 years old, is left in Haiti without either of her parents. After my brother left for the United States, her mother also came to the United States without her, leaving her in the care of her aunt. She is so young, and in Haiti she cannot go to school reliably because of the gang violence shutting down the streets. She fears leaving her house because of the violence that is rampant. She needs to be reunited in a safe place with her father, who is worried about her and talks with her as often as possible. Although I have been sending money back to Haiti to support her, and talked to her on the phone, I have not had the chance to meet my niece in person. If she came to the United States, I would look forward to the opportunity to meet her and be an even better aunt to her.
19. My cousin also lives under fear of violence in Haiti. She has heard that people who have family members in the United States are targeted by the gangs for ransom, and that the gangs will kidnap people and threaten to kill them if they are not given large sums of money – it can be anywhere from $200,000 to $300,000. If the person cannot produce the money, the gangs will kill them. My cousin lives in an area with significant gang violence that makes it hard to go outside even to run errands for daily needs. It is unsafe for her to continue to stay there.

20. If my niece and cousin are not able to come to the United States through CHNV parole, the time and energy I put into their applications will be lost, but even more importantly, we will not be able to all reunite as a family and they will continue to live with the terrors of the ongoing violence in Haiti. It has been wonderful having my brother and his family here with me and my children, but without my niece and cousin, our family is incomplete. To me, it feels like the U.S. government provided a route to safety in the U.S. so that families like ours can be together, and now it is taking it away without any regard for just how dangerous and uncertain it is in Haiti.
21. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our sponsorship applications for CHNV parole processed, as they should be.
22. I am willing to serve as a class representative on behalf of those who are similarly situated to me.
23. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the indefinite pause on the processing of sponsorship applications for CHNV parole.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Woburn, Massachusetts on March 15, 2025.



Wilhen Pierre Victor

ATTACHMENT

to Plaintiffs' Second Supplemental Motion to Proceed Under Pseudonym

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs*, *v.* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, *Defendants.*	Case No.: 1:25-cv-10495-IT

DECLARATION OF GABRIELA DOE

I, Gabriela Doe, upon my personal knowledge, hereby declare as follows:

1. I was born in Managua, Nicaragua in March 1983. I came to the United States in 1992, and in 2011 I became a U.S. citizen. I have been living in the United States for the last 33 years.
2. I currently live in Tacoma, Washington, with my husband and two kids, who are twelve and seventeen years old, respectively. I have lived here in Tacoma for the last 17 years. I work as an accredited representative at a non-profit that provides direct legal services and educational resources to immigrants in the state.
3. I have sponsored seven people through the parole process for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV"). I first learned about CHNV parole processes in 2023, when my uncle asked me if I could sponsor his girlfriend. She was the first person I sponsored under CHNV.
4. Specifically, besides my uncle's girlfriend whom I sponsored in 2023 and whose two-year parole period has since ended, I have sponsored four of my cousins, Ana Doe, her

husband Armando Doe, and her two brothers, Miguel and Alejandro Doe; a family friend whose parole has since ended, and the seventeen-year-old son of another family friend. I also have another cousin, Carlos Doe, who is here in the United States with CHNV parole, but he is sponsored by someone else in the family.

5. Everyone I have sponsored are nationals of Nicaragua. The cousins I am sponsoring were approved for two-year parole periods in 2024 and are currently living in Georgia. The seventeen-year-old boy I sponsored entered the United States and was approved for two years of parole in August 2024, but he has since returned to Nicaragua.

6. For my cousins, four of whom I am sponsoring, life in Nicaragua was becoming more and more dangerous for them. Our family has a history of being on the side of the socialist party in Nicaragua, and I have many family members who are now living in exile outside of Nicaragua because of this. For my family who remained in Nicaragua, many have been targeted by the government and the police for their political beliefs or even because of their relation to our family. My uncle—Ana, Alejandro, and Miguel's father—was even arrested and detained for three to four days because of this, and my aunt, their mother, keeps a low profile in Nicaragua given her name and relation to our family. Because our family name is prominently known by the Nicaraguan police and government as being against the government, continuing to live in Nicaragua was just no longer a safe option for my cousins.

7. I offered to sponsor my cousins through CHNV in 2023. Being able to sponsor them was not only vital for their well-being and safety, but it was also important for me, as someone who believes in the importance of family. I have a special relationship with my cousins, as they supported me greatly when my father became sick with cancer and

eventually passed away in June 2023, which was an extremely difficult time for me. My father was the eldest of his nine siblings, and he was known for always taking care of and supporting his family however he could. As it happens, I am the eldest cousin of 27 cousins in our family, so supporting my family and cousins by sponsoring them under the CHNV parole processes not only reflects an important personal value of mine but is also a way for me to continue my father's legacy of supporting the family whatever means necessary.

8. In order to sponsor all of my beneficiaries, I had to provide extensive proof and documents to demonstrate I was able to support all of my beneficiaries, including bank account statements and other financial-related documents. It was a time-consuming process. During the process, I made sure all of my beneficiaries had a checklist of all of the important documents they needed for every step, while helping them through the process to the best of my ability.

9. When the cousins I sponsored arrived in the United States and were granted parole in 2024, they moved to Georgia to be near their father, who has been a great help to them in settling in. After they obtained work authorization and were able to secure employment, they have been very self-sufficient in providing for themselves financially. I continue to support them by helping them navigate the U.S. immigration system, informing them about new changes or policies, and supporting them in exploring other options they have for immigration relief. Since they've been living in the United States, my family and I have visited them in Georgia twice. It was great to be reunited with them here in the United States and see how well they have all been doing. They've all gotten jobs and have established lives for themselves here. My cousins are a very close-knit group, and I

am amazed and proud of how well they've worked together to support one another as they've settled into new lives here in the United States.

10. I first heard about the government's intention in terminating the CHNV parole processes through my work in immigration. Naturally, my family—including those with parole—started to grow more nervous as news about President Trump's plans to terminate the CHNV parole processes began to spread. On Friday, March 21, I learned about the publication of the Federal Register notice that will officially terminate the CHNV parole process. The termination of the CHNV parole process and the revocation of my cousins' parole leaves me feeling scared and worried. I'm worried for my cousins and the prospect of them having to go back to Nicaragua, given how the government and police have persecuted them and my family before. In Nicaragua, once someone leaves the country, it is common for these people to be considered "traitors" of the country; if you try to return, there is no guarantee that the government will allow you to re-enter, basically leaving you stateless. All of these possible outcomes for my cousins if their parole is revoked and they are deported are terrifying to me.

11. As a person who must manage clinical depression and anxiety, the loss of CHNV parole and the impact this would have on my cousins would have a terrible impact on my mental health. All I can do is stay up to date on the news and latest developments of the plans regarding the termination of CHNV, and make sure they understand possible scenarios and other relevant Know Your Rights information. But apart from that, I feel powerless in being able to prevent how this termination will be implemented, and the harm they would suffer as a result. My cousins are rightfully very concerned and worried about what this

termination of CHNV could mean for them, and I try to support and comfort them the best I can, but it is hard to do so when I do not know what lies ahead.

12. CHNV parole has opened doors to new opportunities for all immigrant parolees. As is the case with my cousins, immigrants who have been paroled through this process have shown that how much they bring to the table by helping each other and their communities and hitting the ground running by building productive lives for themselves and their families. The loss of CHNV would mean closing the doors on all of these opportunities and benefits that have been made possible because of this parole process.

13. The loss of CHNV would also mean the loss of having my family here in the United States. It would mean the loss in choices my cousins would have in establishing a full life for themselves, one where they are working hard and contributing to the community, and one that is on their own terms and free of the fear of persecution and instability. My cousins all abided by the process set forth by the U.S. government when creating CHNV, including rigorous vetting and screening at multiple points. I have invested time, effort, and resources into the sponsorship process for all of my cousins and continue to make sure they are all taken care of—continuing my father's legacy in always taking care of your community and loved ones. Now, the U.S. government wants to upend the entire process by terminating CHNV, leaving my cousins vulnerable to deportation and removal and stripping them of the lives they have begun to cultivate here. This is not only cruel but goes against all the reasons that drove me to help my family as a sponsor.

14. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our beneficiaries take full advantage of their CHNV parole period, as they should be allowed to do.

15. I am willing to serve as a class representative on behalf of those who are similarly situated to me.

16. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the termination of the CHNV parole program and the revocation of parole.

17. Defending CHNV parole from termination is very important to me and is the reason why I am joining this lawsuit as a plaintiff. However, at the same time, I am fearful that if my real name was disclosed, this would inflict harm onto my family.

18. First, my cousins—Ana, Armando, Alejandro, Carlos, and Miguel Doe—are CHNV parolees and plaintiffs in this lawsuit. As a result, I fear that if I use my real name in this lawsuit, the fact that I have sponsored four of my cousins could lead to them all being identified by either the U.S. government or Nicaraguan government, and thus make them vulnerable to retaliation both in the United States through deportation, for example, or in Nicaragua through continued targeted attacks and persecution.

19. Second, I have several family members here and abroad who could be vulnerable if my real name is used in this lawsuit. I have family members here in the United States who have CHNV parole and are not participating in this lawsuit. If I use my real name in this lawsuit, they could be identified by either the U.S. government or Nicaraguan government, which would make them vulnerable to retaliation in the United States, and if deported, in Nicaragua too.

20. I also have family members in Nicaragua who have no connection to this lawsuit, so I fear that if my real name is disclosed and the Nicaraguan government discovers that I am

related to them due to our shared last name, they will face heightened risks of retaliation by the Nicaraguan government who has persecuted our family in the past. For example, after a U.S. based uncle of mine posted anti-Nicaraguan government content on his social media and subsequently received direct threats from pro-government individuals about this post—where they threatened that they would hurt him through his family who was still in Nicaragua—shortly afterwards an uncle of mine in Nicaragua was a victim to an attempted poisoning. Moreover, both my maternal and paternal families were part of the revolution in the 1980s and have declined invitations to join the controlling regime in Nicaragua. As a result, the Nicaraguan government has watched our family closely and has shown—through their actions—that we are a family of interest because of our political past and present. Because of this, I fear that if my real name is used in this lawsuit, this information will get back to Nicaragua and it will only add fuel to the threats and actions the government has taken against my family.

21. Lastly, I have family members here in the United States with varying statuses and I fear that if my real name were used publicly in this lawsuit they could potentially be targeted and retaliated against by the U.S. government, whose plans to deport as many undocumented immigrants as possible are evident.

22. If I were not able to proceed pseudonymously in this lawsuit, I would not proceed any further in this litigation as a plaintiff, out of an abundance of caution for the safety and well-being of my cousins and family here in the United States and in Nicaragua.

23. For these reasons, I am respectfully asking the court to allow me to proceed as plaintiff in this lawsuit under a pseudonym so I can protect my family.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Tacoma, Washington on 3/24/2025

[redacted]

Gabriela Doe

EXHIBIT 2

to Plaintiffs' Emergency Motion for a Preliminary Injunction and Stay of DHS's *En Masse* Truncation of all Valid Grants of CHNV Parole

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs*, *v.* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, *Defendants.*	Case No.: 1:25-cv-10495-IT

DECLARATION OF NORMA LORENA DUS

I, Norma Lorena Dus, upon my personal knowledge, hereby declare as follows:

1. I was born in Caracas, Venezuela in 1988. I completed my college degree in Ireland and then moved to the United States in 2016. I became a U.S. citizen in 2020.
2. I currently live in West Stockbridge, Massachusetts with my husband and stepchildren. I have lived here since 2016. I work for a nonprofit doing immigration advocacy and providing direct legal services.
3. I am the sponsor for my sister, Lucia Doe, who is a national of Venezuela, under the parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV"). When I learned of the CHNV parole processes through my job, I immediately thought of Lucia, who was living in Venezuela with our mother at the time, and how it would be a beneficial, legal way for her to come to the United States.
4. Back in Venezuela, even though she was working full-time, Lucia didn't make enough money to pay for food, rent, and other necessities for herself and our parents. Daily life was very difficult for them, especially because our mother has health conditions that

require expensive doctor's visits, exams and labs, and medication. The public hospital system in Venezuela is a heartbreaking state, with many hospitals lacking even consistent electricity and running water, as well as basic medical supplies and medications. This means that the only real option for our mother is private health insurance, which is extremely expensive because there are no health insurance options. She has to pay for all her care out of pocket, but she only receives a pension that is not even enough to buy a dozen eggs. I, along with our two other siblings who have moved outside of Venezuela, regularly send money back to Venezuela to help support our parents given the low wages and severe economic challenges there. When we heard about the CHNV processes, we saw it as an opportunity for my sister to both find a way to better provide for herself and to help support the family from abroad. It was also an opportunity for her to spend time outside of Venezuela.

5. I submitted the CHNV sponsorship application for Lucia in December 2022, and she was granted authorization to travel in May 2024. I paid for her plane ticket and her work permit application fee, and Lucia arrived in the United States in July 2024. She was granted parole through July 2026. She traveled to Florida, where she has lived since then. From previous times visiting Florida when she was attending university in Puerto Rico, she has friends and some connections there. That made it easier for her to find housing with a friend and get a job right away, instead of coming to live with me in a remote part of Massachusetts.

6. After Lucia arrived in the United States, she had to wait a month or so for her work permit, so to help support her during that time, I sent money to the friend that she is living with. As soon as Lucia got her work permit, she started working at her friend's

cleaning business and paying for her own expenses, including the rent for staying at her friend's apartment. She is completely self-sufficient now, and she sends money back to our parents as well, which helps them cover rent, food, and medical care. Even though I didn't ask her to, she is also paying me back for the costs I covered for her.

7. The CHNV parole process has been a blessing for our family in more ways than one. Not only is Lucia able to support herself more easily, send money back to our parents, and relieve some of the financial strain on me and our other siblings, but having her in the United States also means that we are more easily able to see each other in person. Last October, Lucia came to Massachusetts, and for the first time in six years, all the siblings were together. Our mother and our other siblings also traveled in, and we all spent time together. It was incredible to be reunited. It was a joyful reunion for everyone. As a U.S. citizen, it is very difficult for me to travel in and out of Venezuela, so having my sister physically closer allows us to connect and strengthen our relationship.
8. I first heard that CHNV parole was getting terminated, and that current parole grants like Lucia's would be revoked, through my job and by reading the news. It was devastating to hear because I know both through my own experience and my work with clients that this process has been lifechanging for so many individuals and families. It is appalling that the government would punish people like Lucia who applied from abroad to come to the United States, are supported by a sponsor, came through a legal pathway, and are working to support themselves and bolster the U.S. economy. I feel disappointed and hurt by how deeply unfair it is.
9. In preparation for Lucia's parole status being revoked, we have been discussing what options she has that will allow her to return to the United States in the future through

other legal pathways, including tourist visas. I spoke with an immigration attorney at the organization that I work at to understand those options. We have also been preparing for the possibility that Lucia will need to leave at a moment's notice, which is difficult logistically given the dearth of flights to Venezuela and the fact that Lucia has settled into her community in Florida over the last eight months.

10. On March 21, 2025 I learned that the CHNV parole was officially terminated and that any time remaining on existing parole statuses would be revoked.

11. Lucia's parole being revoked will harm me and our family in several ways. First, I am concerned about Lucia's safety and stability if she has to return to Venezuela. She quit her job there when she was granted CHNV parole, so she would need to find a new job that she enjoys and that will sustain her and our parents, which is difficult to do. It will be challenging for her to get food, clothing, and other items that she needs to survive. Life in Venezuela is incredibly difficult in general, including because the healthcare system is in crisis; there are frequently mass internet and power blackouts; inflation makes daily necessities unaffordable for the majority of the population; and basic services like water, gas to cook, and transportation are unreliable or sometimes unavailable for days. On top of that, crime is a constant concern, and daily life comes with a level of uncertainty about safety that is emotionally and physically draining.

12. Second, the revocation will have a severe financial impact on me and our family. Lucia will no longer have extra income to provide for our parents, which means that our other siblings and I will need to send more money back to help them cover rent, food, transportation, clothes, and medical care. Providing money to our parents is a responsibility that we take on because we love them and because it is vital for their

survival in Venezuela, but it is also a sacrifice financially. Revoking Lucia's parole inevitably means that I will need to stretch even further financially to make sure my parents have what they need. Our entire family would suffer significant hardship as a result of Lucia's parole status being revoked.

13. Finally, it will be psychologically difficult. I am already beginning to experience the mental toll of how unfair the revocation is and the emotional hardship of my sister having to leave again, after coming to the United States on permission from the government. It feels like, after we followed all the rules, that we have been betrayed.
14. I am participating in this lawsuit so that I, along with other individuals who are in the same position, can have our beneficiaries take full advantage of their CHNV parole period, as they should be allowed to do.
15. I am willing to serve as a class representative on behalf of those who are similarly situated to me.
16. I know that if the class is certified, I will be representing more than just myself in this case. I have spoken with the lawyers who represent me about what being a class representative means. I want to help everyone in my situation because we are all harmed by the termination of the CHNV parole program and the revocation of parole.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in West Stockbridge, Massachusetts on March 24, 2025.

Norma Lorena Dus

EXHIBIT 21

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

SUPPLEMENTARY INFORMATION: The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

The Chief of Prevention Division, Eighth District, U.S. Coast Guard, certifies that the HAYDEN GRACE, O.N. 1326783 is a vessel of special construction or purpose, and that, with respect to the position of the mast lights, stern light, and sidelights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The Chief of Prevention Division, Eighth District, U.S. Coast Guard, further finds and certifies that the mast lights, stern light, and sidelights are in the closest possible compliance with the applicable provisions of the 72 COLREGS.[5]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: October 13, 2022.

A.H. Moore, Jr.,

Captain, U.S. Coast Guard, Chief, Prevention Division, Eighth Coast Guard District.

[FR Doc. 2022–22712 Filed 10–18–22; 8:45 am]

BILLING CODE 9110–04–P

[1] 33 U.S.C. 1605.
[2] 33 CFR 81.5.
[3] 33 CFR 81.9.
[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.
[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Venezuelans

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to immediately address the increasing number of encounters of Venezuelan nationals along the southwest border (SWB), as the Administration continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by irregular migration. Venezuelans who do not avail themselves of this process, and instead enter the United States without authorization between POEs, will be subject to expulsion or removal. As part of this effort, the Department of Homeland Security (DHS) will implement a process—modeled on the successful *Uniting for Ukraine* (U4U) parole process—for certain Venezuelan nationals to lawfully enter the United States in a safe and orderly manner. To be eligible, individuals must have a supporter in the United States who agrees to provide housing and other supports as needed; must pass national security and public safety vetting; and must agree to fly at their own expense to an interior U.S. port of entry (POE), rather than entering at a land POE. Individuals are ineligible if they have been ordered removed from the United States within the prior five years or have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication.

DATES: DHS will begin accepting online applications for this process on October 18, 2022.

FOR FURTHER INFORMATION CONTACT: Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445, (202) 282–9708.

SUPPLEMENTARY INFORMATION:

I. Background—Venezuela Parole Process

This notice describes the implementation of a new parole process for certain Venezuelan nationals announced by the Secretary of Homeland Security on October 12, 2022,[1] including the eligibility criteria and filing process. The parole process is intended to enhance border security by reducing the record levels of Venezuelan nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The Secretary's announcement followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated October 12, 2022.[2] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration. The strategy—a shared endeavor with partner countries—focuses on addressing the root causes of migration, which currently are fueling unprecedented levels of irregular migration, and creating safe and orderly processes for migration throughout the region. This strategy will reduce regional irregular migration in the mid- to long-term, but we anticipate continued substantial pressures along the southwest border over the coming months.

In light of this reality, DHS is implementing an immediate effort to address the increasing number of encounters of Venezuelan nationals at the SWB as we continue to implement the broader and long-term strategy. We anticipate that this new effort would reduce the record levels of Venezuelan nationals seeking to irregularly enter the United States between POEs along the SWB, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

With the cooperation of the Government of Mexico (GOM), and potentially other governments, this effort is intended to serve as a deterrent to irregular migration by providing a meaningful alternative to irregular migration and by imposing immediate consequences on Venezuelan nationals who choose to not avail themselves of the new process and instead seek to irregularly enter the United States

[1] DHS Announces New Migration Enforcement Process for Venezuelans, October 12, 2022, available at: *https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans.*

[2] *See* Memorandum for the Secretary from U.S. Customs and Border Protection Commissioner and U.S. Citizenship and Immigration Services Director, Parole Process for Certain Venezuelan Nationals (Oct. 12, 2022).

between POEs. It will also provide an incentive for Venezuelans to avoid the often dangerous journey to the border altogether, by putting in place a safe and orderly process for Venezuelan nationals to travel to the United States to seek a discretionary, case-by-case grant of parole into the United States, based on significant public benefit and urgent humanitarian reasons.[3] Venezuelan nationals who irregularly enter the United States between POEs after October 19, 2022 are subject to expulsion or removal from the United States; those who enter irregularly into the United States, Mexico, or Panama will also be found ineligible for a discretionary grant of parole under this process. Only those who meet specified criteria and pass national security and public safety vetting would be eligible for consideration for parole under this process.

Implementation of the parole process is conditioned on Mexico continuing to accept the expulsion or removal of Venezuelan nationals seeking to irregularly enter the United States between POEs. As such, this new process will couple a meaningful incentive to seek a lawful, safe and orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly.

The new policy is modeled on *Uniting for Ukraine* (U4U), the successful parole process that was put in place in the wake of Russia's unprovoked invasion of Ukraine, when thousands of Ukrainian migrants spontaneously arrived at SWB POEs. Once U4U was implemented, such spontaneous arrivals fell sharply, and travel shifted to a safe and orderly process. This new process is procedurally similar to U4U, in which certain Ukrainians with U.S.-based supporters who meet specified eligibility criteria have been able to travel to the United States to seek a discretionary, case-by-case grant of parole for up to two years. As in U4U, applications using this parole process will be initiated by a supporter in the United States who would apply on behalf of a Venezuelan individual and commit to providing the beneficiary housing and other financial support, as needed, for the duration of their parole.

In addition to the supporter requirement, Venezuelan nationals are required to meet several eligibility criteria, as outlined in more detail later in this notice, to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis. Importantly, individuals are ineligible if they have been ordered removed from the United States within the prior five years; they are also ineligible if they have crossed into the United States between POEs, or entered Mexico or Panama without authorization, after October 19, 2022. Only those who pass national security and public safety vetting and agree to fly to an interior POE, as opposed to entering between POEs, and who meet all specified criteria below will be eligible to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis, under this process.

Any discretionary grants of parole will be for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged and long-term strategy and engage with our foreign partners throughout the region. These efforts are intended to support conditions that would decrease irregular migration, work to improve refugee processing and other lawful immigration pathways in the region, and allow for increased removals of those who continue to migrate irregularly and lack a valid claim of asylum or other lawful basis to remain in the United States. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the U.S. economy as they do so. Those who are not granted asylum or other immigration benefits will need to leave the United States at the expiration of their authorized period of parole or will generally be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Venezuelan nationals pursuant to this process will provide a significant public benefit for the United States, while also addressing the urgent humanitarian reasons that Venezuelan nationals are fleeing, to include repression and unsafe conditions in their home country. Most significantly, we anticipate that parole will: (i) enhance the security of our SWB by reducing irregular migration of Venezuelan nationals; (ii) enhance border security and national security by vetting individuals prior to their arrival at a United States POE; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of Venezuelan irregular migration; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere. The process is capped at 24,000 beneficiaries. After this cap is reached, DHS will not approve additional beneficiaries, absent a Secretary-level decision, at the Secretary's sole discretion, to continue the process.

B. Conditions at the Border

1. Trends and Flows: Increase of Venezuelan Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year. By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[4] These gains were subsequently reversed, however, as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.

Shifts in demographics have also had a significant effect on irregular migration. Border encounters in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons. Beginning in the 2010s, a growing share of migrants have been from Northern Central America[5] (NCA) and, since the late 2010s, from countries throughout the Americas. Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence and political oppression and for other non-economic reasons.[6]

The most recent rise in the numbers of encounters at the border has been driven in significant part by a surge in

[3] *See* INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[4] Office of Immigration Statistics (OIS) analysis of historic CBP data.

[5] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[6] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of Title 42 expulsions in 2020. As the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

migration of Venezuelan nationals. Unique encounters of Venezuelan nationals increased throughout fiscal year (FY) 2021, totaling 47,328. More than 25% of Venezuela's population has left the country. The United States is seeing a rising rate of Venezuelans encountered at our border over the past two years, which has surged in the last few months. Average monthly unique encounters of Venezuelan nationals at the land border totaled 15,494 in FY 2022,[7] rising further to over 25,000 in August and 33,000 in September, compared to a monthly average of 127 unique encounters from FY 2014–2019.[8] Of note, unique encounters of Venezuelan nationals rose 293 percent between FY 2021 and FY 2022, while unique encounters of all other nationalities combined increased by 45 percent. Panama is currently seeing more than 3,000 people, mostly Venezuelan nationals, crossing into its territory from Colombia via the Darién jungle each day.

In recent months, this surge in irregular migration of Venezuelan nationals has been accelerating. Nationals from Venezuela accounted for 25,130 unique encounters in August 2022, and the Office of Immigration Statistics (OIS) estimates that there were 33,500 unique encounters in September, more than Mexico and more than all three NCA countries combined.[9]

2. Push and Pull Factors

DHS assesses that the high—and rising—number of Venezuelan encounters has three key causes: First, the deteriorating conditions in Venezuela, including repression, instability, and violence, are pushing large numbers to leave their home country. Second, the lack of safe and orderly migration alternatives throughout the entire region, including to the United States, means that those seeking refuge outside of Venezuela have few lawful options. Third, the United States faces significant limits on the ability to return Venezuelan nationals to Venezuela or elsewhere, as described below; absent such a return ability, more individuals are willing to take a chance that they can come—and stay.

a. Factors Pushing Migration From Venezuela

A complex political, humanitarian, and economic crisis; the widespread presence of non-state armed groups; crumbling infrastructure; and the repressive tactics of Nicolás Maduro have caused nearly 7 million Venezuelans to flee their country.[10] Maduro has arbitrarily banned key opposition figures from participating in the political process, detained hundreds of political prisoners, employed judicial processes to circumscribe political parties, and denied opposition political representatives equal access to media coverage and freedom of movement in the country.[11] In a February 2022 report, Amnesty International reported that ''[c]rimes under international law and human rights violations, including politically motivated arbitrary detentions, torture, extrajudicial executions and excessive use of force have been systematic and widespread, and could constitute crimes against humanity.'' [12] Amnesty International further reported that ''trends of repression in Venezuela have been directed against a specific group of people: those perceived as dissidents or opponents'' of Nicolás Maduro.[13]

According to the United Nations High Commissioner for Refugees, Venezuela has become the second-largest external displacement crisis in the world, following Syria.[14] At least in the short term, the crisis is expected to continue, thus continuing to push Venezuelans to seek alternatives elsewhere. As described above, Panama is currently seeing more than 3,000 people, mostly Venezuelan nationals, crossing into its territory from Colombia via the Darién jungle each day.

b. Return Limitations

At this time, there are significant limits in DHS's ability to expel or return Venezuelans who enter the United States without authorization in between POEs. DHS is currently under a court-ordered obligation to implement the Centers for Disease Control and Prevention's (CDC) Title 42 public health Order, under which covered noncitizens may be prevented entry or expelled to prevent the spread of communicable disease.[15] But Venezuela does not presently allow repatriations via charter flights, which significantly limits DHS's ability to return those subject to the Title 42 Order or who are ordered removed. To date, other countries, including Mexico, have generally been reluctant to accept Venezuelans as well. As a result, DHS was only able to repatriate a small number of Venezuelan nationals to Venezuela in FY 2022.

c. Overall Effect

DHS assesses that the combination of the country conditions in Venezuela, the lack of safe and orderly lawful pathways, and the present inability to expel or remove Venezuelan nationals engaged in irregular migration, has significantly led to the significant increase in irregular migration among Venezuelan nationals. Conversely, DHS assesses that the return of a significant portion of Venezuelans who enter irregularly at the border, coupled with an alternative process pursuant to which Venezuelans could enter the United States lawfully, would meaningfully change the incentives for those intending to migrate—leading to a decline in the numbers of Venezuelans seeking to irregularly cross the SWB.

This prediction is based on prior experience: CBP saw rapidly increasing numbers of encounters of Guatemalan and Honduran nationals from January 2021 until August 2021, when these countries began accepting the direct return of their nationals. In January 2021, CBP encountered an average of 424 Guatemalan nationals and 362 Honduran nationals a day. By August 4, 2021, the 30-day average daily encounter rates had climbed to 1,249 Guatemalan nationals and 1,502 Honduran nationals—an increase of 195 percent and 315 percent, respectively. In the 60 days immediately following the resumption of routine flights, average daily encounters fell by 37

[7] FY 2022 CBP data cited in this notice is based on internal reporting to date. CBP releases official data in regular intervals; final FY 2022 figures may differ to some degree from the figures cited here.

[8] OIS analysis of OIS Persist Dataset based on data through August 31, 2022 and OIS analysis of U.S. Customs and Border Protection (CBP) data from Unified Immigration Portal (UIP) as of October 6, 2022. Unique encounters include encounters of persons at the Southwest Border who were not previously encountered in the prior 12 months. Throughout this notice unique encounter data are defined to also include OFO parolees and other OFO administrative encounters.

[9] OIS Persist Dataset based on data through August 31, 2022 and OIS analysis of CBP UIP data as of October 6, 2022.

[10] UNHCR, Venezuela Situation, available at: *https://www.unhcr.org/en-us/venezuela-emergency.html* (last visited Sept. 24, 2022).

[11] 2021 Country Reports of Human Rights Practices: Venezuela, U.S. Department of State, Apr. 12, 2022, available at: *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/venezuela/* (last visited Sept. 24, 2022).

[12] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p. 11, Feb. 10, 2022, available at: *https://www.amnesty.org/en/documents/amr53/5133/2022/en/* (last visited Sept. 25, 2022).

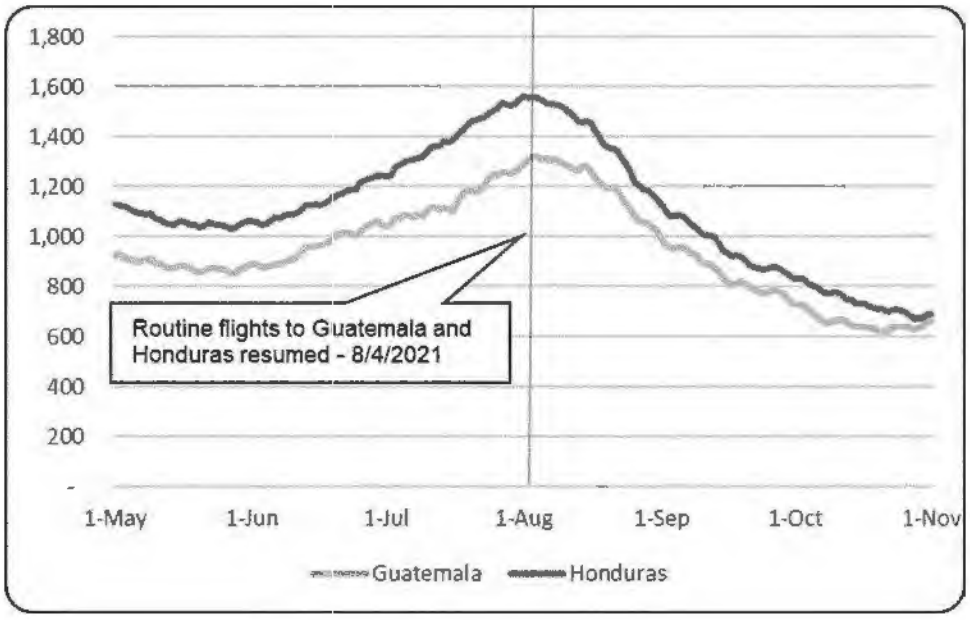
[13] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p.52, Feb. 10, 2022, available at: *https://www.amnesty.org/en/documents/amr53/5133/2022/en/* (last visited Sept. 25, 2022).

[14] UNHCR, Venezuela Situation, available at: *https://www.unhcr.org/en-us/venezuela-emergency.html* (last visited Sept. 24, 2022).

[15] *Louisiana* v. *CDC,*—F. Supp. 3d—, 2022 WL 1604901 (W.D. La. May 20, 2022).

percent for Guatemala and 42 percent for Honduras, as shown in Figure 1 below.[16]

Figure 1: Daily Encounters of Guatemalan and Honduran Nationals, May 1–November 1, 2021.



NOTE: Figure depicts 30-day average of daily encounters.

Source: OIS analysis of OIS Persist Dataset.

Returns alone, however, are not sufficient. While the numbers of encounters of Guatemalan and Honduran nationals have fallen, CBP is currently encountering a total of around 1,000 nationals from these two countries each day. The process thus seeks to *combine* a consequence for Venezuelan nationals who seek to enter the United States irregularly at the land border with an incentive to use the lawful process to request authorization to travel by air to and enter the United States, without making the dangerous journey to the border.

This effort is informed by the way that similar incentives and disincentives worked in the U4U process. In the two weeks prior to U4U's implementation, DHS encountered a daily average of 940 nationals of Ukraine at the U.S.-Mexico land border seeking to enter the United States. After the new parole process launched and approved Ukrainians could fly directly into the United States—whereas those who sought to enter irregularly were subject to expulsion pursuant to the Title 42 public health Order—daily encounters dropped to fewer than twelve per day.[17] Mexican officials also reported seeing a similar decline in the number of inbound Ukrainian air passengers.

3. Impact on DHS Resources and Operations

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in significant part by the number of Venezuelan nationals encountered—DHS has taken a series of extraordinary steps. Largely since FY 2021, DHS has built and now operates 10 soft-sided processing facilities, which cost $688 million in FY 2022. It has detailed 3,770 officers and agents from CBP and ICE to the SWB. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from elsewhere in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 on grants to non-governmental organizations (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP—H) to assist with the reception and onward travel of irregular migrants arriving at the SWB. This spending is in addition to $1.4 billion in FY 2022 one-year surge funding for SWB enforcement and processing capacities.[18]

The impact has been particularly acute in certain border sectors. The increased flows of Venezuelan nationals are disproportionately occurring within the remote Del Rio, El Paso, and Yuma sectors, all of which are at risk of operating, or are currently operating, over capacity. In FY 2022, 93 percent of unique encounters of Venezuelan nationals occurred in these three sectors, with the trend rising to 98 percent in September 2022.[19] In FY 2022, the Del Rio, El Paso, and Yuma sectors encountered almost double the number of migrants as compared to FY 2021 (an 87 percent increase), and a ten-fold increase over the average for FY 2014–FY 2019, primarily as a result of increases in Venezuelans and other non-traditional sending countries.[20]

The focused increase in encounters in those three sectors is particularly challenging. Yuma and Del Rio sectors are geographically remote, and because—until the past two years—they have never been a focal point for large numbers of individuals entering irregularly, they have limited infrastructure and personnel in place to safely process the elevated encounters

[16] OIS analysis of OIS Persist Dataset based on data through August 31, 2022.

[17] OIS Persist Dataset based on data through August 31, 2022.

[18] DHS Plan for Southwest Border Security and Preparedness, DHS Memorandum for Interested Parties, Alejandro N. Mayorkas, Secretary of Homeland Security, Apr. 26, 2022.

[19] OIS analysis of OIS Persist Dataset through August 31, 2022 and CBP UIP data for September 1–30, 2022.

[20] OIS analysis of OIS Persist Dataset through August 31, 2022.

that they are seeing. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border, but is far away from other CBP sectors, which makes it challenging to move individuals elsewhere for processing during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors with capacity to process. In just one week (between September 22–September 28), El Paso and Yuma sectors operated a combined 79 decompression buses staffed by Border Patrol agents to neighboring sectors.[21] In that same week, El Paso and Yuma sectors also operated 29 combined lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[22]

Because these assets are finite, using DHS air resources to operate lateral flights impacts DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources. This is concerning given the correlation between DHS's ability to operate return flights to non-contiguous home countries and encounters at the border, as described above. DHS assesses that a reduction in the flow of Venezuelans arriving at the SWB would reduce pressure on overstretched resources and enable the Department to more quickly process and, as appropriate, return or remove those who do not have a lawful basis to stay.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with discretionary authority to parole noncitizens into the United States temporarily, under such reasonable conditions that the Secretary may prescribe, on a case-by-case basis for ''urgent humanitarian reasons or significant public benefit.'' [23] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[24] DHS may set the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[25] Individuals may be granted advance authorization to travel to the United States to seek parole.[26] DHS may terminate parole in its discretion at any time.[27] Individuals who are paroled into the United States generally may apply for employment authorization.[28]

This effort will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Venezuelan nationals to remain where they are and use a lawful process to request authorization to travel by air to and ultimately enter the United States for the purpose of seeking a discretionary grant of parole for up to two years.

III. Justification for the Process

A. Significant Public Benefit

The case-by-case parole of Venezuelan nationals pursuant to this process—which combines consequences for those who seek to enter the United States irregularly between POEs with an opportunity for eligible Venezuelan nationals to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—will serve a significant public benefit for multiple, intersecting reasons. Specifically, as noted above, we assess that the parole of eligible individuals pursuant to this process will result in the following: (i) enhancing the security of our border by reducing irregular migration of Venezuelan nationals; (ii) enhancing border security and national security by vetting individuals before they arrive at our border; (iii) reducing the strain on DHS personnel and resources; (iv) minimizing the domestic impact of Venezuelan irregular migration; (v) disincentivizing a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfilling important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhancing the Security of Our Border by Reducing Irregular Migration of Venezuelan Nationals

Implementation of the parole process is contingent on the GOM agreeing to accept the return of Venezuelan nationals encountered irregularly entering the United States without authorization between POEs. While DHS remains under the court order to implement the CDC's Title 42 public health Order, these returns will take the form of expulsions. Once Title 42 is no longer in place, DHS will engage the GOM to effectuate Title 8 removals of individuals subject to expedited removal who cannot be returned to Venezuela or elsewhere. The ability to effectuate returns to Mexico will impose a consequence on irregular entry that currently does not exist.

As described above, Venezuelan nationals make up a significant and growing number of those encountered seeking to cross between POEs irregularly. We assess that without additional and more immediate consequences imposed on those who seek to do so, together with a safe and orderly parole process, the numbers will continue to grow. By pairing a consequence on those seeking to irregularly cross between the POEs with the incentive provided by the opportunity to apply for advance authorization to travel to the United States to seek a discretionary grant of parole, this process will create a combination of incentives and disincentives that will lead to a substantial decline in irregular migration by Venezuelans to the SWB.

As also described above, this expectation is informed, in part, by past experience with respect to the ways that flows of irregular migration decreased from NCA countries once nationals from those countries were returned to their home countries and shifts that took place once the U4U process was initiated. These experiences provide compelling evidence of the importance of coupling effective disincentives for irregular entry with incentives for lawful entry as a way of addressing migratory surges.

2. Enhance Border Security and National Security by Vetting Individuals Before They Arrive at Our Border

The Venezuelan parole process described above will allow DHS to vet potential beneficiaries for national security and public safety purposes *before* they travel to the United States. It is important to note that all noncitizens DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing, and that individuals who are determined to pose a national security or public safety threat are detained pending removal. Venezuelan nationals seeking parole via this process will still be subject to this vetting upon their arrival at the POE. That said, there are distinct advantages to being able to conduct some vetting actions *before* an individual arrives at the border to prevent individuals who

[21] Data from SBCC, as of September 29, 2022.

[22] Data from SBCC, as of September 29, 2022.

[23] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole'').

[24] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[25] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[26] *See* 8 CFR 212.5(f).

[27] *See* 8 CFR 212.5(e).

[28] *See* 8 CFR 274a.12(c)(11).

could pose threats to national security or public safety from even traveling to the United States.

As described above, the vetting will require prospective beneficiaries to upload a live photograph via a mobile application. This will substantially enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny them an advance authorization to travel before they arrive at our border.

3. Reduce the Burden on DHS Personnel and Resources

As discussed above, the impact of the increased migratory flows has strained the DHS workforce in ways that have been particularly concentrated in certain sectors along the SWB. By reducing encounters of Venezuelan nationals at the SWB, and channeling decreased flows of Venezuelan nationals to interior POEs through this streamlined process, we anticipate the process will relieve some of this burden. This will free up resources, including those focused on decompression of border sectors, which in turn could enable an increase in removal flights—enabling the removal of more noncitizens with final orders of removal faster and reducing the number of days in DHS custody. While the process will also draw on DHS resources within USCIS and CBP to process requests for discretionary parole on a case-by-case basis and conduct vetting, these requirements involve different parts of DHS and require minimal resources as compared to the status quo.

4. Minimize the Domestic Impact

The increase in irregular migration, including the change in demographics, has put a strain on domestic resources, which is felt most acutely by border communities. As the number of arrivals increases, thus necessitating more conditional releases, the strains are shared by others as well. Given the current inability to return or repatriate Venezuelans in substantial numbers, Venezuelan nationals account for a significant percentage of the individuals being conditionally released pending their removal proceedings or the initiation of such proceedings after being encountered and processed along the SWB.

State and local governments, along with NGOs, are providing services and assistance to the Venezuelans and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[29] DHS also has worked with Congress to make approximately $290 million available since FY 2019 through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. This funding has allowed DHS to support building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Despite these efforts, local communities have reported strain on their ability to provide needed social services.[30] Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[31] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[32] The parole process will address these concerns by diverting flows of Venezuelan nationals to interior POEs through a safe and orderly process and ensuring that those who do arrive in the United States have support during their period of parole. The effort is intended to yield a decrease in the numbers arriving at the SWB.

Moreover, and critically, beneficiaries will be required to fly to the interior, rather than arriving at the SWB, absent extraordinary circumstances. They will only be authorized to come to the United States if they have a supporter who has agreed to receive them and provide basic needs, including housing support. Beneficiaries also will be eligible to apply for work authorization, thus enabling them to support themselves. We anticipate that this process will help reduce the burden on communities, state and local governments, and NGOs that currently support the reception and onward travel of migrants arriving at the SWB.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

In FY 2022, more than 750 migrants died attempting to enter the United States across the SWB,[33] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[34] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues) [35] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[36] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[37] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[38] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils of the journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. Migrants are increasingly traveling to the SWB from South America through the Darién Gap, an incredibly dangerous and grueling 100-kilometer stretch of dense jungle between Colombia and Panama. Women and children are particularly vulnerable. Children are particularly at risk for diarrhea, respiratory diseases, dehydration, and other ailments that

[29] Aya Elamroussi and Adrienne Winston, Washington, DC, approves creation of new agency to provide services for migrants arriving from other states, CNN, Sept. 21, 2022, available at: *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office (last visited Sept. 29, 2022).*

[30] Lauren Villagran. El Paso struggles to keep up with Venezuelan migrants: 5 key things to know. Sep. 14, 2022, available at: *https://www.elpasotimes.com/story/news/2022/09/14/venezuelan-migrants-el-paso-what-to-know-about-their-arrival/69493289007/* (last visited Sept. 29, 2022); Uriel J. Garcia. El Paso scrambles to move migrants off the streets and gives them free bus rides as shelters reach capacity. Sept. 20, 2022, available at: *https://www.texastribune.org/2022/09/20/migrants-el-paso-texas-shelter/* (last visited Sept. 29, 2022).

[31] Email from City of San Diego Office of Immigration Affairs to DHS, Sept. 23, 2022.

[32] Denelle Confair, Local migrant shelter reaching max capacity as it receives hundreds per day, KGUN9 Tucson, Sept. 23, 2022, available at: *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day* (last visited Sept. 29, 2022).

[33] Priscilla Alvarez, First on CNN: A record number of migrants have died crossing the US-Mexico border, Sept. 7, 2022, available at: *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html* (last visited Sept. 30, 2022).

[34] Rescue Beacons and Unidentified Remains, Fiscal Year 2022 Report to Congress, U.S. Customs and Border Protection.

[35] Priscilla Alvarez, First on CNN: A record number of migrants have died crossing the US-Mexico border, Sept. 7, 2022, available at: *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html* (last visited Sept. 30, 2022).

[36] Rescue Beacons and Unidentified Remains, Fiscal Year 2022 Report to Congress, U.S. Customs and Border Protection.

[37] Valerie Gonzalez, The Guardian, Migrants risk death crossing treacherous Rio Grande river for 'American dream,' Sept. 5, 2022, available at: *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream* (last visited Oct. 11, 2022).

[38] Rescue Beacons and Unidentified Remains, Fiscal Year 2022 Report to Congress, U.S. Customs and Border Protection.

require immediate medical attention.[39] According to Panama migration authorities, of the over 31,000 migrants passing through the Darién Gap in August 2022, 23,600 were Venezuelan.[40]

These migration movements are in many cases facilitated by numerous human smuggling organizations that treat the migrants as pawns.[41] These organizations exploit migrants for profit, often bringing them through across inhospitable jungles, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area, noncitizens seeking to cross the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey. Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico last December, and the tragic incident in San Antonio, Texas on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety.[42]

[39] UNICEF, 2021 Records Highest Ever Number of Migrant Children Crossing the Darien Towards the U.S., Oct. 11, 2021, available at: *https://www.unicef.org/lac/en/press-releases/2021-records-highest-ever-number-migrant-children-crossing-darien-towards-us* (last visited Sept. 29, 2022).

[40] Panamá Migración, Irregulares en Tránsito Frontera Panamá—Colombia 2022, available at: *https://www.migracion.gob.pa/inicio/estadisticas*

[41] DHS Plan for Southwest Border Security and Preparedness, DHS Memorandum for Interested Parties, Alejandro N. Mayorkas, Secretary of Homeland Security, Apr. 26, 2022.

[42] Jacob Garcia, Reuters, Migrant truck crashes in Mexico killing 54, available at: *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R* (last visited Sept. 29, 2022); Mica Rosenberg, Kristina Cooke, Daniel Trotta, The border's toll: Migrants increasingly die crossing into U.S. from Mexico, July 25, 2022, available at: *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X* (last visited Oct. 2, 2022).

This new process, which will incentivize intending migrants to use a safe and orderly means to access the United States via commercial air flights, cuts out the smuggling networks. DHS anticipates it will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit.

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy); the Collaborative Migration Management Strategy (CMMS); and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries. The CMMS and the L.A. Declaration call for a collaborative and regional approach to migration. Countries that have endorsed the L.A. Declaration are committed to implementing programs and processes to stabilize communities that host migrants, or that have high outward migration. They commit to humanely enforcing existing laws regarding movements across international boundaries, especially when minors are involved, taking actions to stop migrant smuggling by targeting the criminals involved in these activities, and providing increased regular pathways and protections for migrants residing in or transiting through the 21 countries. The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [43]

[43] L.A. Declaration.

This new process helps achieve these goals by providing an immediate and temporary safe and orderly process for Venezuelan nationals to lawfully enter the United States while we work to improve conditions in sending countries and expand more permanent lawful immigration pathways in the region, including refugee processing, and other lawful pathways into the United States and other Western Hemisphere countries. It thus enables the United States to lead by example.

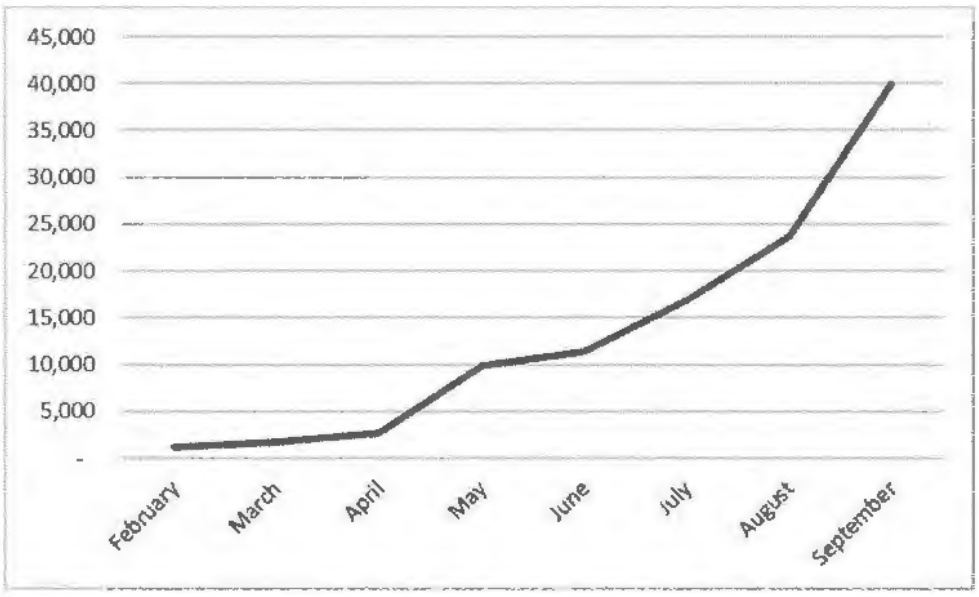
The process also responds to an acute foreign policy need. The current surge of Venezuelan nationals transiting the Darién Gap is impacting every country between Colombia and the SWB. Colombia, Peru, and Ecuador are now hosting almost 4 million displaced Venezuelans among them. The Government of Panama has repeatedly signaled that it is overwhelmed with the number of migrants, a significant portion of whom are Venezuelan, emerging from harrowing journeys through the Darién Gap.

Reporting indicates that in the first six months of 2022, 85 percent more migrants, primarily Venezuelans, crossed from Colombia into Panama through the Darién Gap than during the same period in 2021—including approximately 40,000 Venezuelans in September alone.[44] Again, Darién Gap migrant encounters now average more than 3,000 each day, predominantly comprised of Venezuelan nationals.

Figure 2 shows that the number of Venezuelan nationals processed by Panama after entering irregularly from Colombia increased by almost 30-fold from the week of April 1, 2022 to the week of October 1, 2022.

Figure 2: Panamanian Encounters of Venezuelan Nationals in the Darién Gap, February–September 2022

[44] The Department of State Cable, 22 Panama 624.



Note: September figure is a preliminary estimate.

Source: Panama Migration Report, September 24, 2022.

Key allies throughout the region—including the Governments of Mexico, Costa Rica, and Panama, all of which are also affected by the increased movement of Venezuelan nationals—have been seeking greater action to address these challenging flows for some time. Meanwhile, the GOM has consistently expressed concerns with policies, programs, and trends that contribute to large populations of migrants, many of whom are Venezuelan, entering Mexico. These entries strain local governmental and civil society resources in Mexican border communities in both the south and north, and have at times led to violence, crime, and unsafe and unhealthy encampments.

The United States is already taking key steps to address some of these concerns. On June 10, 2022, the Department of State's Bureau of Population, Refugees, and Migration (PRM) and the U.S. Agency for International Development (USAID) announced $314 million in new funding for humanitarian and development assistance for refugees and vulnerable migrants across the hemisphere, including support for socio-economic integration and humanitarian aid for Venezuelans in 17 countries of the region.[45] And on September 22, 2022, PRM and USAID announced nearly $376 million in additional humanitarian assistance, which will provide essential support for vulnerable Venezuelans inside Venezuela, as well as urgently needed assistance for migrants, refugees, and host communities across the region. This funding will further address humanitarian needs in the region.[46]

This new process adds to these efforts and enables the United States to lead by example. It is a key mechanism to advance the larger domestic and foreign policy goals of this Administration to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. It also lays the foundation for the United States to press regional partners to undertake additional actions with regards to these populations, many of which are already taking important steps. Colombia, for example, is hosting more than 2.4 million displaced Venezuelans and has provided temporary protected status for more than 1.5 million of them. Costa Rica is developing plans to renew temporary protection for Venezuelans. And on June 1, 2022, the Government of Ecuador—which is hosting more than 500,000 Venezuelans—authorized a second regularization process that would provide certain Venezuelans a two-year temporary residency visa.[47] Any effort to meaningfully address the crisis in Venezuela will require continued efforts by these and other regional partners.

Importantly, the United States will not implement the new parole process without the ability to return Venezuelan nationals to Mexico who enter irregularly. The United States' ability to execute this process thus requires the GOM to accept the return of Venezuelan nationals who bypass this new process and enter the United States irregularly between POEs.

For its part, the GOM has made clear that in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe and orderly processes for migrants who seek to enter the United States. As the GOM makes a unilateral decision whether to accept returns of third country nationals at the border and how best to manage migration within Mexico, it is closely watching the United States' approach to migration management and whether the United States is delivering on its plans in this space. Initiating and managing this process—which is dependent on the GOM's actions—will require careful, deliberate, and regular assessment of the GOM's responses to unilateral U.S. actions and ongoing, sensitive diplomatic engagements.

This process is responsive to the GOM's desire to see more lawful pathways to the United States and is aligned with broader Administration

[45] The United States Announces More Than $314 Million in New Stabilization Efforts and Humanitarian Assistance for Venezuelans and Other Migrants at the Summit of the Americas, June 10, 2022, available at: *https://www.usaid.gov/news-information/press-releases/jun-10-2022-united-states-announces-more-314-million-new-stabilization-efforts-venezuela* (last visited Oct. 11, 2022).

[46] The United States Announces Nearly $376 Million in Additional Humanitarian Assistance for People Affected by the Ongoing Crisis in Venezuela and the Region, Sept. 22, 2022, available at: *https://www.usaid.gov/news-information/press-releases/sep-22-2022-the-us-announces-nearly-376-million-additional-humanitarian-assistance-for-people-affected-by-ongoing-crisis-in-venezuela* (last visited Sept. 30, 2022).

[47] Venezuela Regional Crisis—Complex Emergency, June 14, 2022, available at: *https://www.usaid.gov/sites/default/files/documents/2022-06-14_USG_Venezuela_Regional_Crisis_Response_Fact_Sheet_3.pdf* (last visited Sept. 29, 2022).

domestic and foreign policy priorities in the region. It will couple a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly. The goal of this process is to reduce the irregular migration of Venezuelan nationals throughout the hemisphere while we, together with partners in the region, work to improve conditions in sending countries and create more lawful immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian reasons faced by so many Venezuelans subject to the repressive regime of Nicolás Maduro. This process provides a safe and orderly mechanism for Venezuelan nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States.

IV. Eligibility To Participate in the Process and Processing Steps

A. Supporters

U.S.-based supporters will initiate an application on behalf of a Venezuelan national [48] by submitting a Form I–134, Declaration of Financial Support, to USCIS for each beneficiary. Supporters can be sole individuals, individuals filing on behalf of a group, or individuals representing an entity. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Venezuela or be a non-Venezuelan immediate family member [49] of and traveling with a Venezuelan principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134 on their behalf that USCIS has vetted and confirmed;
- possess a passport valid for international travel;
- provide for their own commercial travel to an air POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and
- demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Venezuelan national is ineligible to be considered for parole under this process if that person is a permanent resident or dual national of any country other than Venezuela, or currently holds refugee status in any country.[50]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

- failed to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;
- has been ordered removed from the United States within the prior five years or is subject to a bar based on a prior removal order; [51]
- has crossed irregularly into the United States, between the POEs, after October 19, 2022;
- has irregularly crossed the Mexican or Panamanian borders after October 19, 2022; or
- is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[52]

Travel requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with CDC, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *https://www.uscis.gov/venezuela.*

C. Processing Steps

Step 1: Financial Support

A U.S.-based supporter will submit a Form I–134, Declaration of Financial Support with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134 identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134 for each beneficiary they are seeking to support, including Venezuelans' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the individual and any immediate family members whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS on how to create an account with myUSCIS and instructions on next steps for completing the application. The beneficiary will be required to confirm their biographic information in myUSCIS and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and completing required eligibility attestations, the beneficiary will receive

[48] Certain non-Venezuelans may use this process if they are an immediate family member of a Venezuelan beneficiary and traveling with that Venezuelan beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

[49] See the preceding footnote.

[50] This limitation does not apply to immediate family members traveling with a Venezuelan national.

[51] *See, e.g.,* INA sec. 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

[52] As defined in 6 U.S.C. 279(g)(2). Children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian to be considered for parole at the POE under the process.

instructions through myUSCIS on how to access the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval To Travel to the United States

After completing Step 3, the beneficiary will receive a notice to their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel via commercial air to the United States.[53] Approval of advance authorization to travel does not guarantee parole into the United States at a U.S. POE. That parole is a discretionary determination made by CBP at the POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Upon their arrival at a POE, each individual arriving under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with the CBP inspectional process. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to U.S. Immigration and Customs Enforcement (ICE) for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization under existing regulations. Individuals may request authorization to work from USCIS. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for work authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

D. Sunset, Renewal, and Termination

The process is capped at 24,000 beneficiaries. After this cap is reached, the program will sunset absent a decision by the Secretary to continue the process, based on the Secretary's sole discretion. The Secretary also retains the sole, unreviewable discretion to terminate the process at any point.

E. Administrative Procedure Act (APA)

This process is exempt from notice-and-comment rulemaking requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[54] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [55] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process is exempt from such requirements because it involves a foreign affairs function of the United States.[56] In addition, although under the APA, invocation of this exemption from notice-and-comment rulemaking does not require the agency to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing,[57] and DHS can make one here.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Venezuelan nationals to enter the United States. The United States will not implement the new parole process without the ability to return Venezuelan nationals who enter irregularly to Mexico, and the United States' ability to execute this process thus requires the GOM's willingness to accept into Mexico those who bypass this new process and enter the United States irregularly between POEs. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to this unilateral U.S. action and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now and result in definitely undesirable international consequences. It also would complicate broader discussions and negotiations about migration management. For now, Mexico has indicated it is prepared to make a unilateral decision to accept a substantial number of Venezuela returns. That willingness to accept the returns could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return nationals of Venezuela to Mexico at a future date would likely result in a surge in migration, as migrants rush to the border to enter before the rule becomes final—which would adversely impact each country's border security and further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the request of Mexico and key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process will advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining a strong bilateral relationship.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, in 2017 DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in

[53] Air carriers can validate an approved and valid travel authorization submission using the same mechanisms that are currently in place to validate that a traveler has a valid visa or other documentation to facilitate issuance of a boarding pass for air travel.

[54] 5 U.S.C. 553(b)(A).

[55] *Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[56] 5 U.S.C. 553(a)(1).

[57] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

policy was consistent with the foreign affairs exemption because the change was central to ongoing negotiations between the two countries.[58]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking would be impracticable and contrary to the public interest because of the need for coordination with the GOM described above, and the urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[59] It would be impracticable to delay issuance in order to undertake such procedures because—as noted above—maintaining the status quo, which involves record numbers of Venezuelan nationals currently being encountered attempting to enter irregularly at the SWB, coupled with DHS's extremely limited options for processing, detaining, or quickly removing such migrants, unduly impedes DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths. Undertaking such procedures would also be contrary to the public interest because an advance announcement of this process would seriously undermine a key goal of the policy by incentivizing even more irregular migration of Venezuelan nationals seeking to enter the United States before the process would take effect.

F. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

First, OMB has approved a revision to USCIS Form I–134, *Declaration of Financial Support* (OMB control number 1615–0014) under the PRA's emergency processing procedures at 5 CFR 1320.13. USCIS is making some changes to the online form in connection with the implementation of the process described above. These changes include: requiring two new data elements for U.S.-based supporters (''Sex'' and ''Social Security Number''); adding a third marker (''X'') in addition to ''M'' and ''F'' in accordance with this Administration's stated gender equity goals; and adding Venezuela as an acceptable option for the beneficiary's country of origin. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

Second, OMB has approved an emergency request under 5 CFR 1320.13 for a new information collection from CBP entitled *Advance Travel Authorization.* OMB has approved the emergency request for a period of 6 months and will assign a control number to the collection. This new information collection will allow certain noncitizens from Venezuela, and their qualifying immediate family members, who lack United States entry documents to submit information through the newly developed CBP ATA capability within the CBP One™ application as part of the process to request an advance authorization to travel to the United States to seek parole. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA. More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2022–22739 Filed 10–18–22; 8:45 am]

BILLING CODE 9110–9M–P

[58] *See* 82 FR 4902 (Jan. 17, 2017).

[59] 5 U.S.C. 553(b)(B).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–52]

30-Day Notice of Proposed Information Collection: Debt Resolution Program, OMB Control No.: 2502–0483

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* November 18, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 23, 2022 at 87 FR 1479.

A. Overview of Information Collection

Title of Information Collection: Debt Resolution Program.

OMB Approval Number: 2502–0483.

OMB Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–56141, HUD–56142, HUD–56146.

Description of the need for the information and proposed use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s).

Respondents: Individuals or Households, Business or other For-Profit.

Estimated Number of Respondents: 648.

Estimated Number of Responses: 2,159.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 590 hours.

EXHIBIT 22

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00252 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of Changes to the Parole Process for Venezuelans

ACTION: Notice

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) has authorized updates to the Parole Process for Venezuelans that was initiated in October 2022. The Venezuela process provides a safe and orderly pathway for certain individuals to seek authorization to travel to the United States to be considered for parole at an interior port of entry, contingent on the Government of Mexico (GOM) making an independent decision to accept the return or removal of Venezuelan nationals who bypass this new process and enter the United States without authorization. Pursuant to this notice, the Secretary has removed the limit of 24,000 total travel authorizations and replaced it with a monthly limit of 30,000 travel authorizations spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**). The Secretary also has updated the eligibility criteria for the Venezuela process by including an exception that will enable Venezuelans who cross without authorization into the United States at the Southwest Border (SWB) and are subsequently permitted a one-time option to voluntarily depart or voluntarily withdraw their application for admission to maintain eligibility to participate in this parole process. DHS believes that these changes are needed to ensure that the Venezuela process continues to deliver the already-realized benefits of reducing the number of Venezuelan nationals crossing our border without authorization and the surge in migration throughout the hemisphere and channels migrants into a safe and orderly process that enables them to enter the United States without making the dangerous journey to the SWB.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023. DHS will apply the changes to the process beginning on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Venezuelan Parole Process

On October 19, 2022, DHS published a **Federal Register** Notice describing a new effort to address the high number of Venezuelans encountered at the SWB.[1] Since the announcement of that process, Venezuelans who have not availed themselves of the process, and instead entered the United States without authorization, have been expelled to Mexico pursuant to the Centers for Disease Control and Prevention (CDC) Title 42 public health Order or, if not expelled, processed for removal or the initiation of removal proceedings.

Once the Title 42 public health Order is lifted, DHS will no longer expel noncitizens to Mexico, but rather all noncitizens will be processed pursuant to DHS's Title 8 immigration authorities. The United States' continued operation of this process will continue to be contingent on the GOM's independent decision to accept the return of removal of individuals, including under Title 8 authorities.

Eligibility To Participate in the Process

As described in the October 19 **Federal Register** Notice, the Department of Homeland Security (DHS) implemented a process—modeled on the successful Uniting for Ukraine (U4U) parole process—for certain Venezuelan nationals to lawfully enter the United States in a safe and orderly manner. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support, such as housing and other needs; must pass national security and public safety vetting; and must agree to fly at their own expense to an interior U.S. port of entry (POE), rather than entering at a land POE.

Individuals are ineligible if they have been ordered removed from the United States within the prior five years or have entered unauthorized into the United States, Mexico, or Panama after October 19, 2022. Venezuelan nationals also are generally ineligible if they are a permanent resident or dual national of any country or hold refugee status in any country other than Venezuela, though per the conforming change described below, they will now remain eligible to be considered for parole under this process if DHS operates a similar parole process for nationals of that other country. Only those who meet all specified criteria will be eligible to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis, under this process. The process originally limited the number of Venezuelans who could receive travel authorization to 24,000.

II. Assessment of Venezuela Parole Process to Date

The success of the Venezuela process demonstrates that combining a clear and meaningful consequence for unauthorized entry along the SWB with a significant incentive for migrants to wait where they are and use a lawful process to come to the United States can change migratory flows. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, to an average of 86 per day.[2] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in Venezuelan irregular migration [3] throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién was down from 40,593 in October 2022 to just 668 in November.[4] DHS provided the new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by

[1] 87 FR 63507 (Oct. 19, 2022).

[2] Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[3] In this notice, irregular migration refers to the movement of people into another country without authorization.

[4] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

flying to interior POEs—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the GOM for the first time made an independent decision to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, which imposed a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced parole process. With the vast majority of those encountered returned to Mexico, fewer releases have freed up DHS resources that would otherwise be used to process these individuals; this has also reduced the number of individuals state and local governments, as supported by civil society, have had to receive and assist.

The effects have been felt throughout the Western Hemisphere, not just in the United States. Thousands of Venezuelans who had already crossed the Darién have flown back to Venezuela on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society.[5] Other migrants who were about to enter the Darién have turned around and headed back south.[6] Still others who were intending to migrate north are staying where they are to apply for this lawful process, rather than make the dangerous journey to the SWB.[7]

DHS has seen strong interest in this parole process. As of December 27, 2022, DHS had authorized travel for more than 15,700 Venezuelan beneficiaries, already more than half of the available number of travel authorizations.[8] Of those authorized to travel to the United States, more than 10,600 have arrived and been paroled into the country.[9] More than 3,600 of those Venezuelans who have flown into the United States and were paroled through this process arrived from Colombia; another 2,300 came from Venezuela, 1,500 from Mexico, and 3,100 from other countries. Those figures show that the process is reaching both people in Venezuela and Colombia *before* they seek to irregularly migrate, and those who are displaced in transit countries, like Mexico.[10]

III. Changes

Given the early success of the process, the Secretary has authorized two changes to the process to ensure its continued viability, particularly as DHS prepares for an eventual transition from Title 42 processing to full Title 8 processing at the border.[11]

A. Removal of the 24,000 Limit on Travel Authorizations and Replacement With a 30,000 Monthly Limit Spread Across Separate and Independent Parole Processes

The process announced in the October 19 **Federal Register** Notice was subject to a numerical limit. Demand for the Venezuela process has far exceeded the 24,000 limit set in the first **Federal Register** Notice. In just two months of operation, DHS received thousands of applications from supporters and has already approved well more than half of the available travel authorizations. Were DHS to reach the numerical limit, prospective migrants would no longer be eligible for this process, which serves as a meaningful alternative to irregular migration. DHS anticipates that we would then see increased irregular migration of Venezuelans.

Accordingly, the Secretary has removed the 24,000 numerical limit on travel authorizations and replaced it with a monthly limit of 30,000 travel authorizations in the aggregate spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**). This change gives DHS the flexibility to continue the process for Venezuelans, thereby providing more certainty to the public and supporting partners. It also preserves the flexibility to extend or terminate the process, as the circumstances warrant. DHS will continue to evaluate this monthly limit and make adjustments if needed over time.

B. Updated Eligibility Criteria

Following the GOM's independent decision to accept returns of Venezuelans, DHS began expelling Venezuelans who are encountered after entering the United States without authorization, pursuant to the Title 42 public health Order. Currently, a Venezuelan (or qualifying immediate family member) is ineligible to participate in the parole process if, among other things, they crossed irregularly into the United States after October 19, 2022—regardless of whether they were expelled, ordered removed, or departed voluntarily.[12]

After the Title 42 Order ceases to be in effect, DHS will resume Title 8 immigration processing of all individuals, including Venezuelans. Pursuant to Title 8, noncitizens who have entered the United States without authorization may be permitted to voluntarily depart pursuant to Immigration and Nationality Act (INA) 240B, 8 U.S.C. 1229c, may be permitted to voluntarily withdraw their application for admission pursuant to INA 235(a)(4), 8 U.S.C. 1225(a)(4), or may be ordered removed, regardless of whether Title 42 remains in effect.

Individuals continue to be generally ineligible for consideration for parole pursuant to this process if they have crossed into the United States without authorization between POEs along the SWB since October 20, 2022. There will now be the following exception: individuals who have crossed without authorization into the United States after December 20, 2022, and have been permitted a single instance of voluntary departure pursuant to INA 240B, 8 U.S.C. 1229c, or withdrawal of their application for admission pursuant to INA 235(a)(4), 8 U.S.C. 1225(a)(4), will remain eligible to participate in the parole process. If such an individual crossed without authorization between POEs along the SWB from October 20, 2022 through December 20, 2022, they would remain ineligible to participate and the exception would not apply. Permitting Venezuelan nationals to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process will reduce the burden on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

[5] La Prensa Latina Media, *More than 4,000 migrants voluntarily returned to Venezuela from Panama, https://www.laprensalatina.com/more-than-4000-migrants-voluntarily-returned-to-venezuela-from-panama/,* Nov. 9 2022 (last viewed Dec. 8, 2022).

[6] Voice of America, *U.S. Policy Prompts Some Venezuelan Migrants to Change Route, https://www.voanews.com/a/us-policy-prompts-some-venezuelan-migrants-to-change-route/6790996.html,* Oct. 14, 2022 (last viewed Dec. 8, 2022).

[7] Axios, *Biden's new border policy throws Venezuelan migrants into limbo, https://www.axios.com/2022/11/07/biden-venezuela-border-policy-darien-gap,* Nov. 7 2022 (last viewed Dec. 8, 2022).

[8] Department of Homeland Security, Daily Venezuela Report, Dec. 27, 2022.

[9] *Id.*

[10] *Id.*

[11] The Secretary authorized the changes following considerations reflected in the Secretary's decision memorandum dated December 22, 2022. *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Updates to the Parole Process for Certain Venezuelan Nationals (Dec. 22, 2022).

[12] 87 FR 63507 (Oct. 19, 2022).

The Secretary has also approved a conforming change to provide that a Venezuelan national who is a permanent resident or dual national of any country or holds refugee status in any country other than Venezuela remains eligible to be considered for parole under this process if DHS operates a similar parole process for nationals of that other country. All other eligibility requirements described in the October 19, 2022 Notice remain the same.

These changes are responsive to our multilateral commitments to address irregular migration throughout the Hemisphere. In this case, the United States is making two changes to this process that will support our commitment to creating additional lawful pathways. For its part, the GOM has made an independent decision to accept the return or removal, including under Title 8, of Venezuelan nationals who bypass this new process and enter the United States without authorization. The United States' continued operation of this process is contingent on the GOM's independent decision in this regard.

C. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the Parole Process for Venezuelans at any point.The number of travel authorizations granted under this process shall be spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**), and shall not exceed 30,000 each month. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

IV. Regulatory Requirements

A. Administrative Procedure Act

The October 19 **Federal Register** Notice describing this process explained that this process is exempt from notice-and-comment rulemaking requirements because (1) the process is a general statement of policy,[13] (2) the process pertains to a foreign affairs function of the United States,[14] and (3) even if notice-and-comment were required, DHS would for good cause find that the delay associated with implementing these changes through notice-and-comment rulemaking would be impracticable and contrary to the public interest because of the need for coordination with the GOM, and the urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[15] The changes described in this Notice are amenable to immediate issuance and implementation for the same reasons.

First, these changes relate to a general statement of policy,[16] *i.e.,* a ''statement[] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [17] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if these changes were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, these changes—like the implementation of the process itself—pertain to a foreign affairs function of the United States, as described in the October 19 notice, and are directly responsive to ongoing conversations with, and requests from, foreign partners.[18] Specifically, the GOM has urged the United States to consider lifting the 24,000 limit,[19] which would allow more Venezuelans to participate in and engage the process and further disincentivize irregular migration, enhancing the security of both of our borders. Delaying implementation of these changes to conduct notice-and-comment rulemaking would directly implicate the GOM's independent decision to accept returns, including under Title 8 processes, and produce undesirable international consequences. Absent these changes, DHS would soon reach the 24,000 cap and GOM would no longer accept the returns of Venezuelan nationals. Thus, without these changes, DHS would no longer have the ability to return Venezuelan nationals to Mexico, and the Venezuela process would no longer be viable. That would then, in all likelihood, lead to another surge in migration of Venezuelan nationals throughout the hemisphere and to our border.

Finally, even if notice-and-comment and a delayed effective date were required, DHS would for good cause find that the delay associated with implementing these changes through notice-and-comment rulemaking would be impracticable and contrary to the public interest because of the need for coordination with the GOM, and the urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[20] As noted above, absent immediate action, there is a risk that DHS meets the 24,000 cap, which would in turn cause the GOM to no longer accept the returns of Venezuelan nationals and end the success of the parole process to date at reducing the number of Venezuelan nationals encountered at the border.

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice involves three collections of information, as follows.

In connection with the process for Venezuelans, OMB has previously approved a revision to USCIS Form I–134, *Declaration of Financial Support* (OMB control number 1615–0014) under the PRA's emergency processing procedures at 5 CFR 1320.13. OMB has recently approved a new collection, Form I–134A, Online Request for Consideration to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will now be used for the Venezuela parole process and is being revised in connection with this notice, including by increasing the burden estimate. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has also previously approved an emergency request under 5 CFR 1320.13 for a revision to an information

[13] 5 U.S.C. 553(b)(A); *see also id.* 553(d)(2).

[14] 5 U.S.C. 553(a)(1).

[15] 5 U.S.C. 553(b)(B).

[16] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[17] *Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[18] 5 U.S.C. 553(a)(1).

[19] *See* Dallas Morning News, *Ahead of Title 42's end, U.S.-Mexico negotiations called 'intense,' 'round-the-clock' https://www.dallasnews.com/news/2022/12/13/ahead-of-title-42s-end-us-mexico-negotations-called-intense-round-the-clock/,* Dec. 13, 2022 (last viewed Dec. 14, 2022).

[20] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the changes described above, CBP is making further changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about these collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00253 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4678–DR; Docket ID FEMA–2022–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4678–DR), dated November 28, 2022, and related determinations.

DATES: The declaration was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of July 12 to July 13, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

McDowell County for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00177 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4677–DR; Docket ID FEMA–2022–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4677–DR), dated November 21, 2022, and related determinations.

DATES: The declaration was issued November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Hurricane Ian during the period of September 25 to October 4, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

EXHIBIT 23

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [101] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [102] DHS concluded that ''a surge could result in significant loss of human life.'' [103]

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Nicaragua parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Nicaraguan nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00254 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–9M–P

[101] *Id.*

[102] *Id.*

[103] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4679–DR; Docket ID FEMA–2022–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4679–DR), dated November 28, 2022, and related determinations.

DATES: The declaration was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of August 14 to August 15, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Fayette County for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00178 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Cubans

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to enhance the security

of our Southwest Border (SWB) by reducing the number of encounters of Cuban nationals crossing the border without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by a surge in migration. Cubans who do not avail themselves of this new process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to removal—including to third countries, such as Mexico. As part of this effort, the U.S. Department of Homeland Security (DHS) is implementing a process—modeled on the successful Uniting for Ukraine (U4U) and Process for Venezuelans—for certain Cuban nationals to lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period, pass national security and public safety vetting, and fly at their own expense to an interior POE, rather than entering at a land POE. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication, with an exception for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process; or are otherwise deemed not to merit a favorable exercise of discretion.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Cuban Parole Process

This notice describes the implementation of a new parole process for certain Cuban nationals, including the eligibility criteria and filing process. The parole process is intended to enhance border security by reducing the record levels of Cuban nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations as well as their facilitators and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to and arriving, without authorization, at the SWB.

Building on the success of the Uniting for Ukraine (U4U) process and the Process for Venezuelans, DHS is implementing a similar process to address the increasing number of encounters of Cuban nationals at the SWB and at sea, which have reached record levels over the past six months. Similar to Venezuela, Cuba has restricted DHS's ability to remove individuals to Cuba, which has constrained the Department's ability to respond to this surge.

In October 2022, DHS undertook a new effort to address the high number of Venezuelans encountered at the SWB.[3] Specifically, DHS provided a new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by flying to interior ports of entry—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the Government of Mexico (GOM) made an independent decision for the first time to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, thus imposing a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced Parole Process. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, to an average of 86 per day.[4] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in irregular migration of Venezuelans throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién Gap—an inhospitable jungle that spans between Panama and Colombia—was down from 40,593 in October 2022 to just 668 in November.[5]

DHS anticipates that implementing a similar process for Cubans will reduce the number of Cubans seeking to irregularly enter the United States between POEs along the SWB or by sea by coupling a meaningful incentive to seek a safe, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization pursuant to this process. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process. Implementation of the new parole process for Cubans is

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Cuban Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

[3] Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[4] DHS Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[5] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

contingent on the GOM accepting the return, departure, or removal to Mexico of Cuban nationals seeking to enter the United States without authorization between POEs on the SWB.

As in the process for Venezuelans, a supporter in the United States must initiate the process on behalf of a Cuban national (and certain non-Cuban nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed.

In addition to the supporter requirement, Cuban nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case-by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry at an interior POE.

A grant of parole under this process is for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region, and allow for increased removals of Cubans from the United States and partner nations who continue to migrate irregularly but who lack a valid claim of asylum or other forms of protection. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits, including adjustment of status pursuant to the Cuban Adjustment Act, Public Law 89–732, 80 Stat. 1161 (1966) (8 U.S.C. 1255 note), for which they may be eligible, and to work and contribute to the United States. Those who are not granted asylum or any other immigration benefits during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Cuban nationals pursuant to this process will provide a significant public benefit for the United States, by reducing unauthorized entries along our SWB, while also addressing the urgent humanitarian reasons that are driving hundreds of thousands of Cubans to flee their home country, to include crippling economic conditions and dire food shortages, widespread social unrest, and the Government of Cuba's (GOC) violent repression of dissent.[6] Most significantly, DHS anticipates this process will: (i) enhance the security of the U.S. SWB by reducing irregular migration of Cuban nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Cuba; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

The Secretary retains the sole discretion to terminate the process at any point.

B. Conditions at the Border

1. Impact of Venezuela Process

This process is modeled on the Venezuela process—as informed by the way that similar incentive and disincentive structures successfully decreased the number of Venezuelan nationals making the dangerous journey to and being encountered along the SWB. The Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use a safe, orderly process to come to the United States can change migratory flows. Prior to the October 12, 2022 announcement of the Venezuela process, DHS encountered approximately 1,100 Venezuelan nationals per day between POEs—with peak days exceeding 1,500. Within a week of the announcement, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, an average of 86 per day.[7]

Panama's daily encounters of Venezuelans also declined significantly over the same time period, falling some 88 percent, from 4,399 on October 16 to 532 by the end of the month—a decline driven entirely by Venezuelan migrants' choosing not to make the dangerous journey through the Darién Gap. The number of Venezuelans attempting to enter Panama through the Darién Gap continued to decline precipitously in November—from 40,593 encounters in October, a daily average of 1,309, to just 668 in November, a daily average of just 22.[8]

The Venezuela process fundamentally changed the calculus for Venezuelan migrants. Venezuelan migrants who had already crossed the Darién Gap have returned to Venezuela by the thousands on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society. Other migrants who were about to enter the Darién Gap have turned around and headed back south. Still others who were intending to migrate north are staying where they are to apply for this parole process. Put simply, the Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use this parole process to come to the United States can yield a meaningful change in migratory flows.

2. Trends and Flows: Increase of Cuban Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year.[9] By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[10] However, these gains were subsequently reversed as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.[11]

Shifts in demographics have also had a significant effect on migration flows. Border encounters in the 1980s and

[6] Washington Office on Latin America, *U.S.-Cuba Relations: The Old, the New and What Should Come Next,* Dec. 16, 2022, *https://www.wola.org/analysis/us-cuba-relations-old-new-should-come-next/* (last visited Dec. 17, 2022).

[7] Office of Immigration Statistics (OIS) analysis of data pulled from CBP UIP December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[8] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

[9] OIS analysis of historic CBP data.

[10] *Id.*

[11] *Id.*

1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[12] Beginning in the 2010s, a growing share of migrants have come from Northern Central America [13] (NCA) and, since the late 2010s, from countries throughout the Americas.[14] Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence, political oppression, and for other non-economic reasons.[15]

Cubans are fleeing the island in record numbers, eclipsing the mass exodus of Cuban migrants seen during the Mariel exodus of 1980.[16] In FY 2022, DHS encountered about 213,709 unique Cuban nationals at the SWB, a seven-fold increase over FY 2021 rates, and a marked 29-fold increase over FY 2020.[17] FY 2022 average monthly unique encounters of Cuban nationals at the land border totaled 17,809, a stark increase over the average monthly rate of 589 unique encounters in FYs 2014–2019.[18] These trends are only accelerating in FY 2023. In October and November 2022, DHS encountered 62,788 unique Cuban nationals at the border—almost one third FY 2022's record total.[19] The monthly average of 31,394 unique Cuban nationals is a 76 percent increase over the FY 2022 monthly average.[20] The first 10 days of December 2022 saw 15,657 encounters of Cubans at the SWB.[21] In FY 2023, Cuban nationals have represented 16.5 percent of all unique encounters at the SWB, the second largest origin group.[22]

Maritime migration from Cuba also increased sharply in FY 2022 compared to FY 2021. According to DHS data, in FY 2022, a total of 5,740 Cuban nationals were interdicted at sea, the top nationality, compared to 827 in FY 2021, an almost 600 percent increase in a single fiscal year.[23]

In addition to the increase of Cuban nationals in U.S. Coast Guard (USCG) interdictions at sea and U.S. Customs and Border Protection (CBP) encounters at the SWB, USBP encounters of Cubans in southeast coastal sectors are also on the rise.[24] In FY 2022, DHS encountered 2,657 unique Cuban nationals (46 percent of total unique encounters), an increase of 1,040 percent compared to FY 2021.[25] This trend also has accelerated sharply in FY 2023, as CBP has made 1,917 unique encounters of Cuban nationals in the first two months of the FY—almost three-quarters of FY 2022's total.[26] Cuban nationals are 72 percent of all unique encounters in these sectors in October and November.[27]

3. Push and Pull Factors

DHS assesses that the high—and rising—number of Cuban nationals encountered at the SWB and interdicted at sea is driven by three key factors: First, Cuba is facing its worst economic crisis in decades due to the lingering impacts of the COVID–19 pandemic, high food prices, and economic sanctions.[28] Second, the government's response has been marked by further political repression, including widespread arrests and arbitrary detentions in response to protests.[29] Third, the United States faces significant limits on the ability to return Cuban nationals who do not establish a legal basis to remain in the United States to Cuba or elsewhere; absent the ability to return Cubans who do not have a lawful basis to stay in the United States, more individuals are willing to take a chance that they can come—and stay.

Further, in November 2021, the Government of Nicaragua announced visa-free travel for Cubans.[30] This policy provided Cubans a more convenient and accessible path into the continent, facilitating their ability to begin an irregular migration journey to the SWB via land routes.[31] Many such Cuban migrants fall victim to human smugglers and traffickers, who look to exploit the most vulnerable individuals for profit with utter disregard for their safety and wellbeing, as they attempt the dangerous journey northward through Central America and Mexico.[32]

i. Factors Pushing Migration From Cuba

There are a number of economic and other factors that are driving migration of Cuban nationals. Cuba is undergoing its worst economic crisis since the 1990s [33] due to the lingering impact of the COVID–19 pandemic, reduced foreign aid from Venezuela because of that country's own economic crisis, high food prices, and U.S. economic sanctions.[34] In July 2022, the

[12] According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 96 to over 99 percent of apprehensions of persons entering without inspection between 1980 and 2000. OIS Yearbook of Immigration Statistics, various years. On Mexican migrants from this era's demographics and economic motivations see Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, ''The New Era of Mexican Migration to the United States,'' *The Journal of American History* Vol. 86, No. 2, 518–536 (Sept. 1999).

[13] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[14] According to OIS analysis of CBP data, Mexican nationals continued to account for 89 percent of total SWB encounters in FY 2010, with Northern Central Americans accounting for 8 percent and all other nationalities for 3 percent. Northern Central Americans' share of total encounters increased to 21 percent by FY 2012 and averaged 46 percent in FY 2014–FY 2019, the last full year before the start of the COVID–19 pandemic. All other countries accounted for an average of 5 percent of total SWB encounters in FY 2010–FY 2013, and for 10 percent of total encounters in FY 2014–FY 2019.

[15] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of T42 expulsions in 2020. At the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

[16] El País, *The Cuban Migration Crisis, Biggest Exodus in History Holds Key to Havana-Washington Relations,* Dec. 15, 2022, *https://english.elpais.com/international/2022-12-15/the-cuban-migration-crisis-biggest-exodus-in-history-holds-key-to-havana-washington-relations.html* (last visited Dec. 17, 2022).

[17] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] OIS analysis of CBP Unified Immigration Portal (UIP) data pulled on December 12, 2022.

[22] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[23] OIS analysis of United States Coast Guard (USCG) data provided October 2022; Maritime Interdiction Data from USCG, October 5, 2022.

[24] Includes Miami, FL; New Orleans, LA; and Ramey, PR sectors where all apprehensions are land apprehensions not maritime.

[25] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[26] *Id.*

[27] *Id.*

[28] The Economist, *Cuba is Facing Its Worst Shortage of Food Since 1990s,* July 1, 2021, *https://www.economist.com/the-americas/2021/07/01/cuba-is-facing-its-worst-shortage-of-food-since-the-1990s* (last visited Dec. 17, 2022).

[29] Miami Herald, *As Cubans Demand Freedom, President Díaz-Canel Says He Will Not Tolerate 'Illegitimate' Protests,* October 2, 2022, *https://www.miamiherald.com/news/nation-world/world/americas/cuba/article266767916.html* (last visited Dec. 17, 2022).

[30] Reuters, Nicaragua Eliminates Visa Requirement for Cubans, November 23, 2021, *https://www.reuters.com/world/americas/nicaragua-eliminates-visa-requirement-cubans-2021-11-23/* (last visited Dec. 17, 2022).

[31] The New York Times, *Cuban Migrants Arrive to U.S. in Record Numbers, on Foot, Not by Boat,* May 4, 2022, *https://www.nytimes.com/2022/05/03/world/americas/cuban-migration-united-states.html* (last visited Dec. 17, 2022).

[32] CNN, *Cubans are Arriving to the U.S. in Record Numbers. Smugglers are Profiting from Their Exodus, https://www.cnn.com/2022/05/12/americas/cuba-mass-migration-intl-latam/index.html,* May 12, 2022 (last visited Dec. 17, 2022).

[33] The Economist, *Cuba is Facing Its Worst Shortage of Food Since 1990s,* July 1, 2021, *https://www.economist.com/the-americas/2021/07/01/cuba-is-facing-its-worst-shortage-of-food-since-the-1990s* (last visited Dec. 17, 2022).

[34] Congressional Research Service, *Cuba: U.S. Policy in the 117th Congress,* Sept. 22, 2022, *https://*

Continued

Government of Cuba (GOC) reported the economy contracted by 10.9% in 2020, grew by 1.3% in 2021, and is projected to expand by 4% in 2022.[35] However, this projected expansion is unlikely to respond to the needs of the Cuban people. Mass shortages of dairy and other basic goods continue to persist, and Cubans wait in lines for hours to receive subsidized cooking oil or other basic goods.[36] Deepening poverty, exacerbated by the COVID–19 pandemic, has led to food shortages and rolling blackouts, and continues to batter the economy.[37] This combination of factors has created untenable economic conditions on the island that are likely to continue to drive Cubans to travel irregularly to the United States in the immediate future.[38]

The GOC has not been able to effectively address these issues to date, and has instead taken to repressive tactics to manage public discontent. Cuba remains a one-party authoritarian regime under the Communist Party of Cuba (PCC) government, which continues to restrict freedoms of expression, association, peaceful assembly, and other human rights.[39] The GOC employs arbitrary detention to harass and intimidate critics, independent activists, political opponents, and others.[40] While the Cuban constitution grants limited freedoms of peaceful assembly and association, the GOC restricts these freedoms in practice.[41] The government routinely blocks any attempts to peacefully assemble that might result in opposition to, or criticism of, the government.[42] This was evident when the human rights situation in Cuba began to decline significantly in 2020.[43] In November 2020, the government cracked down on the San Isidro Movement (MSI), a civil society group opposed to restrictions on artistic expression.[44] This crackdown, coupled with deteriorating economic conditions (food and medicine shortages and blackouts), led to demonstrations in Havana and throughout the country.[45]

According to a Human Rights Watch report, the GOC also committed extensive human rights violations in response to massive anti-government protests in July 2021 with the apparent goal of punishing protesters and deterring future demonstrations.[46] The report documents a wide range of human rights violations against well-known government critics and ordinary citizens, including, arbitrary detention, prosecutions without fair trial guarantees, and cases of physical ill treatment, including beatings that in some cases constitute torture.[47] Several organizations reported countrywide internet outages, followed by erratic connectivity, including restrictions on social media and messaging platforms.[48]

Protests over the challenges of obtaining basic necessities have continued as have heavy-handed government responses. In September 2022, a prolonged blackout caused by Hurricane Ian led to protests in Havana and other cities.[49] Cuban President Miguel Díaz-Canel denounced the peaceful gatherings as ''counterrevolutionary'' and ''indecent,'' remarking that ''[d]emonstrations of this type have no legitimacy.'' [50] Amnesty International received reports of the GOC deploying the military and police to repress these protests as well as reports of arbitrary detention.[51]

The government's repression and inability to address the underlying shortages that inspired those lawful demonstrations have generated a human rights and humanitarian crisis that is driving Cubans from the country. On June 2, 2022, the Inter-American Commission on Human Rights (IACHR) in its 2021 Annual Report stated that no guarantees currently exist for exercising freedom of expression in Cuba.[52] Although the forms of harassment of independent journalists, artists, activists, and any who question government officials are not new, the 2021 Annual Report notes that they are worsening quickly.[53] The government controls formal media and closely monitors and targets perceived dissidents within the artistic community, mainstream artists, and media figures who express independent or critical views.[54] GOC frequently blocks access to many news websites and blogs and has repeatedly imposed targeted restrictions on critics' access to cellphone data.[55]

Cuba's deteriorating economic conditions and political repression continue to increasingly drive Cubans out of their country. As a result, many have taken dangerous journeys, including through maritime means, often costing their lives at sea and on land while trying to reach the United States.

ii. Return Limitations

Due to the global COVID–19 pandemic, the GOC stopped accepting regular returns of their nationals via U.S. Immigration and Customs Enforcement (ICE) aircraft after February 28, 2020. The U.S. Government has been engaged in discussions with the GOC to reactivate the Migration Accords, which specify that the United States will process 20,000 Cuban nationals—not including immediate relatives of U.S. citizens—to come to the United States through immigrant visas and other lawful pathways, such as the Cuban Family Reunification Parole (CFRP) program, and that the Cuban government will accept the repatriation of its nationals who are encountered entering the United States without authorization. A limited number of removal flights will not, absent other efforts, impose a deterrent to Cuban nationals seeking to cross, unauthorized, into the United States.

crsreports.congress.gov/product/pdf/R/R47246 (last visited Dec. 17, 2022).

[35] Caribbean Council, *Gil Says Economic Recovery Gradual, Inflation Must Be Better Addressed,* Cuba Briefing, July 25, 2022, *https://www.caribbean-council.org/gil-says-economic-recovery-gradual-inflation-must-be-better-addressed/* (last visited Sept. 25, 2022).

[36] Washington Post, *In Cuba, a Frantic Search for Milk,* May 21, 2022, *https://www.washingtonpost.com/world/interactive/2022/cuba-economy-milk-shortage/* (last visited Sept. 25, 2022).

[37] New York Times, *'Cuba Is Depopulating': Largest Exodus Yet Threatens Country's Future,* Dec. 10, 2022. *https://www.nytimes.com/2022/12/10/world/americas/cuba-us-migration.html* (last visited Dec. 16, 2022).

[38] *Id.*

[39] U.S. Department of State, *2021 Country Reports on Human Rights Practices: Cuba, https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/cuba/* (last visited Dec. 17, 2022).

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] Congressional Research Service, Cuba: U.S. Policy Overview, Aug. 5, 2022, *https://crsreports.congress.gov/product/pdf/IF/IF10045* (last visited Dec. 17, 2022).

[44] *Id.*

[45] *Id.*

[46] Human Rights Watch, Prison or Exile: Cuba's Systematic Repression of July 2021 Demonstrators, July 11, 2022. *https://www.hrw.org/report/2022/07/11/prison-or-exile/cubas-systematic-repression-july-2021-demonstrators.*

[47] *Id.*

[48] Human Rights Watch, World Report 2022—Cuba. See *https://www.hrw.org/world-report/2022/country-chapters/cuba.*

[49] Dave Sherwood, Reuters, Oct. 1, 2022, Banging pots, Cubans stage rare protests over Hurricane Ian blackouts, *https://www.reuters.com/world/americas/cubans-havana-bang-pots-protest-days-long-blackout-after-ian-2022-09-30/.*

[50] Miami Herald, *As Cubans Demand Freedom, President Díaz-Canel Says He Will Not Tolerate 'Illegitimate' Protests,* October 2, 2022, *https://www.miamiherald.com/news/nation-world/world/americas/cuba/article266767916.html* (last visited Dec. 17, 2022).

[51] Amnesty International, *Cuba: Tactics of Repression Must Not be Repeated,* Oct. 5, 2022, *https://www.amnesty.org/en/latest/news/2022/10/cuba-repression-must-not-be-repeated/* (last viewed Dec. 19, 2022).

[52] IACHR, Annual Report 2021—Chapter IV.B—Cuba, p.678, June 2, 2022, *https://www.oas.org/en/iachr/reports/ia.asp?Year=2021* (last visited Dec. 19, 2022).

[53] *Id.*

[54] *Id.*

[55] *Id.*

As a result, the U.S. did not return any Cuban nationals directly to Cuba in FY 2022. In addition, other countries, including Mexico, have generally refused to accept the returns of Cuban nationals, with limited exceptions including Cubans who have immediate family members who are Mexican citizens or who otherwise have legal status in Mexico. In FY 2022, DHS expelled 4,710 Cuban nationals to Mexico, equivalent to 2 percent of Cuban encounters for the year.[56]

Like the Venezuela process, the Cuba process will require a significant expansion of opportunities for return or removal, to include the GOM's acceptance of Cuban nationals encountered attempting to irregularly enter the United States without authorization between POEs.

Returns alone, however, are not sufficient to reduce and divert the flows of Cubans. The United States will combine a consequence for Cuban nationals who seek to enter the United States irregularly at the land border with an incentive to use the safe, orderly process to request authorization to travel by air to, and seek parole to enter, the United States, without making the dangerous journey to the border.

4. Impact on DHS Resources and Operations

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in part by the number of Cuban nationals encountered—DHS has taken a series of extraordinary steps. Since FY 2021, DHS has built and now operates 10 soft-sided processing facilities at a cost of $688 million. CBP and ICE detailed a combined 3,770 officers and agents to the SWB to effectively manage this processing surge. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from other divisions in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 combined on grants to non-governmental (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP–H) to assist with the reception and onward travel of migrants arriving at the SWB. This spending is in addition to $1.4 billion in additional FY 2022 appropriations that were designated for SWB enforcement and processing capacities.[57]

The impact has been particularly acute in certain border sectors. The increased flows of Cuban nationals are disproportionately occurring within the remote Del Rio and Yuma sectors, both of which are at risk of operating, or are currently operating, over capacity. In FY 2022, 73 percent of unique encounters of Cuban nationals occurred in these two sectors.[58] Thus far in FY 2023, Del Rio and Yuma sectors have accounted for 72 percent of unique encounters of Cuban nationals.[59] In FY 2022, Del Rio and Yuma sectors encountered over double (137 percent increase) the number of migrants as compared to FY 2021, a fifteen-fold increase over the average for FY 2014–FY 2019, in part as a result of the sharp increase in Cuban nationals being encountered there.[60]

The focused increase in encounters within those two sectors is particularly challenging. Del Rio sector is geographically remote, and because—up until the past two years—it has not been a focal point for large numbers of individuals entering irregularly, it has limited infrastructure and personnel in place to safely process the elevated encounters that they are seeing. The Yuma Sector is along the Colorado River corridor, which presents additional challenges to migrants, such as armed robbery, assault by bandits, and drowning, as well as to the U.S. Border Patrol (USBP) agents encountering them. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border but is far away from other CBP sectors, which makes it challenging to move individuals for processing elsewhere during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors that have additional capacity to process. In November 2022, USBP sectors along the SWB operated a combined 602 decompression bus routes to neighboring sectors and operated 124 lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[61]

Because DHS assets are finite, using air resources to operate lateral flights reduces DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources. Fewer international repatriation flights in turn exacerbates DHS's inability to return or remove noncitizens in its custody by sending the message that there is no consequence for illegal entry.

The sharp increase in maritime migration has also had a substantial impact on DHS resources. USCG has surged resources and shifted assets from other missions due to this increased irregular maritime migration. In response to the persistently elevated levels of irregular maritime migration across all southeast vectors, the Director of Homeland Security Task Force-Southeast (HSTF–SE) elevated the operational phase of DHS's maritime mass migration plan (Operation Vigilant Sentry) from Phase 1A (Preparation) to Phase 1B (Prevention).[62] Operation Vigilant Sentry is HSTF–SE's comprehensive, integrated, national operational plan for a rapid, effective, and unified response of federal, state, and local capabilities in response to indicators and/or warnings of a mass migration in the Caribbean.

The shift to Phase 1B triggered the surge of additional DHS resources to support HSTF–SE's Unified Command staff and operational rhythm. For example, between July 2021 and August 2022, Coast Guard operational planners surged three times the number of large cutters to the South Florida Straits and the Windward Passage, four times the number of patrol boats and twice the number of fixed/rotary-wing aircraft to support maritime domain awareness and interdiction operations in the southeastern maritime approaches to the United States. USCG also added two MH–60 helicopters to respond to increased maritime migration flows in FY 2022.[63] Moreover, USCG had to almost double its flight hour coverage per month to support migrant interdictions in FY 2022. Increased resource demands translate into increased maintenance on those high demand air and sea assets.

DHS assesses that a reduction in the flow of Cuban nationals arriving at the SWB or taking to sea would reduce pressure on overstretched resources and enable the Department to more quickly

[56] OIS analysis of OIS Persist Dataset and CBP subject-level data through November 30, 2022.

[57] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[58] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[59] *Id.*

[60] *Id.*

[61] Data from SBCC, as of December 11, 2022.

[62] Operation Vigilant Sentry (OVS) Phase 1B, Information Memorandum for the Secretary from RADM Brendon C. McPherson, Director, Homeland Security Task Force—Southeast, August 21, 2022.

[63] Joint DHS and DOD Brief on Mass Maritime Migration, August 2022.

process and, as appropriate, return or remove those who do not have a lawful basis to stay, or repatriate those encountered at sea while also delivering on other maritime missions.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [64] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[65] DHS sets the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[66] DHS may terminate parole in its discretion at any time.[67] By regulation, parolees may apply for and be granted employment authorization to work lawfully in the United States.[68]

This process will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Cuban nationals to remain where they are and use a lawful process to request authorization to travel by air to, and ultimately apply for discretionary grant of parole into, the United States for a period of up to two years.

III. Justification for the Process

As noted above, section 212(d)(5)(A) of the INA confers upon the Secretary of Homeland Security the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [69]

A. Significant Public Benefit

The parole of Cuban nationals and their immediate family members under this process—which imposes new consequences for Cubans who seek to enter the United States irregularly between POEs, while providing an alternative opportunity for eligible Cuban nationals to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—serves a significant public benefit for several, interrelated reasons. Specifically, we anticipate that the parole of eligible individuals pursuant to this process will: (i) enhance border security through a reduction in irregular migration of Cuban nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Cuba; (v) provide a disincentive to undergo the dangerous journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhance Border Security by Reducing Irregular Migration of Cuban Nationals

As described above, Cuban nationals make up a significant and growing number of those encountered seeking to cross between POEs irregularly. DHS assesses that without additional and more immediate consequences imposed on those who seek to do so, together with a safe and orderly process for Cubans to enter the United States, without making the journey to the SWB, the numbers will continue to grow.

By incentivizing individuals to seek a safe, orderly means of traveling to the United States through the creation of an alternative pathway to the United States, while imposing additional consequences to irregular migration, DHS assesses this process could lead to a meaningful drop in encounters of Cuban individuals along the SWB and at sea. This expectation is informed by the recently implemented process for Venezuelans and the significant shifts in migratory patterns that took place once the process was initiated. The success to date of the Venezuela process provides compelling evidence that coupling effective disincentives for irregular entry with incentives for a safe, orderly parole process can meaningfully shift migration patterns in the region and to the SWB.

Implementation of the parole process is contingent on the GOM's independent decision to accept the return of Cuban nationals who voluntarily depart the United States, those who voluntarily withdraw their applications for admission, and those subject to expedited removal who cannot be removed to Cuba or elsewhere. The ability to effectuate voluntary departures, withdrawals, and removals of Cuban nationals to Mexico will impose a consequence on irregular entry that currently does not exist.

2. Improve Vetting for National Security and Public Safety

All noncitizens whom DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing. Individuals who are determined to pose a national security or public safety threat are detained pending removal. That said, there are distinct advantages to being able to vet more individuals before they arrive at the border so that we can stop individuals who could pose threats to national security or public safety even earlier in the process. The Cuban parole process will allow DHS to vet potential beneficiaries for national security and public safety purposes before they travel to the United States.

As described below, the vetting will require prospective beneficiaries to upload a live photograph via an app. This will enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny them travel before they arrive at our border, representing an improvement over the status quo.

3. Reduce the Burden on DHS Personnel and Resources

By reducing encounters of Cuban nationals encountered at sea or at the SWB, and channeling decreased flows of Cuban nationals to interior POEs, we anticipate that the process could relieve some of the impact increased migratory flows have had on the DHS workforce along the SWB. This process is expected to free up resources, including those focused on decompression of border sectors, which in turn may enable an increase in removal flights—allowing for the removal of more noncitizens with final orders of removal faster and reducing the number of days migrants are in DHS custody. While the process will also draw on DHS resources within U.S. Citizenship and Immigration Services (USCIS) and CBP to process requests for discretionary parole on a

[64] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Cubans paroled into the United States through this process are not being paroled as refugees, and instead will be considered for parole on a case-by-case basis for a significant public benefit or urgent humanitarian reasons. This parole process does not, and is not intended to, replace refugee processing.

[65] INA sec. 101(a)(13)(B), 212(d)(5)(A), 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A).

[66] *See* 8 CFR 212.5(c).

[67] *See* 8 CFR 212.5(e).

[68] *See* 8 CFR 274a.12(c)(11).

[69] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

case-by-case basis and conduct vetting, these requirements involve different parts of DHS and require fewer resources as compared to the status quo.

In the Caribbean, DHS also has surged significant resources—mostly from USCG—to address the heightened rate of maritime encounters. Providing a safe and orderly alternative path is expected to also reduce the number of Cubans who seek to enter the United States by sea, and will allow USCG to better balance its other important missions, including its counter-drug smuggling operations, protection of living marine resources, support for shipping navigation, and a range of other critical international engagements.

In addition, permitting Cuban nationals to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process will reduce the burden on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

4. Minimize the Domestic Impact

Though the Venezuelan process has significantly reduced the encounters of Venezuelan nationals, other migratory flows continue to strain domestic resources, which is felt most acutely by border communities. Given the inability to remove, return, or repatriate Cuban nationals in substantial numbers, DHS is currently conditionally releasing 87 percent of the Cuban nationals it encounters at the border, pending their removal proceedings or the initiation of such proceedings, and Cuban nationals accounted for 23 percent of all encounters released at the border in November 2022.[70] The increased volume of provisional releases of Cuban nationals puts strains on U.S. border communities.

Generally, since FY 2019, DHS has worked with Congress to make approximately $290 million available through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. These entities have engaged to provide services and assistance to Cuban nationals and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[71] FEMA funding has supported building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Nevertheless, local communities have reported strain on their ability to provide needed social services. Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[72] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[73] Since Cuban nationals account for a significant percentage of the individuals being conditionally released into communities after being processed along the SWB, this parole process will address these concerns by diverting flows of Cuban nationals into a safe and orderly process in ways that DHS anticipates will yield a decrease in the numbers arriving at the SWB.

DHS anticipates that this process will help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of migrants arriving at the SWB. Beneficiaries are required to fly at their own expense to an interior POE, rather than arriving at the SWB. They also are only authorized to come to the United States if they have a supporter who has agreed to receive them and provide basic needs, including housing support. Beneficiaries also are eligible to apply for work authorization, thus enabling them to support themselves.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

The process, which will incentivize intending migrants to use a safe, orderly, and lawful means to access the United States via commercial air flights, cuts out the smuggling networks. This is critical, because transnational criminal organizations—including the Mexican drug cartels—are increasingly playing a key role in human smuggling, reaping billions of dollars in profit and callously endangering migrants' lives along the way.[74]

In FY 2022, more than 750 migrants died attempting to enter the United States across the SWB,[75] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[76] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues)[77] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[78] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[79] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[80] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils in the migrant journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. These migratory movements are in many cases facilitated by numerous human smuggling organizations, for which the migrants are pawns;[81] the organizations exploit migrants for profit, often bringing them across inhospitable deserts, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area,

[70] OIS analysis of CBP subject-level data and OIS Persist Dataset based on data through November 30, 2022.

[71] CNN, *Washington, DC, Approves Creation of New Agency to Provide Services for Migrants Arriving From Other States,* Sept. 21, 2022, *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office.*

[72] San Antonio Report, *Migrant aid groups stretched thin as city officials seek federal help for expected wave,* Apr. 27, 2022, *https://sanantonioreport.org/migrant-aid-groups-stretched-thin-city-officials-seek-federal-help/.*

[73] KGUN9 Tucson, *Local Migrant Shelter Reaching Max Capacity as it Receives Hundreds per Day,* Sept. 23, 2022, *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day.*

[74] CBP, Fact Sheet: Counter Human Smuggler Campaign Updated (Oct. 6, 2022), *https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th.*

[75] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[76] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[77] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[78] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[79] The Guardian, *Migrants Risk Death Crossing Treacherous Rio Grande River for 'American Dream'* (Sept. 5, 2022), *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream.*

[80] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[81] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

noncitizens seeking to cross into the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey. Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico, in December 2021 and the tragic incident in San Antonio, Texas, on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety.[82]

Migrants who travel via sea also face perilous conditions, including at the hands of smugglers. Human smugglers continue to use unseaworthy, overcrowded vessels that are piloted by inexperienced mariners. These vessels often lack any safety equipment, including but not limited to: personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons. USCG and interagency consent-based interviews suggest that human-smuggling networks and migrants consider the attempts worth the risk.[83]

The increase in migrants taking to sea, under dangerous conditions, has led to devastating consequences. In FY 2022, the USCG recorded 107 noncitizen deaths, including presumed dead, as a result of irregular maritime migration. In January 2022, the Coast Guard located a capsized vessel with a survivor clinging to the hull. USCG crews interviewed the survivor who indicated there were 34 others on the vessel, who were not in the vicinity of the capsized vessel and survivor.[84] The USCG conducted a multi-day air and surface search for the missing migrants, eventually recovering five deceased migrants; the others were presumed lost at sea.[85]

DHS anticipates this process will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit because it incentivizes intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey to the SWB. By reducing the demand for these services, DHS is effectively targeting the resources of TCOs and human-smuggling networks that so often facilitate these unprecedented movements with utter disregard for the health and safety of migrants. DHS and federal partners have taken extraordinary measures—including the largest-ever surge of resources against human-smuggling networks—to combat and disrupt the TCOs and smugglers and will continue to do so.[86]

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy);[87] the Collaborative Migration Management Strategy (CMMS);[88] and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries.[89] The CMMS and the L.A. Declaration call for a collaborative and regional approach to migration, wherein countries in the hemisphere commit to implementing programs and processes to stabilize communities hosting migrants or those of high outward-migration; humanely enforce existing laws regarding movements across international boundaries, especially when minors are involved; take actions to stop migrant smuggling by targeting the criminals involved in these activities; and provide increased regular pathways and protections for migrants residing in or transiting through the 21 countries.[90] The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [91]

The U.S. Government has been working with the GOC to restart the Cuba Migration Accords. On November 15, 2022, U.S. and Cuban officials met in Havana to discuss the implementation of the Accords and to underscore our commitment to pursuing safe, regular, and humane migration between Cuba and the United States.[92] These Migration Talks provide an opportunity for important discussions on mutual compliance with the Migration Accords—composed of a series of binding bilateral agreements between the United States and Cuba signed in 1984, 1994, 1995, and 2017—which establish certain commitments of the United States and Cuba relating to safe, legal, and orderly migration.

In September 2022, the U.S. Government announced the resumption of operations under the CFRP program, which allows certain beneficiaries of family-based immigrant petitions to seek parole into the United States while waiting for a visa number to become available. Beginning in early 2023, U.S. Embassy Havana will resume full immigrant visa processing for the first time since 2017, which will, over time, increase the pool of noncitizens eligible for CFRP.[93] Approved beneficiaries through this process will enter the United States as parolees but will be eligible to apply for adjustment to lawful permanent resident (LPR) status once their immigrant visas become available. Also during this period, Cubans may be eligible to apply for lawful permanent residence under the Cuban Adjustment Act.[94]

While these efforts represent important progress for certain Cubans who are the beneficiaries of a family-based immigrant petition, CFRP's narrow eligibility, challenges faced

[82] Reuters, *Migrant Truck Crashes in Mexico Killing 54* (Dec. 9, 2021), *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R;* Reuters, *The Border's Toll: Migrants Increasingly Die Crossing into U.S. from Mexico* (July 25, 2022), *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X.*

[83] Email from U.S. Coast Guard to DHS Policy, Re: heads up on assistance needed, Dec. 13, 2022.

[84] Adriana Gomez Licon, Associated Press, Situation 'dire' as Coast Guard seeks 38 missing off Florida, Jan. 26, 2022, *https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019.*

[85] Adriana Gomez Licon, Associated Press, Coast Guard suspends search for migrants off Florida, Jan. 27, 2022, *https://apnews.com/article/florida-lost-at-sea-79253e1c65cf5708f19a97b6875ae239.*

[86] *See* DHS Update on Southwest Border Security and Preparedness Ahead of Court-Ordered Lifting of Title 42, Dec. 13, 2022, *https://www.dhs.gov/publication/update-southwest-border-security-and-preparedness-ahead-court-ordered-lifting-title-42* (last visited Dec. 18, 2022).

[87] National Security Council, *Root Causes of Migration in Central America* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[88] National Security Council, *Collaborative Migration Management Strategy,* July 2021, *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[89] *Id.;* The White House, *Los Angeles Declaration on Migration and Protection* (LA Declaration), June 10, 2022, *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

[90] *Id.*

[91] *Id.*

[92] Department of State, *Migration Talks with the Government of Cuba,* Nov. 15, 2022; *https://www.state.gov/migration-talks-with-the-government-of-cuba-2/.*

[93] USCIS, *USCIS Resumes Cuban Family Reunification Parole Program Operations, https://www.uscis.gov/newsroom/alerts/uscis-resumes-cuban-family-reunification-parole-program-operations,* Sept. 9, 2022 (last visited Dec. 10, 2022).

[94] Public Law 89–732, Cuban Adjustment Act of 1966 (CAA), Nov. 2, 1966, *https://www.gpo.gov/fdsys/pkg/STATUTE-80/pdf/STATUTE-80-Pg1161.pdf* (last viewed Dec. 16, 2022).

operating in Cuba, and more modest processing throughput mean that additional pathways are required to meet the current and acute border security and irregular migration mitigation objective. This new process helps achieve these goals by providing an immediate and temporary orderly process for Cuban nationals to lawfully enter the United States while we work to improve conditions in Cuba and expand more permanent lawful immigration pathways in the region, including refugee processing and other lawful pathways into the United States and other Western Hemisphere countries. It thus provides the United States another avenue to lead by example.

The process also responds to an acute foreign policy need. Key allies in the region—including specifically the Governments of Mexico, Honduras, Guatemala, and Costa Rica—are affected by the increased movement of Cuban nationals and have been seeking greater U.S. action to address these challenging flows for some time. Cuban flows contribute to strain on governmental and civil society resources in Mexican border communities in both the south and the north—something that key foreign government partners have been urging the United States to address.

Along with the Venezuelan process, this new process adds to these efforts and enables the United States to lead by example. Such processes are a key mechanism to advance the larger domestic and foreign policy goals of the U.S. Government to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. The new process also strengthens the foundation for the United States to press regional partners—many of which are already taking important steps—to undertake additional actions with regards to this population, as part of a regional response. Any effort to meaningfully address the crisis in Cuba will require continued efforts by these and other regional partners.

Importantly, the United States will only implement the new parole process while able to remove or return to Mexico Cuban nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process thus is contingent on the GOM making an independent decision to accept the return or removal of Cuban nationals who bypass this new process and enter the United States without authorization.

For its part, the GOM has made clear its position that, in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe, orderly, and lawful processes for migrants who seek to enter the United States. The GOM, as it makes its independent decisions as to its ability to accept returns of third country nationals at the border and its efforts to manage migration within Mexico, is thus closely watching the United States' approach to migration management and whether it is delivering on its plans in this space. Initiating and managing this process—which is dependent on GOM's actions—will require careful, deliberate, and regular assessment of GOM's responses to U.S. actions in this regard, and ongoing, sensitive diplomatic engagements.

As noted above, this process is responsive to the GOM's request that the United States increase lawful pathways for migrants and is also aligned with broader Administration domestic and foreign policy priorities in the region. The process couples a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly along the SWB. The goal of this process is to reduce the irregular migration of Cuban nationals while the United States, together with partners in the region, works to improve conditions in sending countries and create more immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian needs of Cuban nationals who have fled crippling economic conditions and social unrest in Cuba. The GOC continues to repress and punish all forms of dissent and public criticism of the regime and has continued to take actions against those who oppose its positions.[95] This process provides a safe mechanism for Cuban nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States.

IV. Eligibility To Participate in the Process and Processing Steps

A. Supporters

U.S.-based supporters must initiate the process by filing Form I–134A on behalf of a Cuban national and, if applicable, the national's immediate family members.[96] Supporters may be individuals filing on their own, with other individuals, or on behalf of non-governmental entities or community-based organizations. Supporters are required to provide evidence of income and assets and declare their willingness to provide financial support to the named beneficiary for the length of parole. Supporters are required to undergo vetting to identify potential human trafficking or other concerns. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Cuba or be a non-Cuban immediate family member[97] and traveling with a Cuban principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134A on their behalf that USCIS has vetted and confirmed;
- possess an unexpired passport valid for international travel;
- provide for their own commercial travel to an air POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and

[95] *Id.;* Congressional Research Service, Cuba: U.S. Policy in the 117th Congress, Sept. 22, 2022, *https://crsreports.congress.gov/product/pdf/R/R47246.*

[96] Certain non-Cubans may use this process if they are an immediate family member of a Cuban beneficiary and traveling with that Cuban beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

[97] Certain non-Cubans may use this process if they are an immediate family member of a Cuban beneficiary and traveling with that Cuban beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

• demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Cuban national is ineligible to be considered for advance authorization to travel to the United States as well as parole under this process if that person is a permanent resident or dual national of any country other than Cuba, or currently holds refugee status in any country, unless DHS operates a similar parole process for the country's nationals.[98]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

• fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;

• has been ordered removed from the United States within the prior five years or is subject to a bar to admissibility based on a prior removal order; [99]

• has crossed irregularly into the United States, between the POEs, after January 9, 2023, except individuals permitted a single instance of voluntary departure pursuant to INA section 240B, 8 U.S.C. 1229c or withdrawal of their application for admission pursuant to INA section 235(a)(4), 8 U.S.C. 1225(a)(4) will remain eligible;

• has irregularly crossed the Mexican or Panamanian border after January 9, 2023; or

• is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[100]

Travel Requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to an interior POE of the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with the Centers for Disease Control and Prevention, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *www.uscis.gov/CHNV.*

C. Processing Steps

Step 1: Declaration of Financial Support

A U.S.-based supporter will submit a Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134A for each beneficiary they are seeking to support, including Cubans' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the beneficiary whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS with instructions to create an online account with myUSCIS and next steps for completing the application. The beneficiary will be required to confirm their biographic information in their online account and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and completing required eligibility attestations, the beneficiary will receive instructions through myUSCIS for accessing the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval To Travel to the United States

After completing Step 3, the beneficiary will receive a notice in their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary with advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel via commercial air to an interior POE of the United States.[101] Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the individual is a discretionary determination made by CBP at the POE at the time the individual arrives at the interior POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the interior POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Each individual arriving at a POE under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with CBP inspection processes. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to ICE for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization under existing regulations. Individuals may request employment authorization from USCIS. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for employment authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

[98] This limitation does not apply to immediate family members traveling with a Cuban national.

[99] *See, e.g.,* INA sec. 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

[100] As defined in 6 U.S.C. 279(g)(2). Children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian to be considered for parole at the POE under the process.

[101] Air carriers can validate an approved and valid travel authorization submission using the same mechanisms that are currently in place to validate that a traveler has a valid visa or other documentation to facilitate issuance of a boarding pass for air travel.

D. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the Parole Process for Cubans at any point. The number of travel authorizations granted under this process shall be spread across this process and the separate and independent Parole Process for Nicaraguans, the Parole Process for Haitians, and Parole Process for Venezuelans (as described in separate notices published concurrently in today's edition of the **Federal Register**) and shall not exceed 30,000 each month in the aggregate. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

V. Regulatory Requirements

A. Administrative Procedure Act

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[102] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [103] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process would be exempt from such requirements because it involves a foreign affairs function of the United States.[104] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [105] In addition, although the text of the Administrative Procedure Act does not expressly require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing.[106] This process satisfies both standards.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Cuban nationals to enter the United States. The United States will only implement the new parole process while able to return or remove to Mexico Cuban nationals who enter without authorization across the SWB. The United States' ability to execute this process is contingent on the GOM making an independent decision to accept the return or removal of Cuban nationals who bypass this new process and enter the United States without authorization. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to this independent U.S. action and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now. It also would complicate broader discussions and negotiations about migration management. For now, the GOM has indicated it is prepared to make an independent decision to accept the return or removal of Cuban nationals. That willingness could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return or remove nationals of Cuba to Mexico at a future date would likely result in an even greater surge in migration, as migrants rush to the border to enter before the process begins—which would adversely impact each country's border security and further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process will advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong bilateral relationships.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in policy was consistent with the foreign affairs exemption because the change was central to ongoing negotiations between the two countries.[107] DHS similarly invoked the foreign affairs exemption more recently, in connection with the Venezuela parole process.[108]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking and with a delayed effective date would be contrary to the public interest and impracticable.[109] The numbers of Cubans encountered at the SWB are already high, and a delay would greatly exacerbate an urgent border and national security challenge, and would miss a critical opportunity to reduce and divert the flow of irregular migration.[110]

Undertaking notice-and-comment rulemaking procedures would be contrary to the public interest because an advance announcement of the process would seriously undermine a key goal of the policy: it would incentivize even more irregular migration of Cuban nationals seeking to enter the United States before the process would take effect. There are urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[111] It has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment

[102] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[103] *See Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[104] 5 U.S.C. 553(a)(1).

[105] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[106] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

[107] *See* 82 FR 4902 (Jan. 17, 2017).

[108] *See* 87 FR 63507 (Oct. 19, 2022).

[109] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

[110] *See Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)).

[111] *See* 5 U.S.C. 553(b)(B).

process.[112] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[113] A number of cases follow this logic in the context of economic regulation.[114]

The same logic applies here, where the Department is responding to exceedingly serious challenges at the border, and advance announcement of that response would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. It is well established that migrants may change their behavior in response to perceived imminent changes in U.S. immigration policy [115] For example, as detailed above, implementation of the parole process for Venezuelans was associated with a drastic reduction in irregular migration by Venezuelans. Had the parole process been announced prior to a notice-and-comment period, it likely would have had the opposite effect, resulting in many hundreds of thousands of Venezuelan nationals attempting to cross the border before the program went into effect. Overall, the Department's experience has been that in some circumstances when public announcements have been made regarding changes in our immigration laws and procedures that would restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States. Smugglers routinely prey on migrants in response to changes in domestic immigration law.

In addition, it would be impracticable to delay issuance of this process in order to undertake such procedures because—as noted above—maintaining the status quo, which involves record numbers of Cuban nationals currently being encountered attempting to enter without authorization at the SWB, coupled with DHS's extremely limited options for processing, detaining, or quickly removing such migrants, would unduly impede DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths.

The Department's determination here is consistent with past practice in this area. For example, in addition to the Venezuelan process described above, DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [116] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [117] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [118] DHS concluded that ''a surge could result in significant loss of human life.'' [119]

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Cuban parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Cuban nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP

[112] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94–95 (D.C. Cir. 2012) (noting that the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1975) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of section 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'— or avoid them—before the freeze deadline.'' (cleaned up)).

[113] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'').

[114] *See, e.g., Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The ['good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[115] *See, e.g.,* Tech Transparency Project, Inside the World of Misinformation Targeting Migrants on Social Media, *https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media,* July 26, 2022 (last viewed Dec. 6, 2022).

[116] Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

[117] *Id.*

[118] *Id.*

[119] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00252 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of Changes to the Parole Process for Venezuelans

ACTION: Notice

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) has authorized updates to the Parole Process for Venezuelans that was initiated in October 2022. The Venezuela process provides a safe and orderly pathway for certain individuals to seek authorization to travel to the United States to be considered for parole at an interior port of entry, contingent on the Government of Mexico (GOM) making an independent decision to accept the return or removal of Venezuelan nationals who bypass this new process and enter the United States without authorization. Pursuant to this notice, the Secretary has removed the limit of 24,000 total travel authorizations and replaced it with a monthly limit of 30,000 travel authorizations spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**). The Secretary also has updated the eligibility criteria for the Venezuela process by including an exception that will enable Venezuelans who cross without authorization into the United States at the Southwest Border (SWB) and are subsequently permitted a one-time option to voluntarily depart or voluntarily withdraw their application for admission to maintain eligibility to participate in this parole process. DHS believes that these changes are needed to ensure that the Venezuela process continues to deliver the already-realized benefits of reducing the number of Venezuelan nationals crossing our border without authorization and the surge in migration throughout the hemisphere and channels migrants into a safe and orderly process that enables them to enter the United States without making the dangerous journey to the SWB.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023. DHS will apply the changes to the process beginning on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Venezuelan Parole Process

On October 19, 2022, DHS published a **Federal Register** Notice describing a new effort to address the high number of Venezuelans encountered at the SWB.[1] Since the announcement of that process, Venezuelans who have not availed themselves of the process, and instead entered the United States without authorization, have been expelled to Mexico pursuant to the Centers for Disease Control and Prevention (CDC) Title 42 public health Order or, if not expelled, processed for removal or the initiation of removal proceedings.

Once the Title 42 public health Order is lifted, DHS will no longer expel noncitizens to Mexico, but rather all noncitizens will be processed pursuant to DHS's Title 8 immigration authorities. The United States' continued operation of this process will continue to be contingent on the GOM's independent decision to accept the return of removal of individuals, including under Title 8 authorities.

Eligibility To Participate in the Process

As described in the October 19 **Federal Register** Notice, the Department of Homeland Security (DHS) implemented a process—modeled on the successful Uniting for Ukraine (U4U) parole process—for certain Venezuelan nationals to lawfully enter the United States in a safe and orderly manner. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support, such as housing and other needs; must pass national security and public safety vetting; and must agree to fly at their own expense to an interior U.S. port of entry (POE), rather than entering at a land POE.

Individuals are ineligible if they have been ordered removed from the United States within the prior five years or have entered unauthorized into the United States, Mexico, or Panama after October 19, 2022. Venezuelan nationals also are generally ineligible if they are a permanent resident or dual national of any country or hold refugee status in any country other than Venezuela, though per the conforming change described below, they will now remain eligible to be considered for parole under this process if DHS operates a similar parole process for nationals of that other country. Only those who meet all specified criteria will be eligible to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis, under this process. The process originally limited the number of Venezuelans who could receive travel authorization to 24,000.

II. Assessment of Venezuela Parole Process to Date

The success of the Venezuela process demonstrates that combining a clear and meaningful consequence for unauthorized entry along the SWB with a significant incentive for migrants to wait where they are and use a lawful process to come to the United States can change migratory flows. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, to an average of 86 per day.[2] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in Venezuelan irregular migration [3] throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién was down from 40,593 in October 2022 to just 668 in November.[4] DHS provided the new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by

[1] 87 FR 63507 (Oct. 19, 2022).

[2] Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[3] In this notice, irregular migration refers to the movement of people into another country without authorization.

[4] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

EXHIBIT 24

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

include: (1) remarks from the administration and CISA leadership on salient NS/EP and cybersecurity efforts; (2) a status update on the NSTAC Addressing the Misuse of Domestic Infrastructure by Foreign Malicious Actors Subcommittee; and (3) a deliberation and vote on the *NSTAC Report to the President on a Strategy for Increasing Trust in the Information and Communications Technology and Services Ecosystem.*

Dated: January 3, 2023.

Christina Berger,

Designated Federal Officer, NSTAC, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–00181 Filed 1–6–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Haitians

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to respond to and protect against a significant increase in the number of Haitian nationals crossing the border without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by irregular migration. Haitians who do not avail themselves of this process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to removal. As part of this effort, the U.S. Department of Homeland Security (DHS) is implementing a process—modeled on the successful Uniting for Ukraine (U4U) and Process for Venezuelans—for certain Haitian nationals to lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period, pass national security and public safety vetting, and fly at their own expense to an interior POE, rather than entering at a land POE. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication with an exception for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process; or are otherwise deemed not to merit a favorable exercise of discretion.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Haitian Parole Process

This notice describes the implementation of a new parole process for certain Haitian nationals, including the eligibility criteria and filing process. The parole process is intended to enhance border security by responding to and protecting against a significant increase of irregular migration by Haitians to the United States via dangerous routes that pose serious risks to migrants' lives and safety, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations as well as their facilitators and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to and arriving, without authorization, at the SWB.

In October 2022, DHS undertook a new effort to address the high number of Venezuelans encountered at the SWB.[3] Specifically, DHS provided a new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by flying to interior ports of entry—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the Government of Mexico (GOM) made an independent decision for the first time to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, thus imposing a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced Parole Process. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 a day to under 200 a day, and as of the week ending December 4, to an average of 86 a day.[4] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in irregular migration of Venezuelans throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién Gap—an inhospitable jungle that spans between Panama and Colombia—was down from 40,593 in October 2022 to just 668 in November.[5]

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Haitian Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

[3] Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[4] DHS Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[5] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_*

Continued

DHS anticipates that implementing a similar process for Haitians will reduce the number of Haitians seeking to irregularly enter the United States between POEs along the SWB or by sea by coupling a meaningful incentive to seek a safe, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization pursuant to this process. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process.

Instituting a similar process for Haitians is critical to responding to and protecting against a significant increase of irregular migration by Haitians to the United States via dangerous routes that pose serious risks to migrants' lives and safety. At the end of FY 2021, DHS experienced a focused surge in Haitian migration in the Del Rio sector of the border that strained its capacity to process individuals in a timely manner, necessitating an all-of-government response. In FY 2022, DHS encounters of Haitians at the SWB increased to unprecedented levels, with 48,697 unique encounters, as compared to the annual average of 3,242 unique encounters for FY 2014 to FY 2019.[6] In addition, the number of Haitian nationals entering Panama through the Darién Gap has been steadily increasing in recent months—something that has been a key predictor of migrant movement towards the SWB in the past, including with nationals of Venezuela a few months ago. Haitians represented the third highest nationality encountered in the Darién Gap between January and November 2022, at 16,933 encounters, and the number of Haitian encounters in Panama doubled between September and November 2022.[7]

Haitian migrants are also increasingly taking to the sea in makeshift boats. Maritime migration from Haiti also increased sharply in FY 2022, with a total of 4,025 Haitian nationals interdicted at sea compared to 1,205 in FY 2021 and 398 in FY 2020.[8] While attempted irregular entry of Haitians between POEs has waned since June 2022, DHS assesses that this trend could quickly shift again, given the prevalence of displaced Haitian communities gathered in Mexico and the increasing volume of Haitians traversing the Darién Gap on their way north.

DHS anticipates that instituting a Venezuela-like process for nationals of Haiti will reduce the irregular migration of Haitians in the hemisphere, disincentivize Haitians in northern Mexico from seeking to enter along the SWB of the United States without authorization, and reduce dangerous attempts to travel to the United States by sea. This will be accomplished by coupling a meaningful incentive to seek a safe, orderly means of traveling by air to interior ports of entry in the United States with the imposition of consequences for those who seek to enter without authorization between POEs along the SWB. Individuals can access this lawful process from safe locations in Haiti or in third countries. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process. Implementation of the new parole process for Haitians is contingent on the GOM making an independent decision to accept the return or removal of Haitian nationals who bypass this new process and enter the United States without authorization.

As in the process for Venezuelans, a supporter in the United States must initiate the process on behalf of a Haitian national (and certain non-Haitian nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed.

In addition to the supporter requirement, Haitian nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case-by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry at an interior POE.

A grant of parole under this process is for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region. These strategies will support efforts to stabilize conditions in Haiti, thus diminishing the push factors and enabling more regular removals of those Haitians who nonetheless enter the United States or partner nations unauthorized and who lack a valid claim of asylum or other forms of protection. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the United States. Those who are not granted asylum or any other immigration benefits during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Haitian nationals pursuant to this process will provide a significant public benefit for the United States by reducing unauthorized entries along our SWB while also addressing the urgent humanitarian reasons that have displaced hundreds of thousands of Haitians throughout the Western Hemisphere, to include concurrent health, economic, and political crises. Most significantly, DHS anticipates this process will: (i) enhance the security of the U.S. SWB by reducing irregular migration of Haitian nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Haiti; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

The Secretary retains the sole discretion to terminate the process at any point.

B. Conditions at the Border

1. Impact of Venezuela Process

This process is modeled on the Venezuela process—as informed by the way that similar incentive and disincentive structures successfully decreased the number of Venezuelan nationals making the dangerous journey to and being encountered along the

%20DARI%C3%89N_NOVIEMBRE_2022.pdf (last viewed Dec. 11, 2022).

[6] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[7] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf,* (last viewed Dec. 11, 2022).

[8] OIS analysis of United States Coast Guard (USCG) data provided October, 2022; Maritime Interdiction Data from USCG, October 5, 2022.

SWB. The Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use a safe, orderly process to come to the United States can change migratory flows. Prior to the October 12, 2022 announcement of the Venezuela process, DHS encountered approximately 1,100 Venezuelan nationals per day between POEs—with peak days exceeding 1,500.[9] Within a week of the announcement, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, an average of 86 per day.[10]

Panama's daily encounters of Venezuelans also declined significantly, falling some 88 percent, from 4,399 on October 16 to 532 by the end of the month—a decline driven entirely by Venezuelan migrants' choosing not to make the dangerous journey through the Darién Gap. The number of Venezuelans attempting to enter Panama through the Darién Gap continued to decline precipitously in November—from 40,593 encounters in October, a daily average of 1,309, to just 668 in November, a daily average of just 22.[11]

The Venezuela process fundamentally changed the calculus for Venezuelan migrants. Venezuelan migrants who had already crossed the Darién Gap have returned to Venezuela by the thousands on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society.[12] Other migrants who were about to enter the Darién Gap have turned around and headed back south.[13] Still others who were intending to migrate north are staying where they are to apply for this parole process.[14] Put simply, the Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use this parole process to come to the United States can yield a meaningful change in migratory flows.

2. Trends and Flows: Increase of Haitian Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year.[15] By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[16] However, these gains were subsequently reversed as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.[17]

Shifts in demographics have also had a significant effect on migration flows. Border encounters in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[18] Beginning in the 2010s, a growing share of migrants have come from Northern Central America[19] (NCA) and, since the late 2010s, from countries throughout the Americas.[20] Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence, political oppression, and for other non-economic reasons.[21]

C. Trends in Haitian Migration

1. Migration by Land

Since 2019, increasing numbers of Haitians have sought to enter the United States at the land border. In FY 2019, DHS encountered just 3,039 Haitian nationals at the SWB.[22] This number grew to 4,431 unique encounters in FY 2020, and then sharply increased by 881 percent to 43,484 unique encounters in FY 2021.[23]

In September 2021, the U.S. experienced a mass migration event involving approximately 15,000 Haitians crossing into Del Rio, Texas, within a matter of days. The group included many thousands who had left Haiti years before, spent time living and working in countries like Chile and Brazil, and then traveled up to our border through Panama.[24] This led to thousands of Haitian nationals living in a makeshift camp under a bridge in Del Rio and placed immense strain on U.S. government resources that were employed to respond to the event.

Unique encounters of Haitian nationals at the SWB continued to increase in FY 2022 to 48,697, with a peak of 9,753 unique encounters in a single month in May 2022.[25] While encounters of Haitian migrants at our border have declined since June 2022, the Government of Panama, which tracks irregular migration through the Darién Gap, has observed a surge in

[9] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[10] Office of Immigration Statistics (OIS) analysis of data pulled from CBP UIP December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[11] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

[12] La Prensa Latina Media, *More than 4,000 migrants voluntarily returned to Venezuela from Panama, https://www.laprensalatina.com/more-than-4000-migrants-voluntarily-returned-to-venezuela-from-panama/,* Nov. 9 2022 (last viewed Dec. 8, 2022).

[13] Voice of America, *U.S. Policy Prompts Some Venezuelan Migrants to Change Route, https://www.voanews.com/a/us-policy-prompts-some-venezuelan-migrants-to-change-route/6790996.html,* Oct. 14, 2022 (last viewed Dec. 8, 2022).

[14] Axios, *Biden's new border policy throws Venezuelan migrants into limbo, https://www.axios.com/2022/11/07/biden-venezuela-border-policy-darien-gap,* Nov. 7 2022 (last viewed Dec. 8, 2022).

[15] OIS analysis of historic CBP data.

[16] *Id.*

[17] *Id.*

[18] According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 96 to over 99 percent of apprehensions of persons entering without inspection between 1980 and 2000. OIS Yearbook of Immigration Statistics, various years. On Mexican migrants from this era's demographics and economic motivations see Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, ''The New Era of Mexican Migration to the United States,'' *The Journal of American History* Vol. 86, No. 2 (Sept. 1999): 518–536.

[19] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[20] According to OIS analysis of CBP data, Mexican nationals continued to account for 89 percent of total SWB encounters in FY 2010, with Northern Central Americans accounting for 8 percent and all other nationalities for 3 percent. Northern Central Americans' share of total encounters increased to 21 percent by FY 2012 and averaged 46 percent in FY 2014–FY 2019, the last full year before the start of the COVID–19 pandemic. All other countries accounted for an average of 5 percent of total SWB encounters in FY 2010–FY 2013, and for 10 percent of total encounters in FY 2014–FY 2019.

[21] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of T42 expulsions in 2020. At the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

[22] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[23] *Id.*

[24] The Texan, *Many Haitian Nationals Came From Chile and Brazil Before Heading to Del Rio,* Oct. 7, 2021, *https://thetexan.news/many-haitian-nationals-came-from-chile-and-brazil-before-heading-to-del-rio/.*

[25] CBP, Nationwide Encounters, *https://www.cbp.gov/newsroom/stats/nationwide-encounters*, (last visited, Dec. 17, 2022; OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

land-based encounters of Haitian nationals migrating north in recent months. Encounters of Haitian nationals in Panama jumped from 1,021 in July 2022, to 2,170 in September, to 4,607 in November.[26]

Those numbers are rising at a time when Haitians are already concentrated in Mexico. UNHCR estimates that there were 62,680 Haitians in Mexico in 2022 and projects that this population will grow to 104,541 in 2023.[27] From October 2021 to October 2022, approximately 55,429 Haitian nationals were granted 12-month temporary humanitarian visitor status in Mexico, the highest of any nationality and almost twice as many as the second-highest nationality.[28] Some Haitians migrating north have sought asylum in Mexico—a number that peaked in 2021—and may be planning to settle there permanently.[29] However, DHS assesses that many thousands of Haitians are waiting in Mexico with the ultimate goal of entering the United States, with many reporting they are waiting until the Centers for Disease Control and Prevention (CDC) Title 42 Order is lifted.

2. Migration by Sea

Increasing numbers of Haitian migrants also continue to attempt migration to the United States via maritime routes, often endangering their own lives in precarious and unseaworthy vessels. Maritime migration from Haiti more than tripled in FY 2022, with a total of 4,025 Haitian nationals interdicted at sea compared to 1,205 in FY 2021 and 398 in FY 2020.[30]

The southeast coastal border sectors also have seen increases in unique encounters of Haitian nationals who arrived in the United States by sea.[31] In FY 2021, those sectors encountered 593 unique Haitian nationals, a 411 percent increase compared to 116 in FY 2020.[32] In FY 2022, unique encounters of Haitian nationals in coastal sectors tripled from FY 2021 to 1,788—composing 31 percent of total unique encounters by USBP in the southeast coastal sectors.[33]

3. Push and Pull Factors

DHS assesses that the high number of Haitian nationals encountered at the land border and interdicted at sea is driven primarily by two key factors: First, the displacement of Haitians throughout the Western Hemisphere caused by years of political, health, and economic crises, as well as the explosion of gang violence in Haiti—exacerbated by events that took place in the summer of 2021—are causing thousands to leave the country. Second, the precarious security situation in Haiti is having an impact on DHS's ability to remove Haitian nationals who do not establish a legal basis to remain in the United States; absent such an ability, more individuals may be willing to take a chance that they can come—and stay.

i. Factors Pushing Migration From Haiti

In recent years, Haiti has experienced a series of events, including natural disasters, economic stagnation, pervasive hunger, gang violence, and political assassinations that have devastated the country. This has led tens of thousands of Haitians to lose hope and attempt to migrate.[34]

On August 14, 2021, a 7.2 magnitude earthquake hit Haiti, killing more than 2,200 people, injuring over 12,000 more, destroying tens of thousands of homes, and crippling Haiti's already fragile infrastructure.[35] Just days later, Tropical Storm Grace hit Haiti, with heavy downpours hampering the continuing rescue efforts for those impacted by the earthquake.[36] Within a month, over 650,000 Haitians required humanitarian assistance, including 260,000 children.[37] The World Bank estimates that the August 2021 earthquake caused damages and losses in excess of more than $1.6 billion, roughly 11 percent of GDP.[38]

Amidst the political, security, and environmental crises, Haiti's economy has collapsed. Even before the events of 2021, Haiti already stood as the poorest country in the Americas and one of the poorest in the world.[39] In 2021, Haiti had a GDP per capita of $1,815, the lowest in the Latin America and the Caribbean region, ranking 170 out of 189 on the UN's Human Development Index.[40] The situation has deteriorated to such a point that the Haitian Government itself, on October 7, 2022, asked for international military assistance to help address the converging crises.[41]

In addition to the economic turmoil the island has confronted, the security situation in Haiti has been problematic for some time. Violence in Haiti reached an inflection point on July 7, 2021, with the assassination of Haitian President Jovenel Moïse.[42] The President's death exacerbated political instability on the island, undermining state institutions and generating a power vacuum that has been occupied by gangs. Between January and June 2022, gangs have carried out approximately 930 killings, 680 injuries, and 680 kidnappings in Port-au-Prince alone, with more than 1,200 kidnappings occurring in 2021, almost twice the number reported in 2020 and five times more than in 2019.[43] This recent surge in gang

[26] Servicio Nacional de Migración de Panamá, Irregulares Por Darien, November 2022.

[27] UNHCR Global Focus, *Mexico,* See countries of origin data for 2022 and 2023, *https://reporting.unhcr.org/mexico?year=2022.*

[28] OIS analysis of *Instituto Nacional de Migracion* data.

[29] Estadísticas Comisión Mexicana de Ayuda a Refugiados, *Mexico Commission for Assistance of Refugee data show that about 6,000 Haitians applied for asylum in Mexico in 2020, 50,000 in 2021, and nearly 16,000 in 2022 (through November), https://www.gob.mx/cms/uploads/attachment/file/783226/Cierre_Noviembre-2022__1-Dic._.pdf,* (last viewed Dec. 17, 2022).

[30] OIS analysis of United States Coast Guard (USCG) data provided October 2022; Maritime Interdiction Data from USCG, October 5, 2022.

[31] Includes Miami, FL; New Orleans, LA; and Ramey, PR sectors where all apprehensions are land apprehensions not maritime.

[32] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[33] *Id.*

[34] Diana Roy, Council on Foreign Relations, *Ten Graphics That Explain the U.S. Struggle With Migrant Flows in 2022* (Dec. 1, 2022). *https://www.cfr.org/article/ten-graphics-explain-us-struggle-migrant-flows-2022.*

[35] UNICEF, *Massive earthquake leaves devastation in Haiti: UNICEF and partners are on the ground providing emergency assistance for children and their families, https://www.unicef.org/emergencies/massive-earthquake-devastation-haiti* (last viewed Dec. 12, 2022).

[36] The Washington Post, *Tropical Depression Grace Drenching Haiti Days After Major Earthquake,* Aug. 16, 2021, *https://www.washingtonpost.com/weather/2021/08/16/tropical-depression-grace-haiti-flooding/,* (last viewed Dec. 19, 2022).

[37] UNICEF, *One Month After Haiti Earthquake: 260,000 Children Still Need Humanitarian Assistance,* Sept. 15, 20221, *https://www.unicef.org.uk/press-releases/one-month-after-haiti-earthquake-260000-children-still-need-humanitarian-assistance-unicef/,* (last visited Dec. 19, 2022).

[38] The World Bank, *Haiti Overview,* Updated Nov. 8, 2022, *https://www.worldbank.org/en/country/haiti/overview#:~:text=The%20results%20of%20the%20assessment%20of%20the%20effects,in%20damage%20and%20losses%2C%20or%2011%25%20of%20GDP,* (last visited Dec. 19, 2022).

[39] *Id.*

[40] The Human Development Index (HDI) is a summary measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and have a decent standard of living.

[41] CNN, *Haiti government asks for international military assistance,* Oct. 7, 2022, *https://www.cnn.com/2022/10/07/americas/haiti-international-military-assistance-humanitarian-crisis-intl/index.html* (last viewed Dec. 17, 2022).

[42] Catherine Porter, Michael Crowley, and Constant Méheut, The New York Times, *Haiti's President Assassinated in Nighttime Raid, Shaking a Fragile Nation* (July 7, 2021). *https://www.nytimes.com/2021/07/07/world/americas/haiti-president-assassinated-killed.html.*

[43] *See* International Crisis Group, *New Gang Battle Lines Scar Haiti as Political Deadlock Persists* (July 27, 2022), *https://www.crisisgroup.org/latin-america-caribbean/haiti/new-gang-battle-lines-scar-haiti-political-deadlock-persists;* Office of the High Commissioner for Human Rights, *Sexual violence in Port-au-Prince: A weapon used by gangs to instill*

violence has destroyed infrastructure and caused businesses to close, leaving Haitians struggling to find basic products including food, water, and medicines.[44] Armed clashes with gangs have destroyed water networks, severely restricting access to potable drinking water and further hampering the attempts to control a cholera outbreak that, as of November 15, 2022, had caused 8,146 hospitalizations and 188 deaths.[45]

The situation has deteriorated to such a point that the Haitian Government, on October 7, 2022, asked for international military assistance to help address the converging crises.[46]

Over the past two years, many of the Haitian nationals encountered at our SWB actually left Haiti for opportunities in South America many years before.[47] This Haitian diaspora in South America developed after the January 2010 earthquake in Haiti that killed more than 217,000 and displaced more than 1.5 million people. Many migrated to Brazil, which offered employment opportunities, humanitarian protection, and support from large and growing Haitian diaspora communities.[48] Others migrated to Chile, where Haitian nationals could, until 2020, enter visa-free. As of 2020, there were an estimated 143,000 Haitians living in Brazil and 180,000 in Chile.[49] However, over the past two years, declining economic conditions in Chile and Brazil, which were exacerbated by the COVID–19 pandemic, have led many Haitian migrants to leave those countries to head north.[50]

As noted above, UNHCR estimates 62,680 Haitians were in Mexico in 2022, and projects that this population will grow to 104,541 in 2023.[51] Many thousands more are between Mexico and South America.

ii. Return Limitations

While the Government of Haiti generally accepts repatriations, gang activity and conditions in the country have created significant instability, at times curtailing DHS's ability to repatriate Haitians, either by air or maritime repatriations by sea. For example, in early September 2022, destabilizing events, including gangs seizing control of a key fuel terminal, led to a pause in repatriation flights. The ability of our on-the-ground partners to help receive migrants that provide services for individuals returned to Haiti is evaluated on a day-to-day basis.[52] The ability to conduct returns is tenuous, and not something that can be counted on at scale should large numbers of Haitian nationals once again start crossing our SWB.

The maritime environment is similarly affected by the limitation on returns. Even a temporary inability of DHS to repatriate Haitians interdicted at sea could have a cascading effect on U.S. Government resources. U.S. Coast Guard (USCG) uses its vessels to conduct direct repatriations, yet these have limited capacity to hold migrants; they cannot continue to hold migrants for extended periods of time if repatriations are not possible.

4. Impact on DHS Resources and Operations

i. Impact on DHS Resources

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in part by the number of Haitian nationals encountered—DHS has taken a series of extraordinary steps. Since FY 2021, DHS has built and now operates 10 soft-sided processing facilities at a cost of $688 million. CBP and ICE detailed a combined 3,770 officers and agents to the SWB to effectively manage this processing surge. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from other divisions in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 combined on grants to non-governmental (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP–H) to assist with the reception and onward travel of migrants arriving at the SWB. This spending is in addition to $1.4 billion in additional FY 2022 appropriations that were designated for SWB enforcement and processing capacities.[53]

ii. Impact on Border Operations

The impact has been particularly acute in certain border sectors. In FY 2021, 81 percent of unique Haitians encountered occurred in the Del Rio sector.[54] In FY 2022, flows shifted disproportionately to the El Paso and Yuma sectors, which accounted for 82 percent of unique encounters in that year, while Del Rio fell to 13 percent.[55] All three sectors remain at risk of operating, or are currently operating, over capacity.[56] In FY 2022, El Paso and Yuma sector encounters increased by 161 percent, a seven-fold increase over the average for FY 2014–FY 2019, in part as a result of the increases in Haitian nationals being encountered there.[57]

The focused increase in encounters within those three sectors is particularly challenging. Yuma and Del Rio sectors are geographically remote, and because—up until the past two years—they have not been a focal point for large numbers of individuals entering irregularly, have limited infrastructure and personnel in place to safely process the elevated encounters that they are seeing. The Yuma Sector is along the Colorado River corridor, which presents additional challenges to migrants, such

fear (Oct. 14, 2022), *https://www.ohchr.org/en/documents/country-reports/sexual-violence-port-au-prince-weapon-used-gangs-instill-fear.* Doctors Without Borders, *Returning to Haiti means death* (Aug. 12, 2022), *https://www.doctorswithoutborders.org/latest/returning-haiti-means-death.*

[44] Office of the High Commissioner for Human Rights, *Press Release: Haiti: Bachelet deeply disturbed by human rights impact of deteriorating security situation in Port-au-Prince* (May 17, 2022), *https://www.ohchr.org/en/press-releases/2022/05/haiti-bachelet-deeply-disturbed-human-rights-impact-deteriorating-security.*

[45] Pan American Health Organization, *Cholera Outbreak in Hispaniola Situation Report #6* (Nov. 17, 2022), *https://www.paho.org/en/documents/cholera-outbreak-hispaniola-2022-situation-report-6.*

[46] CNN, *Haiti government asks for international military assistance,* Oct. 7, 2022, *https://www.cnn.com/2022/10/07/americas/haiti-international-military-assistance-humanitarian-crisis-intl/index.html,* (last viewed Dec. 17, 2022).

[47] Migration Policy Institute, *Haitian Migration through the Americas: A Decade in the Making,* (Sept. 30, 2021), *https://www.migrationpolicy.org/article/haitian-migration-through-americas;* Council on Foreign Relations, *Why Are Haitian Migrants Gathering at the U.S. Border?* October 1, 2021, *https://www.cfr.org/in-brief/why-are-haitian-migrants-gathering-us-border, (last visited Dec. 19, 2022).*

[48] *Id.*

[49] Migration Policy Institute, *Chile's Retooled Migration Law Offers More Restrictions, Less Welcome,* (May 2021), *https://www.migrationportal.org/insight/chiles-retooled-migration-law-offers-more-restrictions-less-welcome/,* (last visited Dec. 19, 2022).

[50] *Id.* Migration Policy Institute.

[51] UNHCR Global Focus, *Mexico,* See countries of origin data for 2022 and 2023, *https://reporting.unhcr.org/mexico?year=2022.*

[52] International Organization for Migration, *IOM condemns violence and looting of humanitarian supplies in Haiti* (Sept. 24, 2022). *https://haiti.iom.int/news/iom-condemns-violence-and-looting-humanitarian-supplies-haiti.*

[53] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness,* Apr. 26, 2022, *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[54] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[55] *Id.*

[56] OIS analysis of data pulled from CBP UIP December 7, 2022.

[57] *Id.*

as armed robbery, assault by bandits, and drowning, as well as to the U.S. Border Patrol (USBP) agents encountering them. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border but is far away from other CBP sectors, which makes it challenging to move individuals for processing elsewhere during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors that have additional capacity to process. In November 2022, USBP sectors along the SWB operated a combined 602 decompression bus routes to neighboring sectors and operated 124 lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[58]

Because DHS assets are finite, using air resources to operate lateral flights reduces DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources.

iii. Impact on Maritime Operations

In FY 2022, interdictions of Haitians surged to 4,025, compared to just 824 interdictions at sea in FY 2019.[59] While these numbers are significantly smaller than those encountered at the land border, they are high for the maritime environment where the safety risk is particularly acute.

Responding to this increase requires significant resources. In response to the persistently elevated levels of irregular maritime migration across all southeast vectors, the Director of Homeland Security Task Force-Southeast (HSTF–SE) elevated the operational phase of DHS's maritime mass migration plan (Operation Vigilant Sentry) from Phase 1A (Preparation) to Phase 1B (Prevention).[60] Operation Vigilant Sentry is HSTF–SE's comprehensive, integrated, national operational plan for a rapid, effective, and unified response of federal, state, and local capabilities in response to indicators and/or warnings of a mass migration in the Caribbean.

The shift to Phase 1B triggered the surge of additional DHS resources to support HSTF–SE's Unified Command staff and operational rhythm. Between July 2021 and December 2022, Coast Guard deployed three times the number of large cutters to the South Florida Straits and the Windward Passage, four times the number of patrol boats and twice the number of fixed/rotary-wing aircraft to support maritime domain awareness and interdiction operations in the southeastern maritime approaches to the United States.[61] USCG also added two MH–60 helicopters to respond to increased maritime migration flows in FY 2022.[62] USCG almost doubled its flight hour coverage per month to support migrant interdictions in FY 2022. Increased resource demands translate into increased maintenance on those high demand air and sea assets.

DHS assesses that a reduction in the flow of Haitian nationals arriving at the SWB or taking to sea would reduce pressure on overstretched resources and enable the Department to more quickly process and, as appropriate, return or remove those who do not have a lawful basis to stay.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [63] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[64] DHS sets the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[65] DHS may terminate parole in its discretion at any time.[66] By regulation, parolees may apply for and be granted employment authorization to work lawfully in the United States.[67]

This process will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Haitian nationals to remain where they are and use a lawful process to request authorization to travel by air to, and ultimately apply for discretionary grant of parole into, the United States for a period of up to two years.

III. Justification for the Process

As noted above, section 212(d)(5)(A) of the INA confers upon the Secretary of Homeland Security the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [68]

A. Significant Public Benefit

The parole of Haitian nationals and their immediate family members under this process—which imposes new consequences for Haitians who seek to enter the United States irregularly between POEs, while providing an alternative opportunity for eligible Haitian nationals to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—serves a significant public benefit for several, interrelated reasons. Specifically, we anticipate that the parole of eligible individuals pursuant to this process will: (i) enhance border security through a reduction in irregular migration of Haitian nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Haiti; (v) provide a disincentive to undergo the dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhance Border Security by Reducing Irregular Migration of Haitian Nationals

As described above, in FY 2022, Haitian nationals made up a significant and growing number of those encountered seeking to cross, unauthorized, into the United States by land or who are intercepted after taking to the sea. While the number of Haitian encounters at our land border have

[58] Data from SBCC, as of December 11, 2022.

[59] OIS analysis of USCG data provided October 2022; Maritime Interdiction Data from USCG, October 5, 2022.

[60] Operation Vigilant Sentry (OVS) Phase 1B, Information Memorandum for the Secretary from RADM Brendon C. McPherson, Director, Homeland Security Task Force—Southeast, August 21, 2022.

[61] *Id.*

[62] Joint DHS and DOD Brief on Mass Maritime Migration, August 2022.

[63] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Haitians paroled into the United States through this process are not being paroled as refugees, and instead will be considered for parole on a case-by-case basis for a significant public benefit or urgent humanitarian reasons. This parole process does not, and is not intended to, replace refugee processing.

[64] INA 101(a)(13)(B), 212(d)(5)(A), 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A).

[65] *See* 8 CFR 212.5(c).

[66] *See* 8 CFR 212.5(e).

[67] *See* 8 CFR 274a.12(c)(11).

[68] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

decreased in recent months, they could quickly rise again due to the conditions in Haiti, the significant number of Haitians present in Mexico, and the increasing number of Haitians crossing into Panama from South America.

By incentivizing individuals to seek a lawful, orderly means of traveling to the United States, while imposing consequences to irregular migration, DHS assesses that the new parole process will mitigate anticipated future surges of Haitians seeking to cross into the United States without authorization, whether by land or by sea. This expectation is informed by the recently implemented process for Venezuelans and the significant shifts in migratory patterns that took place once the process was initiated. The success to date of the Venezuela process provides compelling evidence that coupling effective disincentives for irregular entry with incentives to travel in a lawful and orderly manner can meaningfully shift migration patterns in the region and to the SWB.

Implementation of the parole process is contingent on the GOM's independent decision to accept the return of Haitian nationals who voluntarily depart the United States, those who voluntarily withdraw their application for admission, and those subject to expedited removal who cannot be removed to Haiti or elsewhere. The ability to effectuate voluntary departures, withdrawals, and removals of Haitian nationals to Mexico will impose a consequence on irregular entry that may not exist should the security situation in Haiti continue to deteriorate to the extent that DHS cannot effectuate sufficient returns in a safe manner.

2. Improve Vetting for National Security and Public Safety

All noncitizens whom DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing. Individuals who are determined to pose a national security or public safety threat are detained pending removal. That said, there are distinct advantages to being able to vet more individuals before they arrive at the border so that we can stop individuals who could pose threats to national security or public safety even earlier in the process. The Haitian parole process will allow DHS to vet potential beneficiaries for national security and public safety purposes *before* they travel to the United States.

As described below, the vetting will require prospective beneficiaries to upload a live photograph via an app. This will enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny them travel before they arrive at our border, representing an improvement over the status quo.

3. Reduce the Burden on DHS Personnel and Resources

By mitigating an anticipated increase in encounters of Haitian nationals along the SWB as well as maritime interdictions, and channeling decreased flows of Haitian nationals to interior POEs, we anticipate the process will relieve some of the forecasted impact increased migratory flows could have on the DHS workforce, resources, and other missions.

In the Caribbean, DHS also has surged significant resources—mostly from USCG—to address the heightened rate of maritime encounters. Providing a safe and orderly alternative path is expected to also reduce the number of Haitians who seek to enter the United States by sea and will allow USCG, in particular, to better balance its other important missions, including its counter-drug smuggling operations, protection of living marine resources, support for shipping navigation, and a range of other critical international engagements.

In addition, permitting Haitian nationals to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process will reduce the burden on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

4. Minimize the Domestic Impact

Though the Venezuelan process has significantly reduced the encounters of Venezuelan nationals, other migratory flows continue to strain domestic resources, which is felt most acutely by border communities. Recent experience, including the Del Rio incident in August 2021, show that migratory surges can happen suddenly and quickly overwhelm U.S. government and partner resources. Given the number of Haitian migrants currently residing in Mexico, the prospect of another surge cannot be discounted. The Haiti process directly mitigates against such a surge—and the impact it would have on State and local governments and civil society stakeholders—by providing a substantial incentive for Haitians to use a lawful process to fly directly to the United States, and a significant consequence for those who do not.

Generally, since FY 2019, DHS has worked with Congress to make approximately $290 million available through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. These entities have provided services and assistance to Haitian nationals and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[69] FEMA funding has supported building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Nevertheless, local communities have reported strain on their ability to provide needed social services. Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[70] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[71] As Haitian nationals are amongst those being conditionally released into communities after being processed along the SWB, this parole process will address these concerns by diverting flows of Haitian nationals into an orderly and lawful process in ways that DHS anticipates will yield a decrease in the numbers arriving at the SWB.

DHS anticipates that this process will help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of arriving migrants at the SWB. Beneficiaries are required to fly at their own expense to an interior POE, rather than arriving at the SWB. They also are only authorized to come to the United States if they have a supporter who has agreed to receive them and provide

[69] CNN, *Washington, DC, Approves Creation of New Agency to Provide Services for Migrants Arriving From Other States* (Sept. 21, 2022), *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office.*

[70] San Antonio Report, *Migrant aid groups stretched thin as city officials seek federal help for expected wave* (Apr. 27, 2022), *https://sanantonioreport.org/migrant-aid-groups-stretched-thin-city-officials-seek-federal-help/.*

[71] KGUN9 Tucson, *Local Migrant Shelter Reaching Max Capacity as it Receives Hundreds per Day* (Sept. 23, 2022), *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day.*

basic needs, including housing support. Beneficiaries also are eligible to apply for work authorization, thus enabling them to support themselves.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

The process, which will incentivize intending migrants to use a safe, orderly, and lawful means to access the United States via commercial air flights, cuts out the smuggling networks. This is critical, because transnational criminal organizations—including the Mexican drug cartels—are increasingly playing a key role in human smuggling, reaping billions of dollars in profit and callously endangering migrants' lives along the way.[72]

In FY 2022, more than 750 migrants died attempting to enter the United States,[73] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[74] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues) [75] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[76] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[77] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[78] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils in the migrant journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. These migratory movements are in many cases facilitated by numerous human smuggling organizations, for which the migrants are pawns; [79] the organizations exploit migrants for profit, often bringing them across inhospitable deserts, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area, noncitizens seeking to cross into the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey. Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico, in December 2021 and the tragic incident in San Antonio, Texas, on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety.[80]

Migrants who travel via sea also face perilous conditions, including at the hands of smugglers. Human smugglers continue to use unseaworthy, overcrowded vessels that are piloted by inexperienced mariners. These vessels often lack any safety equipment, including but not limited to: personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons. USCG and interagency consent-based interviews suggest that human-smuggling networks and migrants consider the attempts worth the risk.

The increase in migrants taking to sea, under dangerous conditions, has also led to devastating consequences. In FY 2022, the USCG recorded 107 noncitizen deaths, including presumed dead, as a result of irregular maritime migration. In January 2022, the USCG located a capsized vessel with a survivor clinging to the hull. USCG crews interviewed the survivor who indicated there were 34 others on the vessel who were not in the vicinity of the capsized vessel and survivor.[81] The USCG conducted a multi-day air and surface search for the missing migrants, eventually recovering five deceased migrants, while the others were presumed lost at sea.[82] In November 2022, USCG and CBP rescued over 180 people from an overloaded boat that became disabled off of the Florida Keys.[83] They pulled 18 Haitian migrants out of the sea after they became trapped in ocean currents while trying to swim to shore.[84]

DHS anticipates this process will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit because it incentivizes intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey.

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy); [85] the Collaborative Migration Management Strategy (CMMS); [86] and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries.[87] The

[72] CBP, Fact Sheet: Counter Human Smuggler Campaign Updated (Oct. 6, 2022), *https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th.*

[73] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[74] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[75] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[76] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[77] The Guardian, *Migrants Risk Death Crossing Treacherous Rio Grande River for 'American Dream'* (Sept. 5, 2022), *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream.*

[78] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[79] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[80] Reuters, *Migrant Truck Crashes in Mexico Killing 54* (Dec. 9, 2021), *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R;* Reuters, *The Border's Toll: Migrants Increasingly Die Crossing into U.S. from Mexico* (July 25, 2022), *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X.*

[81] Adriana Gomez Licon, Associated Press, Situation 'dire' as Coast Guard seeks 38 missing off Florida, Jan. 26, 2022, *https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019.*

[82] Adriana Gomez Licon, Associated Press, Coast Guard suspends search for migrants off Florida, Jan. 27, 2022, *https://apnews.com/article/florida-lost-at-sea-79253e1c65cf5708f19a97b6875ae239.*

[83] Ashley Cox, CBS News CW44 Tampa, More than 180 people rescued from overloaded vessel in Florida Keys, Nov. 22, 2022, *https://www.cbsnews.com/tampa/news/more-than-180-people-rescued-from-overloaded-vessel-in-florida-keys/.*

[84] *Id.*

[85] National Security Council, *Root Causes of Migration in Central America* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[86] National Security Council, *Collaborative Migration Management Strategy* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[87] *Id.;* The White House, *Los Angeles Declaration on Migration and Protection* (LA Declaration) (June 10, 2022) *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

CMMS and the L.A. Declaration call for a collaborative and regional approach to migration, wherein countries in the hemisphere commit to implementing programs and processes to stabilize communities hosting migrants or those of high outward-migration; humanely enforce existing laws regarding movements across international boundaries, especially when minors are involved; take actions to stop migrant smuggling by targeting the criminals involved in these activities; and provide increased regular pathways and protections for migrants residing in or transiting through the 21 countries.[88] The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [89]

In June 2022, the U.S. Government announced the planned resumption of operations under the Haitian Family Reunification Parole (HFRP) program.[90] Approved HFRP beneficiaries enter the United States as parolees but are eligible to apply for lawful permanent residence (LPR) status once their immigrant visas become available. However, the security situation in Haiti makes it virtually impossible to resume the program in a timely manner and with enough resources to process meaningful numbers of beneficiaries. Furthermore, the Department of State temporarily reduced presence in Haiti due to the security situation, hampering its ability to process parents, spouses, and children of U.S. citizens and lawful permanent residents for more than 20,000 beneficiaries with immigrant visas currently available.

While HFRP and other efforts represent important progress for certain Haitians who are the beneficiaries of family-based immigrant petitions, HFRP's narrow eligibility criteria, coupled with the operational challenges posed by the security situation in Haiti and Department of State's limited family-based visa processing, result in modest processing throughput and mean that additional pathways are required to meet the current and acute border security and irregular migration mitigation objective. This new process will help achieve these goals by providing an immediate, temporary, and orderly process for Haitian nationals to lawfully enter the United States while we work to improve conditions in Haiti and expand more permanent lawful immigration pathways in the region, including refugee processing and other lawful pathways into the United States and other Western Hemisphere countries.

The process also will respond to an acute foreign policy need complementary to regional efforts. Many countries in the region are affected by the surge in migration of Haitian nationals, and some are eagerly seeking greater United States action to address these challenging flows. The Dominican Republic, which shares a border with Haiti, hosts thousands of Haitian migrants. Brazil and Chile, which had provided Haitians a legal pathway allowing them to reside there, saw Haitians leaving in very high numbers as a result of declining economic conditions, which were only exacerbated by the COVID–19 pandemic.[91] Peru, Ecuador, and Colombia have observed Haitian migrants who had been residing in South America for some time transiting their countries in order to reach the SWB. Panama has been particularly hard-hit by these migratory flows given its geographic location; additionally, the Darién Gap serves as a bottleneck and also creates a humanitarian challenge for the country as it seeks to provide shelter, medical care, food, and other services to migrants exiting the jungle.[92]

Along with the Venezuelan process, this new process will add to these efforts and enable the United States to lead by example. Such processes are a key mechanism to advance the larger domestic and foreign policy goals of the U.S. Government to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. The new process also strengthens the foundation for the United States to press regional partners—many of which are already taking important steps—to undertake additional actions with regards to this population, as part of a regional response. Any effort to meaningfully address the crisis in Haiti will require continued efforts by these and other regional partners.

Importantly, the United States will only implement the new parole process while able to return or remove to Mexico Haitian nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process thus is contingent on the GOM making an independent decision to accept the return or removal of Haitian nationals who bypass this new process and enter the United States without authorization.

For its part, the GOM has made clear its position that, in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe, orderly, and lawful processes for migrants who seek to enter the United States. The GOM, as it makes its independent decisions as to its ability to accept returns of third country nationals at the border and its efforts to manage migration within Mexico, is thus closely watching the United States' approach to migration management and whether it is delivering on its plans in this space. Initiating and managing this process—which is dependent on GOM's actions—will require careful, deliberate, and regular assessment of GOM's responses to independent U.S. actions and ongoing, sensitive diplomatic engagements.

As noted above, this process is responsive to the GOM's request that the United States increase lawful pathways for migrants and is also aligned with broader Administration domestic and foreign policy priorities in the region. The process couples a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly along the SWB. The goal of this process is to reduce the irregular migration of Haitian nationals while the United States, together with partners in the region, works to improve conditions in sending countries and create more lawful immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process also will address the urgent humanitarian needs of many Haitian nationals. As described above, escalating gang violence, the aftermaths of an earthquake, and a cholera outbreak have worsened already concerning political, economic, and social conditions in Haiti.[93] This process provides a safe mechanism for Haitian nationals who

[88] *Id.*

[89] *Id.*

[90] White House, Fact Sheet: The Los Angeles Declaration on Migration and Protection U.S. Government and Foreign Partner Deliverables (June 2022) *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/fact-sheet-the-los-angeles-declaration-on-migration-and-protection-u-s-government-and-foreign-partner-deliverables/.*

[91] Council on Foreign Relations, *Why Are Haitian Migrants Gathering at the U.S. Border?* October 1, 2021, *https://www.cfr.org/in-brief/why-are-haitian-migrants-gathering-us-border,* (last visited Dec. 19, 2022).

[92] Reuters, *Thousands of mostly Haitian Migrants Traverse Panama on Way to United States,* Sept. 26, 2021, *https://www.reuters.com/world/americas/thousands-mostly-haitian-migrants-traverse-panama-way-united-states-2021-09-26/,* (last viewed Dec. 19, 2021).

[93] Congressional Research Service, *Haiti: Political Conflict and U.S. Policy Overview* (Aug. 2, 2022), *https://crsreports.congress.gov/product/pdf/IF/IF12182.*

seek to enter the United States for urgent humanitarian reasons without having to make a dangerous journey by land or sea.

IV. Eligibility

A. Supporters

U.S.-based supporters must initiate the process by filing Form I–134A on behalf of a Haitian national and, if applicable, the national's immediate family members.[80] Supporters may be individuals filing on their own, with other individuals, or on behalf of non-governmental entities or community-based organizations. Supporters are required to provide evidence of income and assets and declare their willingness to provide financial support to the named beneficiary for the length of parole. Supporters are required to undergo vetting to identify potential human trafficking or other concerns. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Haiti or be a non-Haitian immediate family member[81] and traveling with a Haitian principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134A on their behalf that USCIS has vetted and confirmed;
- possess an unexpired passport valid for international travel;
- provide for their own commercial travel to an air U.S. POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and
- demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Haitian national is ineligible to be considered for advance authorization to travel to the United States as well as parole under this process if that person is a permanent resident or dual national of any country other than Haiti, or currently holds refugee status in any country, unless DHS operates a similar parole process for the country's nationals.[94]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

- fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;
- has been ordered removed from the United States within the prior five years or is subject to a bar to admissibility based on a prior removal order;[83]
- has crossed irregularly into the United States, between the POEs, after January 9, 2023 except individuals permitted a single instance of voluntary departure pursuant to INA section 240B, 8 U.S.C. 1229c or withdrawal of their application for admission pursuant to INA section 235(a)(4), 8 U.S.C. 1225(a)(4) will remain eligible;
- has irregularly crossed the Mexican or Panamanian border after January 9, 2023; or
- is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[84]

Travel Requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to an interior POE of the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with CDC, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *www.uscis.gov/CHNV.*

[94] This limitation does not apply to immediate family members traveling with a Haitian national.

C. Processing Steps

Step 1: Declaration of Financial Support

A U.S.-based supporter will submit a Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134A for each beneficiary they are seeking to support, including Haitians' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the beneficiary whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS with instructions to create an online account with myUSCIS and next steps for completing the application. The beneficiary will be required to confirm their biographic information in their online account and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and completing required eligibility attestations, the beneficiary will receive instructions through myUSCIS for accessing the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval To Travel to the United States

After completing Step 3, the beneficiary will receive a notice in their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary with advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel

via commercial air to an interior POE of the United States.[85] Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the individual is a discretionary determination made by CBP at the POE at the time the individual arrives at the interior POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the interior POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Each individual arriving under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with CBP inspection processes. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to ICE for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization from USCIS under existing regulations. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for employment authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

D. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the Parole Process for Haitians at any point. The number of travel authorizations granted under this process shall be spread across this process and the separate and independent Parole Process for Cubans, the Parole Process for Nicaraguans, and Parole Process for Venezuelans (as described in separate notices published concurrently in today's edition of the **Federal Register**) and shall not exceed 30,000 each month in the aggregate. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

V. Regulatory Requirements

A. Administrative Procedure Act

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[95] *i.e.,* a ''statement[] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [96] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process would be exempt from such requirements because it involves a foreign affairs function of the United States.[97] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [98] In addition, although the text of the Administrative Procedure Act does not expressly require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing.[99] This rule satisfies both standards.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Haitian nationals to enter the United States. The United States will only implement the new parole process while able to return or remove Haitian nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process is contingent on the GOM making an independent decision to accept the return or removal of Haitian nationals who bypass this new process and enter the United States without authorization. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to U.S. action in this regard, and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now. It also would complicate broader discussions and negotiations about migration management. For now, the GOM has indicated it is prepared to make an independent decision to accept the return or removal of Haitian nationals. That willingness could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return or remove nationals of Haiti to Mexico at a future date would likely result in a surge in migration, as migrants rush to the border to enter before the process begins—which would adversely impact each country's border security and further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process would advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong bilateral relationships.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in policy was consistent with the foreign affairs

[95] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[96] *See Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[97] 5 U.S.C. 553(a)(1).

[98] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[99] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

exemption because the change was central to ongoing negotiations between the two countries.[100] DHS similarly invoked the foreign affairs exemption more recently, in connection with the Venezuela parole process.[101]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking and with a delayed effective date would be contrary to the public interest and impracticable.[102] The numbers of Haitians encountered at the SWB are already high, and a delay would greatly exacerbate an urgent border and national security challenge and would miss a critical opportunity to reduce and divert the flow of irregular migration.[103]

Undertaking notice-and-comment rule making procedures would be contrary to the public interest because an advance announcement of the process would seriously undermine a key goal of the policy: it would incentivize even more irregular migration of Haitian nationals seeking to enter the United States before the process would take effect. There are urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[104] It has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment process.[105] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[106] A number of cases follow this logic in the context of economic regulation.[107]

The same logic applies here, where the Department is responding to exceedingly serious challenges at the border, and advance announcement of that response would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. It is well established that migrants may change their behavior in response to perceived imminent changes in U.S. immigration policy.[108] For example, as detailed above, implementation of the parole process for Venezuelans was associated with a drastic reduction in irregular migration by Venezuelans. Had the parole process been announced prior to a notice-and-comment period, it likely would have had the opposite effect, resulting in many hundreds of thousands of Venezuelan nationals attempting to cross the border before the program went into effect. Overall, the Department's experience has been that in some circumstances when public announcements have been made regarding changes in our immigration laws and procedures that would restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States. Smugglers routinely prey on migrants in response to changes in domestic immigration law.

In addition, it would be impracticable to delay issuance of this process in order to undertake such procedures because—as noted above—maintaining the status quo is likely to contribute to more Haitians attempting to enter irregularly either at the SWB or by sea, at a time when DHS has extremely limited options for processing, detaining, or quickly removing such migrants safely and in sufficient numbers. Inaction would unduly impede DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths.

The Department's determination here is consistent with past practice in this area. For example, in addition to the Venezuelan process described above, DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [109] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [110] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [111] DHS concluded that ''a surge could result in significant loss of human life.'' [112]

[100] *See* 82 FR 4902 (Jan. 17, 2017).

[101] *See* 87 FR 63507 (Oct. 19, 2022).

[102] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

[103] *See Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)).

[104] *See* 5 U.S.C. 553(b)(B).

[105] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94–95 (D.C. Cir. 2012) (noting that the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1975) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of § 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'—or avoid them—before the freeze deadline.'' (cleaned up)).

[106] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'').

[107] *See, e.g., Chamber of Commerce of U.S.* v. *S.E.C.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[108] *See, e.g.,* Tech Transparency Project, Inside the World of Misinformation Targeting Migrants on Social Media, *https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media,* July 26, 2022, (last viewed Dec. 6, 2022).

[109] Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

[110] *Id.*

[111] *Id.*

[112] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Haiti parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Haitian nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00255 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Nicaraguans

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to enhance the security of our Southwest Border (SWB) by reducing the number of encounters of Nicaraguan nationals crossing the border without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by a surge in migration. Nicaraguans who do not avail themselves of this new process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to removal—including to third countries, such as Mexico. As part of this effort, the U.S. Department of Homeland Security (DHS) is implementing a process—modeled on the successful Uniting for Ukraine (U4U) and Process for Venezuelans—for certain Nicaraguan nationals to lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period, pass national security and public safety vetting, and fly at their own expense to an interior POE, rather than entering at a land POE. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication, with an exception for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process; or are otherwise deemed not to merit a favorable exercise of discretion.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Nicaraguan Parole Process

This notice describes the implementation of a new parole process for certain Nicaraguan nationals, including the eligibility criteria and filing process. The parole process is intended to enhance border security by reducing the record levels of Nicaraguan nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations, as well as their facilitators, and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to, and arriving without authorization at, the SWB.

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Nicaraguan Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

EXHIBIT 25

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

B. Paperwork Reduction Act (PRA)

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The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations, as well as their facilitators, and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to, and arriving without authorization at, the SWB.

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Nicaraguan Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

Building on the success of the successful Uniting for Ukraine (U4U) process and the Process for Venezuelans, DHS is implementing a similar process to address the increasing number of encounters of Nicaraguan nationals at the SWB, which have reached record levels over the past six months. Similar to Venezuela, Nicaragua has restricted DHS's ability to remove individuals to Nicaragua, which has constrained DHS's ability to respond to this surge.

In October 2022, DHS undertook a new effort to address the high number of Venezuelans encountered at the SWB.[3] Specifically, DHS provided a new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by flying to interior ports of entry—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the Government of Mexico (GOM) for the first time made an independent decision to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, thus imposing a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced Parole Process. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and, as of the week ending December 4, to an average of 86 per day.[4] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in irregular migration of Venezuelans throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién Gap—an inhospitable jungle that spans between Panama and Colombia—was down from 40,593 in October 2022 to just 668 in November.[5]

DHS anticipates that implementing a similar process for Nicaraguans will reduce the number of Nicaraguans seeking to irregularly enter the United States between POEs along the SWB by coupling a meaningful incentive to seek a safe, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization pursuant to this process. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process. Implementation of the new parole process for Nicaraguans is contingent on the GOM accepting the return, departure, or removal to Mexico of Nicaraguan nationals seeking to enter the United States without authorization between POEs on the SWB.

As in the process for Venezuelans, a supporter in the United States must initiate the process on behalf of a Nicaraguan national (and certain non-Nicaraguan nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed.

In addition to the supporter requirement, Nicaraguan nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case-by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry at an interior POE.

A grant of parole under this process is for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region, and allow for increased removals of Nicaraguans from both the United States and partner nations who continue to migrate irregularly but who lack a valid claim of asylum or other forms of protection. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the United States. Those who are not granted asylum or any other immigration benefit during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Nicaraguan nationals pursuant to this process will provide a significant public benefit for the United States by reducing unauthorized entries along our SWB while also addressing the urgent humanitarian reasons that are driving hundreds of thousands of Nicaraguans to flee their home country, to include widespread and violent repression and human rights violations and abuses by the Ortega regime. Most significantly, DHS anticipates this process will: (i) enhance the security of the U.S. SWB by reducing irregular migration of Nicaraguan nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) enhance border security and national security by vetting individuals prior to their arrival at a U.S. POE; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Nicaragua; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

The Secretary retains the sole discretion to terminate the Nicaragua process at any point.

B. Conditions at the Border

1. Impact of Venezuela Process

This process is modeled on the Venezuela process—as informed by the way that similar incentive and disincentive structures successfully decreased the number of Venezuelan nationals making the dangerous journey to and being encountered along the SWB. The Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use a safe, orderly process to come to the United States can change migratory flows. Prior to the October 12, 2022 announcement of the Venezuela process, DHS encountered approximately 1,100 Venezuelan nationals per day between POEs—with peak days exceeding 1,500.[6] Within a week of the announcement, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under

[3] Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[4] DHS Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[5] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

[6] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

200 per day, and as of the week ending December 4, an average of 86 per day.[7]

Panama's daily encounters of Venezuelans also declined significantly over the same time period, falling some 88 percent, from 4,399 on October 16 to 532 by the end of the month—a decline driven entirely by Venezuelan migrants' choosing not to make the dangerous journey through the Darién Gap. The number of Venezuelans attempting to enter Panama through the Darién Gap continued to decline precipitously in November—from 40,593 encounters in October, a daily average of 1,309, to just 668 in November, a daily average of just 22.[8]

The Venezuela process fundamentally changed the calculus for Venezuelan migrants. Venezuelan migrants who had already crossed the Darién Gap returned to Venezuela by the thousands on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society.[9] Other migrants who were about to enter the Darién Gap turned around and headed back south.[10] Still others who were intending to migrate north are staying where they are to apply for this parole process.[11] Put simply, the Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use this parole process to come to the United States can yield a meaningful change in migratory flows.

2. Trends and Flows: Increase of Nicaraguan Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year.[12] By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[13] However, these gains were subsequently reversed as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.[14]

Shifts in demographics have also had a significant effect on migration flows. Border encounters in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[15] Beginning in the 2010s, a growing share of migrants have come from Northern Central America [16] (NCA) and, since the late 2010s, from countries throughout the Americas.[17] Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence, political oppression, and for other non-economic reasons.[18]

Historically, Nicaraguans migrated south to Costa Rica, resulting in relatively few Nicaraguan encounters at the SWB. Consistent with this trend, the number of Nicaraguans seeking asylum in Costa Rica has grown rapidly in recent years, putting immense pressure on the country's asylum system, and causing many asylum seekers to wait years for an initial interview.[19] According to United Nations High Commissioner for Refugees (UNHCR), as of February 2022, ''more Nicaraguans are currently seeking protection in Costa Rica than all the refugees and asylum seekers combined, during Central America's civil wars in the 1980s, when Costa Rica was a sanctuary for those fleeing violence.'' [20] The Government of Costa Rica recently announced its intention to regularize the status of more than 200,000 Nicaraguan migrants and asylum seekers providing them with access to jobs and healthcare as part of the process.[21]

Despite Costa Rica's efforts, increasing numbers of Nicaraguans are traveling north to the SWB due to renewed unrest in Nicaragua and the strained asylum system in Costa Rica. As a result, the United States and Mexico saw surges in migration from Nicaragua, with Nicaraguans claiming asylum in Mexico at three times the rate through October 31 of this year than the previous year and with a surge in migration having significantly contributed to the rising number of encounters at the SWB.[22] Unique encounters of Nicaraguan nationals increased throughout fiscal year (FY) 2021, totaling 47,300,[23] and increased further—and sharply—in FY 2022. DHS encountered an estimated 157,400 unique Nicaraguan nationals in FY 2022, which composed nine percent

[7] OIS analysis of data pulled from CBP UIP December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[8] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf,* (last viewed Dec. 11, 2022).

[9] La Prensa Latina Media, *More than 4,000 migrants voluntarily returned to Venezuela from Panama, https://www.laprensalatina.com/more-than-4000-migrants-voluntarily-returned-to-venezuela-from-panama/,* Nov. 9 2022 (last viewed Dec. 8, 2022).

[10] Voice of America, *U.S. Policy Prompts Some Venezuelan Migrants to Change Route, https://www.voanews.com/a/us-policy-prompts-some-venezuelan-migrants-to-change-route/6790996.html,* Oct. 14, 2022 (last viewed Dec. 8, 2022).

[11] Axios, *Biden's new border policy throws Venezuelan migrants into limbo, https://www.axios.com/2022/11/07/biden-venezuela-border-policy-darien-gap,* Nov. 7, 2022 (last viewed Dec. 8, 2022).

[12] OIS analysis of historic CBP data.

[13] *Id.*

[14] *Id.*

[15] According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 96 to over 99 percent of apprehensions of persons entering without inspection between 1980 and 2000. On Mexican migrants from this era's demographics and economic motivations see Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, ''The New Era of Mexican Migration to the United States,'' *The Journal of American History* Vol. 86, No. 2 (Sept. 1999): 518–536.

[16] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[17] According to OIS analysis of CBP data, Mexican nationals continued to account for 89 percent of total SWB encounters in FY 2010, with Northern Central Americans accounting for 8 percent and all other nationalities for 3 percent. Northern Central Americans' share of total encounters increased to 21 percent by FY 2012 and averaged 46 percent in FY 2014–FY 2019, the last full year before the start of the COVID–19 pandemic. All other countries accounted for an average of 5 percent of total SWB encounters in FY 2010–FY 2013, and for 10 percent of total encounters in FY 2014–FY 2019.

[18] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of T42 expulsions in 2020. At the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

[19] AP News, Fleeing Nicaraguans Strain Costa Rica's Asylum System (Sept. 2, 2022), *https://apnews.com/article/covid-health-elections-presidential-caribbean-52044748d15dbbb6ca706c66cc7459a5.*

[20] UNHCR, 'Sharp rise' in Nicaraguans fleeing to Costa Rica, strains asylum system, *https://news.un.org/en/story/2022/03/1114792,* Mar. 25, 2022 (last viewed Dec. 9, 2022).

[21] Reuters, Costa Rica prepares plan to regularize status of 200,000 mostly Nicaraguan migrants, *https://www.reuters.com/world/americas/costa-rica-prepares-plan-regularize-status-200000-mostly-nicaraguan-migrants-2022-08-10/,* Aug. 10, 2022 (last viewed Dec. 4, 2022).

[22] Boris Cheshirkov, Number of displaced Nicaraguans in Costa Rica doubles in less than a year, *https://www.unhcr.org/news/briefing/2022/3/623d894c4/number-displaced-nicaraguans-costa-rica-doubles-year.html,* Mar. 25, 2022 (last viewed Dec. 7, 2022).

[23] OIS analysis of OIS Persist Dataset based on data through October 31, 2022. Unique encounters include encounters of persons at the Southwest Border who were not previously encountered in the prior 12 months. Throughout this memo unique encounter data are defined to also include OFO parolees and other OFO administrative encounters.

of all unique encounters and was the fourth largest origin group.[24] Between FY 2021 and FY 2022, unique encounters of Nicaraguan nationals rose 232 percent while unique encounters of all other nationalities combined increased just 47 percent.[25] FY 2022 average unique monthly encounters of Nicaraguan nationals at the land border totaled 13,113 as opposed to an average monthly rate of 316 encounters in FYs 2014–2019, a 41-fold increase.[26]

These trends thus far are only accelerating in FY 2023. In October and November of 2022, DHS encountered 51,000 Nicaraguan nationals at the border—nearly one third of the record total of Nicaraguan encounters in FY 2022.[27]

3. Push and Pull Factors

DHS assesses that the high—and rising—number of Nicaraguan nationals encountered at the SWB is driven by two key factors: First, a confluence of political, economic, and humanitarian crises in Nicaragua—exacerbated by the widespread and violent crackdown on democratic freedoms by the Ortega regime and the government's numerous human rights violations against its own population—are causing thousands to leave the country. This situation is compounded by the fact that increasingly sophisticated human smugglers often target migrants in such circumstances to offer them a facilitated opportunity to travel to the United States—at a cost. Second, the United States faces significant limits on the ability to remove Nicaraguan nationals who do not establish a legal basis to remain in the United States to Nicaragua or elsewhere; absent such an ability, more individuals are willing to take a chance that they can come—and stay.

i. Factors Pushing Migration From Nicaragua

Current political, economic, and humanitarian crises in Nicaragua are driving migration of Nicaraguans throughout the hemisphere as well as to our border.[28] As conditions have deteriorated in Nicaragua due to this confluence of factors, the Government of Nicaragua has shown little tolerance for those who openly criticize their regime and moves swiftly to brazenly silence dissent.[29]

Since 2007, Daniel Ortega and his party, the Sandinista National Liberation Front (FSLN), have gradually consolidated control over the country's institutions and society, including by eliminating presidential term limits.[30] Human Rights Watch (HRW) reported in July 2022 that ''[s]ince taking office in 2007, the Ortega administration has dismantled all institutional checks on presidential power, including the judiciary.'' [31] According to the Inter-American Commission on Human Rights (IACHR), this consolidation of power in the executive ''has facilitated Nicaragua's transformation into a police state in which the executive branch has instituted a regime of terror and of suppression of all freedoms. . . supported by the other branches of government.'' [32] The IACHR reported in June 2022 that ''the state's violent response to the social protests that started on April 18, 2018, triggered a serious political, social, and human rights crisis in Nicaragua,'' [33] and that as of late September, ''more than 2,000 organizations of civil society—linked to political parties, academic, and religious spaces—have been cancelled'' since April 2018.[34] Further, HRW reported that the shutting down of non-governmental organizations in Nicaragua ''is part of a much broader effort to silence civil society groups and independent media through a combination of repressive tactics that include abusive legislation, intimidation, harassment, arbitrary detention, and prosecution of human rights defenders and journalists.'' [35]

Since early 2021, the IACHR has observed the escalation of repression by the Nicaraguan government, characterized by a series of state actions leading to the elimination of the opposition's participation in the elections even before they were held.[36] In December 2021, the IACHR expressed its concern ''about the increasing number of people who have been forced to flee Nicaragua and to request international protection in the context of the ongoing serious human rights crisis in the country.'' [37] In August 2022, Ortega had a bishop, five priests, and two seminarians arrested, claiming that the bishop ''persisted in destabilizing and provocative activities.'' [38] Prior to the November 2022 municipalities election, the government closed 200 nongovernmental groups and over 50 media outlets.[39]

Exacerbated by political repression, Nicaragua is one of the poorest countries in Latin America. According to the World Bank, Nicaragua's gross domestic product (GDP) per capita in 2021 was only $2,090.80, the second lowest in the region, above Haiti.[40] According to the World Food Program, almost 30 percent of Nicaraguan families live in poverty in the country, ''over 8 percent struggle in extreme poverty, surviving on less than $1.25 daily,'' and ''17 percent of children aged under five suffer from chronic malnutrition.'' [41] Migrants often seek economic opportunities to be able to support their families that remain in Nicaragua. Remittances from the United

[24] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[25] *Id.*

[26] *Id.*

[27] *Id.;* OIS analysis of UIP CBP data pulled on November 28, 2022.

[28] Voice of America, *With Turmoil at Home, More Nicaraguans Flee to the U.S.* (July 29, 2021), *https://www.voanews.com/a/americas_turmoil-home-more-nicaraguans-flee-us/6208907.html.*

[29] Los Angeles Times, *Sandinistas Complete Their Political Domination of Nicaragua Following Local Elections* (Nov. 8, 2022), *https://www.latimes.com/world-nation/story/2022-11-08/sandinistas-complete-political-domination-nicaragua-local-elections.*

[30] Reuters, *Ortega's Path to Run for Fourth Straight Re-election as Nicaraguan President* (Nov. 3, 2021), *https://www.reuters.com/world/americas/ortegas-path-run-fourth-straight-re-election-nicaraguan-president-2021-11-03/.*

[31] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Situation in Nicaragua* 2 (Sept. 2, 2022), *https://reliefweb.int/report/nicaragua/human-rights-situation-nicaragua-report-united-nations-high-commissioner-human-rights-ahrc5142-unofficial-english-translation.*

[32] Inter-American Commission On Human Rights, *Nicaragua: Concentration of Power and the Undermining of the Rule of Law,* OEA/Ser.L/V/II, Doc. 288, 65 (Oct. 25, 2021), *https://www.oas.org/en/iachr/reports/pdfs/2021_nicaragua-en.pdf.*

[33] Inter-American Commission On Human Rights, *Annual Report 2021,* Chapter IV.B—Nicaragua, 775, (June 2, 2022), *https://www.oas.org/en/iachr/reports/ia.asp?Year=2021.*

[34] In light of serious allegations regarding the closure of civic spaces in Nicaragua, UN and IACHR Special Rapporteurs urge authorities to comply with their international obligations to respect and guarantee fundamental freedoms, IACHR, Sept. 28, 2022, *https://www.oas.org/en/iachr/expression/showarticle.asp?lID=1&artID=1257.*

[35] Nicaragua: Government Dismantles Civil Society, Human Rights Watch, July 19, 2022, *https://www.hrw.org/news/2022/07/19/nicaragua-government-dismantles-civil-society.*

[36] IACHR, *Annual Report 2021,* Chapter IV.B—Nicaragua, 775 (June 2, 2022), *https://www.oas.org/en/iachr/reports/ia.asp?Year=2021.*

[37] Inter-American Commission On Human Rights, *IACHR Calls for International Solidarity, Urges States to Protect the People Who Have Been Forced to Flee from Nicaragua* (Dec. 20, 2021), *http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/346.asp.*

[38] The Washington Post, *Nicaragua Detains Catholic Bishop in Escalating Crackdown on Dissent* (Aug. 19, 2022), *https://www.washingtonpost.com/world/2022/08/19/nicaragua-bishop-rolando-alvarez-arrest-ortega/.*

[39] Politico, *Sandinistas Complete Their Political Domination of Nicaragua* (Nov. 8, 2022), *https://www.politico.com/news/2022/11/08/nicaragua-sandinistas-ortega-repression-00065603.*

[40] The World Bank, *GDP per Capita (Current U.S. $)—Latin America & Caribbean, Nicaragua, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=ZJ-NI&most_recent_value_desc=false* (last visited Dec. 6, 2022).

[41] World Food Programme, *Nicaragua, https://www.wfp.org/countries/nicaragua* (last visited: Sept. 26, 2022).

States to Nicaragua from January–September 2022 have surpassed the total remittances sent in all of 2021.[42]

According to the UNHCR, approximately 200,000 Nicaraguans have sought international protection worldwide.[43] More than 100,000 filed asylum applications in 2021; this is a five-fold increase from 2020.[44] Daniel Ortega's repressive policies, coupled with widespread poverty, have pushed thousands of Nicaraguans to seek humanitarian relief in the Western Hemisphere, including increasingly in the United States.[45]

ii. Return Limitations

The Government of Nicaragua is not accepting returns or removals of their nationals at a volume that allows the United States to effectively manage the number of encounters of Nicaraguans by the United States. Additionally, the GOM has generally not allowed returns of Nicaraguan nationals pursuant to Title 42 authorities, or their removal from the United States pursuant to Title 8 authorities.[46] Other countries have similarly refused to accept Title 8 removals of Nicaraguan nationals. As a result, DHS was only able to repatriate a small number of Nicaraguan nationals to Nicaragua in FY 2022.

Moreover, returns alone are not sufficient to reduce and divert irregular flows of Nicaraguans. The United States will combine a consequence for Nicaraguan nationals who seek to enter the United States without authorization at the land border with an incentive to use the safe, orderly process to request authorization to travel by air to, and seek parole to enter, the United States, without making the dangerous journey to the border.

4. Impact on DHS Resources and Operations

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in part by the number of Nicaraguan nationals encountered—DHS has taken a series of extraordinary steps. Since FY 2021, DHS has built and now operates 10 soft-sided processing facilities at a cost of $688 million. U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) detailed a combined 3,770 officers and agents to the SWB to effectively manage this processing surge. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from other divisions in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 combined on grants to non-governmental organizations (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP–H) to assist with the reception and onward travel of irregular migrants arriving at the SWB. This spending is in addition to $1.4 billion in additional FY 2022 appropriations that were designated for SWB enforcement and processing capacities.[47]

The impact has been particularly acute in certain border sectors. The increased flows of Nicaraguan nationals are disproportionately occurring within the remote Del Rio and Rio Grande Valley sectors, all of which are at risk of operating, or are currently operating, over capacity. In FY 2022, 80 percent of unique encounters of Nicaraguan nationals occurred in these two sectors.[48] There have also been a growing number of encounters in El Paso sector since September 2022. In FY 2023, Del Rio, El Paso, and Rio Grande Valley sectors have accounted for 88 percent of encounters of Nicaraguan nationals.[49] In FY 2022, Del Rio sector encountered almost double (85 percent increase) the number of migrants as compared to FY 2021. Driven in part by the sharp increase in Nicaraguan nationals being encountered in this sector, this was an eighteen-fold increase over the average for FY 2014–FY 2019.[50]

The focused increase in encounters within those three sectors is particularly challenging. Del Rio sector is geographically remote, and because—up until the past two years—it has not been a focal point for large numbers of individuals entering without authorization, has limited infrastructure and personnel in place to safely process the elevated encounters that CBP is now seeing there. The Yuma Sector is along the Colorado River corridor, which presents additional challenges to migrants, such as armed robbery, assault by bandits, and drowning, as well as to the U.S. Border Patrol (USBP) agents encountering them. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border but is far away from other CBP sectors, which makes it challenging to move individuals for processing elsewhere during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors that have additional capacity to process. In November 2022, U.S. Border Patrol (USBP) sectors along the SWB operated a combined 602 decompression bus routes to neighboring sectors and operated 124 lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[51]

Because DHS assets are finite, using air resources to operate lateral flights reduces DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources. Fewer international repatriation flights in turn exacerbates DHS's inability to return or remove Nicaraguans and other noncitizens in its custody by sending the message that there is no consequence for illegal entry. DHS assesses that a reduction in the flow of Nicaraguan nationals arriving at the SWB would reduce pressure on overstretched resources and enable the Department to more quickly process and, as appropriate, return or remove those who do not have a lawful basis to stay.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or

[42] Banco Central De Nicaragua, Remesas Por País de Origen, *https://www.bcn.gob.ni/sites/default/files/estadisticas/siec/datos/remesas_origen.htm* (last visited Dec. 6, 2022).

[43] UNHCR USA, Displacement in Central America, *https://www.unhcr.org/en-us/displacement-in-central-america.html.*

[44] UNHCR, 2021 Global Trends Report, June 16, 2022, *https://www.unhcr.org/62a9d1494/global-trends-report-2021.*

[45] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[46] There are some limited exceptions to this prohibition, including Nicaraguan nationals that have Mexican family members.

[47] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[48] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[49] *Id.,* and CBP UIP data for November 1–27 pulled on November 28, 2022.

[50] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[51] Data from SBCC, as of December 11, 2022.

significant public benefit.'' [52] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[53] DHS may set the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[54] Individuals may be granted advance authorization to travel to the United States to seek parole.[55] DHS may terminate parole in its discretion at any time.[56] Individuals who are paroled into the United States generally may apply for and be granted employment authorization.[57]

This process will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Nicaraguan nationals to remain where they are and use a lawful process to request authorization to travel by air to, and ultimately apply for a discretionary grant of parole into, the United States for a period of up to two years.

III. Justification for the Process

As noted above, section 212(d)(5)(A) of the INA confers upon the Secretary of Homeland Security the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [58]

A. Significant Public Benefit

The parole of Nicaraguan nationals and their immediate family members under this process—which imposes new consequences for Nicaraguans who seek to enter the United States without authorization between POEs, while providing an alternative opportunity for eligible Nicaraguan nationals and their immediate family members to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—serves a significant public benefit for several, interrelated reasons. Specifically, we anticipate that the parole of eligible individuals pursuant to this process will: (i) enhance border security through a reduction in irregular migration of Nicaraguan nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Nicaragua; (v) provide a disincentive to undergo the dangerous journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhanced Border Security by Reducing Irregular Migration of Nicaraguan Nationals

As described above, Nicaraguan nationals make up a significant and growing number of those encountered seeking to cross between POEs without authorization. Without additional and more immediate consequences imposed on those who seek to do so, together with a safe and orderly process for Nicaraguans to enter the United States, without making the journey to the SWB, the numbers will continue to grow.

By incentivizing individuals to seek a safe, orderly means of traveling to the United States through the creation of an alternative pathway to the United States, while imposing additional consequences to irregular migration, DHS assesses this process could lead to a meaningful drop in encounters of Nicaraguan individuals along the SWB. This expectation is informed by the recently implemented process for Venezuelans and the significant shifts in migratory patterns that took place once the process was initiated. The success to date of the Venezuela process provides compelling evidence that coupling effective disincentives for irregular entry with incentives for a safe, orderly parole process can meaningfully shift migration patterns in the region and to the SWB.

Implementation of this parole process is contingent on the GOM's acceptance of Nicaraguan nationals who voluntarily depart the United States, those who voluntarily withdraw their application for admission, and those subject to expedited removal who cannot be removed to Nicaragua or another designated country. The ability to effectuate voluntary departures, withdrawals, and removals of Nicaraguan nationals to Mexico will impose a consequence on irregular entry that currently does not exist.

2. Improve Vetting for National Security and Public Safety

All noncitizens whom DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing. Individuals who are determined to pose a national security or public safety threat are detained pending removal. That said, there are distinct advantages to being able to vet more individuals before they arrive at the border so that we can stop individuals who could pose threats to national security or public safety even earlier in the process. The Nicaraguan parole process will allow DHS to vet potential beneficiaries for national security and public safety purposes *before* they travel to the United States.

As described below, the vetting will require prospective beneficiaries to upload a live photograph via an app. This will enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny authorization to travel under this process before they arrive at our border, representing an improvement over the status quo.

3. Reduce the Burden on DHS Personnel and Resources

By reducing encounters of Nicaraguan nationals at the SWB, and channeling decreased flows of Nicaraguan nationals to interior POEs, we anticipate that the process will relieve some of the impact increased migratory flows have had on the DHS workforce along the SWB. This process is expected to free up resources, including those focused on decompression of border sectors, which in turn may enable an increase in removal flights—allowing for the removal of more noncitizens with final orders of removal faster and reducing the number of days migrants are in DHS custody. While the process will also draw on DHS resources within U.S. Citizenship and Immigration Services (USCIS) and CBP to process requests for discretionary parole on a case-by-case basis and conduct vetting, these requirements involve different parts of DHS and require fewer resources as compared to the status quo.

In addition, permitting Nicaraguans to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process also will reduce the burden

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[52] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Nicaraguans paroled into the United States through this process are not being paroled as refugees, and instead will be considered for parole on a case-by-case basis for a significant public benefit or urgent humanitarian reasons. This parole process does not, and is not intended to, replace refugee processing.

[53] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[54] *Id.*

[55] *See* 8 CFR 212.5(f).

[56] *See* 8 CFR 212.5(e).

[57] *See* 8 CFR 274a.12(c)(11).

[58] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

4. Minimize the Domestic Impact

Though the Venezuelan process has significantly reduced the encounters of Venezuelan nationals, other migratory flows continue to strain domestic resources, which is felt most acutely by border communities. Given the inability to remove, return, or repatriate Nicaraguan nationals in substantial numbers, DHS is currently conditionally releasing 96 percent of the Nicaraguan nationals it encounters at the border, pending their removal proceedings or the initiation of such proceedings, and Nicaraguan nationals accounted for 18 percent of all encounters released at the border in October 2022.[59] The increased volume of provisional releases of Nicaraguan nationals puts strains on U.S. border communities.

Generally, since FY 2019, DHS has worked with Congress to make approximately $290 million available through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. These entities have engaged to provide services and assistance to Nicaraguan nationals and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[60] FEMA funding has supported building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Nevertheless, local communities have reported strain on their ability to provide needed social services. Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[61] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[62] Since Nicaraguan nationals account for a significant percentage of the individuals being conditionally released into communities after being processed along the SWB, this parole process will address these concerns by diverting flows of Nicaraguan nationals into a safe and orderly process in ways that DHS anticipates will yield a decrease in the numbers arriving at the SWB.

DHS anticipates that this process will help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of arriving migrants at the SWB. Beneficiaries are required to fly at their own expense to an interior POE, rather than arriving at the SWB. They also are only authorized to come to the United States if they have a supporter who has agreed to receive them and provide basic needs, including housing support. Beneficiaries also are eligible to apply for work authorization, thus enabling them to support themselves.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

The process, which will incentivize intending migrants to use a safe, orderly, and lawful means to access the United States via commercial air flights, cuts out the smuggling networks. This is critical, because transnational criminal organizations—including the Mexican drug cartels—are increasingly playing a key role in human smuggling, reaping billions of dollars in profit and callously endangering migrants' lives along the way.[63]

In FY 2022, more than 750 migrants died attempting to enter the United States across the SWB,[64] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[65] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues) [66] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[67] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[68] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[69] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils in the migrant journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. These migratory movements are in many cases facilitated by numerous human smuggling organizations, for which the migrants are pawns; [70] the organizations exploit migrants for profit, often bringing them across inhospitable deserts, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area, noncitizens seeking to cross into the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey.[71] Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico, in December 2021 and the tragic incident in San Antonio, Texas, on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs

[59] OIS analysis of and CBP subject-level data and OIS Persist Dataset based on data through October 31, 2022.

[60] CNN, *Washington, DC, Approves Creation of New Agency to Provide Services for Migrants Arriving From Other States* (Sept. 21, 2022), *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office.*

[61] San Antonio Report, *Migrant aid groups stretched thin as city officials seek federal help for expected wave* (Apr. 27, 2022), *https://sanantonioreport.org/migrant-aid-groups-stretched-thin-city-officials-seek-federal-help/.*

[62] KGUN9 Tucson, *Local Migrant Shelter Reaching Max Capacity as it Receives Hundreds per Day* (Sept. 23, 2022), *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day.*

[63] CBP, Fact Sheet: Counter Human Smuggler Campaign Updated (Oct. 6, 2022), *https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th.*

[64] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the U.S.-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[65] Department of Homeland Security, U.S. Customs and Border Protection, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[66] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the U.S.-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[67] Department of Homeland Security, U.S. Customs and Border Protection, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[68] The Guardian, *Migrants Risk Death Crossing Treacherous Rio Grande River for 'American Dream'* (Sept. 5, 2022), *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream.*

[69] Department of Homeland Security, U.S. Customs and Border Protection, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[70] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[71] New York Times, *Smuggling Migrants at the Border Now a Billion-Dollar Business,* (July 25, 2022), *https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.*

engaged in human smuggling prioritize profit over safety.[72]

DHS anticipates this process will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit because it incentivizes intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey to the SWB. By reducing the demand for these services, DHS is effectively targeting the resources of TCOs and human smuggling networks that so often facilitate these unprecedented movements with utter disregard for the health and safety of migrants. DHS and federal partners have taken extraordinary measures—including the largest-ever surge of resources against human smuggling networks—to combat and disrupt the TCOs and smugglers and will continue to do so.[73]

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy);[74] the Collaborative Migration Management Strategy (CMMS);[75] and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries.[76] The CMMS and the L.A. Declaration call for a collaborative and regional approach to migration, wherein countries in the hemisphere commit to implementing programs and processes to stabilize communities hosting migrants or those of high outward-migration; humanely enforce existing laws regarding movements across international boundaries, especially when minors are involved; take actions to stop migrant smuggling by targeting the criminals involved in these activities; and provide increased regular pathways and protections for migrants residing in or transiting through the 21 countries.[77] The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [78]

This new process helps achieve these goals by providing an immediate and temporary orderly process for Nicaraguan nationals to lawfully enter the United States while we work to improve conditions in sending countries and expand more permanent lawful immigration pathways in the region, including refugee processing and other lawful pathways into the United States and other Western Hemisphere countries. It thus provides the United States another avenue to lead by example.

The process also responds to an acute foreign policy need. Key allies in the region—including specifically the Governments of Mexico and Costa Rica—are affected by the increased movement of Nicaraguan nationals and have been seeking greater U.S. action to address these challenging flows for some time. These Nicaraguan flows contribute to strain on governmental and civil society resources in Mexican border communities in both the south and the north—something that key foreign government partners have been urging the United States to address.

Along with the Venezuelan process, this new process adds to these efforts and enables the United States to lead by example. Such processes are a key mechanism to advance the larger domestic and foreign policy goals of the U.S. Government to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. The new process also strengthens the foundation for the United States to press regional partners—many of which are already taking important steps—to undertake additional actions with regard to this population, as part of a regional response. Any effort to meaningfully address the crisis in Nicaragua will require continued efforts by these and other regional partners.

Importantly, the United States will only implement the new parole process while able to remove or return to Mexico Nicaraguan nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process thus is contingent on the GOM making an independent decision to accept the return or removal of Nicaraguan nationals who bypass this new process and enter the United States without authorization.

For its part, the GOM has made clear its position that, in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe, orderly, and lawful processes for migrants who seek to enter the United States. The GOM, as it makes its independent decisions as to its ability to accept returns of third country nationals at the border and its efforts to manage migration within Mexico, is thus closely watching the United States' approach to migration management and whether it is delivering on its plans in this space. Initiating and managing this process—which is dependent on GOM's actions—will require careful, deliberate, and regular assessment of GOM's responses to independent U.S. actions and ongoing, sensitive diplomatic engagements.

As noted above, this process is responsive to the GOM's request that the United States increase lawful pathways for migrants and is also aligned with broader Administration domestic and foreign policy priorities in the region. The process couples a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization along the SWB. The goal of this process is to reduce the irregular migration of Nicaraguan nationals while the United States, together with partners in the region, works to improve conditions in sending countries and create more lawful immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian needs of Nicaraguan nationals who have fled the Ortega regime and Nicaragua. The Government of Nicaragua continues to repress and punish all forms of dissent and public criticism of the regime and has continued to take actions against

[72] Reuters, *Migrant Truck Crashes in Mexico Killing 54* (Dec. 9, 2021), *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R;* Reuters, *The Border's Toll: Migrants Increasingly Die Crossing into U.S. from Mexico* (July 25, 2022), *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X.*

[73] *See* DHS Update on Southwest Border Security and Preparedness Ahead of Court-Ordered Lifting of Title 42 (Dec. 13, 2022), *https://www.dhs.gov/publication/update-southwest-border-security-and-preparedness-ahead-court-ordered-lifting-title-42.*

[74] National Security Council, *Root Causes of Migration in Central America* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[75] National Security Council, *Collaborative Migration Management Strategy* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[76] *Id.;* The White House, *Los Angeles Declaration on Migration and Protection* (LA Declaration) (June 10, 2022) *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

[77] *Id.*

[78] *Id.*

those who oppose its positions.[79] This process provides a safe mechanism for Nicaraguan nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States.

IV. Eligibility To Participate in the Process and Processing Steps

A. Supporters

U.S.-based supporters must initiate the process by filing Form I–134A on behalf of a Nicaraguan national and, if applicable, the national's immediate family members.[80] Supporters may be individuals filing on their own, with other individuals, or on behalf of non-governmental entities or community-based organizations. Supporters are required to provide evidence of income and assets and declare their willingness to provide financial support to the named beneficiary for the length of parole. Supporters are required to undergo vetting to identify potential human trafficking or other concerns. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Nicaragua or be a non-Nicaraguan immediate family member[81] and traveling with a Nicaraguan principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134A on their behalf that USCIS has vetted and confirmed;
- possess an unexpired passport valid for international travel;
- provide for their own commercial travel to an air U.S. POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and
- demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Nicaraguan national is ineligible to be considered for advance authorization to travel to the United States as well as parole under this process if that person is a permanent resident or dual national of any country other than Nicaragua, or currently holds refugee status in any country, unless DHS operates a similar parole process for the country's nationals.[82]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

- fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;
- has been ordered removed from the United States within the prior five years or is subject to a bar to admissibility based on a prior removal order;[83]
- has crossed irregularly into the United States, between the POEs, after January 9, 2023 except individuals permitted a single instance of voluntary departure pursuant to INA section 240B, 8 U.S.C. 1229c or withdrawal of their application for admission pursuant to INA section 235(a)(4), 8 U.S.C. 1225(a)(4) will remain eligible;
- has irregularly crossed the Mexican or Panamanian border after January 9, 2023; or
- is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[84]

Travel Requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to an interior POE of the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with the Centers for Disease Control and Prevention, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *www.uscis.gov/CHNV.*

C. Processing Steps

Step 1: Declaration of Financial Support

A U.S.-based supporter will submit a Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134A for each beneficiary they are seeking to support, including Nicaraguans' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the beneficiary whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS with instructions to create an online account with myUSCIS and next steps for completing the application. The beneficiary will be required to confirm their biographic information in their online account and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and

[79] OHCHR, Presentation of Report on the Human Rights Situation in Nicaragua, Human Rights Council Resolution 49/3 (Sept. 13, 2022), *https://www.ohchr.org/en/speeches/2022/09/presentation-report-human-rights-situation-nicaragua.*

[80] Certain non-Nicaraguans may use this process if they are an immediate family member of a Nicaraguan beneficiary and traveling with that Nicaraguan beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

[81] See preceding footnote.

[82] This limitation does not apply to immediate family members traveling with a Nicaraguan national.

[83] *See, e.g.,* INA sec. 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

[84] As defined in 6 U.S.C. 279(g)(2). Children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian to be considered for parole at the POE under the process.

completing required eligibility attestations, the beneficiary will receive instructions through myUSCIS for accessing the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval to Travel to the United States

After completing Step 3, the beneficiary will receive a notice in their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary with advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel via commercial air to the United States.[85] Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the individual is a discretionary determination made by CBP at the POE at the time the individual arrives at the interior POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the interior POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Each individual arriving at a POE under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with CBP inspection processes. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to ICE for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization from USCIS under existing regulations. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for employment authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

D. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the process at any point.The number of travel authorizations granted under the Parole Process for Nicaraguans shall be spread across this process and the separate and independent Parole Process for Cubans, the Parole Process for Haitians, and Parole Process for Venezuelans (as described in separate notices published concurrently in today's edition of the **Federal Register**) and shall not exceed 30,000 each month in the aggregate. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

V. Regulatory Requirements

A. Administrative Procedure Act

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[86] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [87] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process would be exempt from such requirements because it involves a foreign affairs function of the United States.[88] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [89] In addition, although the text of the Administrative Procedure Act does not expressly require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing.[90] This process satisfies both standards.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Nicaraguan nationals to enter the United States. The United States will only implement the new parole process while able to return or remove to Mexico Nicaraguan nationals who enter without authorization across the SWB. The United States' ability to execute this process is contingent on the GOM making an independent decision to accept the return or removal of Nicaraguan nationals who bypass this new process and enter the United States without authorization. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to U.S. action in this regard, and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now. It also would complicate broader discussions and negotiations about migration management. For now, the GOM has indicated it is prepared to make an independent decision to accept the return or removal of Nicaraguan nationals. The GOM's willingness to accept the returns or removals could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return or remove nationals of Nicaragua to Mexico at a future date would likely result in an even greater surge in migration, as migrants rush to the border to enter before the process begins—which would adversely impact each country's border security and

[85] Air carriers can validate an approved and valid travel authorization submission using the same mechanisms that are currently in place to validate that a traveler has a valid visa or other documentation to facilitate issuance of a boarding pass for air travel.

[86] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[87] *See Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[88] 5 U.S.C. 553(a)(1).

[89] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[90] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process will advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong bilateral relationships.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in policy was consistent with the foreign affairs exemption because the change was central to ongoing negotiations between the two countries.[91] DHS similarly invoked the foreign affairs exemption more recently, in connection with the Venezuela parole process.[92]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking and with a delayed effective date would be contrary to the public interest and impracticable.[93] The numbers of Nicaraguans encountered at the SWB are already high, and a delay would greatly exacerbate an urgent border and national security challenge and would miss a critical opportunity to reduce and divert the flow of irregular migration.[94]

Undertaking notice-and-comment rule making procedures would be contrary to the public interest because an advance announcement of the process would seriously undermine a key goal of the policy: it would incentivize even more irregular migration of Nicaraguan nationals seeking to enter the United States before the process would take effect. There are urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[95] It has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment process.[96] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[97] A number of cases follow this logic in the context of economic regulation.[98]

The same logic applies here, where the Department is responding to exceedingly serious challenges at the border, and advance announcement of that response would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. It is well established that migrants may change their behavior in response to perceived imminent changes in U.S. immigration policy.[99] For example, as detailed above, implementation of the parole process for Venezuelans was associated with a drastic reduction in irregular migration by Venezuelans. Had the parole process been announced prior to a notice-and-comment period, it likely would have had the opposite effect, resulting in many hundreds of thousands of Venezuelan nationals attempting to cross the border before the program went into effect. Overall, the Department's experience has been that in some circumstances when public announcements have been made regarding changes in our immigration laws and procedures that would restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States. Smugglers routinely prey on migrants in response to changes in domestic immigration law.

In addition, it would be impracticable to delay issuance of this process in order to undertake such procedures because—as noted above—maintaining the status quo, which involves record numbers of Nicaraguan nationals currently being encountered attempting to enter without authorization at the SWB, coupled with DHS's extremely limited options for processing, detaining, or quickly removing such migrants, would unduly impede DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths.

The Department's determination here is consistent with past practice in this area. For example, in addition to the Venezuelan process described above, DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [100] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting

[91] *See* 82 FR 4902 (Jan. 17, 2017).

[92] *See* 87 FR 63507 (Oct. 19, 2022).

[93] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

[94] *See Chamber of Commerce of U.S.* v. *SEC,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)).

[95] *See* 5 U.S.C. 553(b)(B).

[96] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94–95 (D.C. Cir. 2012) (noting that the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1975) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of section 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'—or avoid them—before the freeze deadline.'' (cleaned up)).

[97] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'').

[98] *See, e.g., Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[99] *See, e.g.,* Tech Transparency Project, Inside the World of Misinformation Targeting Migrants on Social Media, *https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media,* July 26, 2022 (last viewed Dec. 6, 2022).

[100] Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [101] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [102] DHS concluded that ''a surge could result in significant loss of human life.'' [103]

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Nicaragua parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Nicaraguan nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00254 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–9M–P

[101] *Id.*

[102] *Id.*

[103] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4679–DR; Docket ID FEMA–2022–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4679–DR), dated November 28, 2022, and related determinations.

DATES: The declaration was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of August 14 to August 15, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Fayette County for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00178 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Cubans

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to enhance the security

EXHIBIT 36

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, *et al.*, *Plaintiffs*, – *versus* – KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, Defendants.	No: 1:25-cv-10495-IT

DECLARATION OF ESTHER H. SUNG IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND STAY

1. My name is Esther H. Sung, I am over the age of 18, and my business address is P.O. Box 27280, Los Angeles, CA 90027.

2. I am the legal director of Justice Action Center, counsel of record for the Plaintiffs in the above-captioned action. I am a member in good standing of the State Bar of California and I have been admitted *pro hac vice* in this action.

3. I respectfully submit this declaration in connection with Plaintiffs' Motion for Preliminary Injunction and Stay ("Motion.").

4. Attached as **Exhibit 37** to the Index of Exhibits is a compilation of true and correct copies of the legislative amendments, in chronological order as enacted, to the parole authority codified at 8 U.S.C. §1182(d)(5).

5. Attached as **Exhibit 38** is a true and correct copy of a page from the CATO Institute's website, dated July 27, 2023, titled "126 Parole Orders over 7 Decades: A Historical Review of Immigration Parole Orders." The document is available at

https://www.cato.org/blog/126-parole-orders-over-7-decades-historical-review-immigration-parole-orders.

6. Attached as **Exhibit 39** is a true and correct copy of the **Declaration of Yael Schacher**, dated June 19, 2023. Ms. Schacher is a historian who focuses "on the relationship between foreign policy and migration policy, particularly as it relates to humanitarian protection," and she has "conducted extensive archival research on the Executive branch's use of the statutory parole authority." Schacher Decl. ¶ 3. Ms. Schacher's expert report—which "explain[s] and summarize[s] the legislative and administrative history of parole programs under 8 U.S.C. § 1182(d)(5), with particular focus on the programmatic use of parole, including after the statute was revised in 1980 and 1996, and how the Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole processes compare to past parole programs," *id.* ¶ 5—was submitted by Intervenor Defendants as part of the trial record in Texas's lawsuit challenging as unlawful the CHNV parole processes, *Texas v. DHS*, No. 6:23cv7 (S.D. Tex. filed Jan. 23, 2023). I and other attorneys at Justice Action Center represent the Intervenor Defendants in that case.

7. Attached as **Exhibit 40** is a true and correct copy of the fact **Declaration of Eric Schwartz**, dated June 19, 2023, which was also submitted by Intervenor Defendants in the *Texas* case. From 1993 to 2001, Mr. Schwartz served in the White House on the National Security Council, and then from 2009 to 2011 as the Assistant Secretary of State for the Bureau of Population, Refugees, and Migration. His declaration discusses, on the basis of his own personal knowledge, how the parole authority was used by the Executive to address specific foreign policy, migration, and humanitarian issues challenges.

8. Attached as **Exhibit 41** is a true and correct copy of the fact **Declaration of Morton H. Halperin**, dated June 16, 2023, which was also submitted by Intervenor Defendants in the *Texas*

case. Mr. Halperin was a national security advisor in the Johnson, Nixon, and Clinton Administrations, and his declaration—which is supported by primary source documents attached to it—discusses how he saw the Executive use the parole authority to address the Cuban migration crisis of the 1990s.

9. Attached as **Exhibit 42** is a true and correct copy of the fact **Declaration of Debra Rogers**, dated October 19, 2024. Ms. Rogers had a 38-year career in public service that started with the Immigration and Naturalization Service (INS) and continued with DHS upon its creation in 2003 through 2023. Ms. Rogers' declaration discusses her intimate involvement in the development of the Military Parole-In-Place process and the various reasons why DHS issued the guidance creating it. Ms. Rogers' declaration was submitted with an amicus brief by individuals who were denied intervention in a different Texas's lawsuit, this one challenging as unlawful the Keeping Families Together parole processes. *Texas v. DHS*, No. 6:24cv306 (E.D. Tex. filed August 23, 2024). I and other attorneys at Justice Action Center represented the individuals who filed the amicus brief with Ms. Rogers' declaration after unsuccessfully seeking intervention as defendants.

10. Attached as **Exhibit 43** is a true and correct copy of a June 15, 2001 memorandum from Bo Cooper, General Counsel of the U.S. Immigration and Naturalization Service, addressed to Jeffrey L. Weiss, the Director of the Office for International Affairs, providing a "Legal Opinion" on the "Parole of Individuals From the Former Soviet Union Who are Denied Refugee Status." The memorandum, which was issued shortly after the enactment of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104, 208 Division C., § 602(a), 110 Stat. 3009-546, 3009-689 (1996), examined whether "the Attorney General may continue to parole individuals into the United States from the Former Soviet Union after they are denied refugee status." Acknowledging that through IIRIRA, Congress specified that parole should be granted

"only on a case-by-case basis for urgent humanitarian reasons or significant public benefit," the memorandum concluded that "[d]esignating, whether by regulation or policy, a class whose members generally would be considered appropriate candidates for parole does not conflict with a 'case-by-case' decision requirement, since the adjudicator must individually determine whether a person is a member of the class and whether there are any reasons not to exercise the parole authority in the particular case."

11. Attached as **Exhibit 44** is a true and correct copy of a USCIS webpage providing an "Update on Form I-134A," stating that because of the January 20, 2025 "Securing Our Borders" Executive Order, USCIS "is pausing acceptance of Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, until we review all categorical parole processes as required by that order." Until the release of the "Update on Form I-134A" on January 28, 2025, Form I-13A had been the online application form filed by individuals who wished to sponsor a foreign national for admission to the United States through the U4U and CHNV parole processes.

12. Attached as **Exhibit 45** is a true and correct copy of "Updated Guidance," issued by U.S. Customs and Border Protection, providing guidance to airline carriers and advising that "[c]arriers that transport [individuals] subject to the Presidential Executive Order ["Securing Our Borders"] may be subject to a carrier fine for each [individual] brought to the United States." The Guidance further advised that "impacted programs" subject to the "Securing Our Borders" Executive Order include Uniting for Ukraine; Operation Allies Welcome; Family Reunification Parole; parole for Cubans, Haitians, Nicaraguans, and Venezuelans; and 'Central American Minor [CAM]'." The "Updated Guidance" was first published on X.com by Kathleen Bush-Joseph (@KathleenBus hJo2), *available at* x.com/KathleenBushJo2/status/1887111257725038888.

13. Attached as **Exhibit 46** is a true and correct copy of a communication sent by USCIS to a CHNV parole beneficiary, advising CHNV parole beneficiaries that "USCIS has placed an administrative hold on all benefit requests filed by [individuals] who are or were paroled into the United States under the U4U, CHNV, or FRP processes, pending the completion of the required screening and vetting to identify any fraud, public safety, or national security concerns." We received a copy of this USCIS communication from the parole beneficiary's attorney.

14. Attached as **Exhibit 47** is a true and correct copy of a communication sent by USCIS to a U4U parole beneficiary who has applied for TPS, stating that "UCSIS is pausing the processing of any immigration benefit requests filed by or on behalf of [individuals] who were paroled under the U4U, CHNV, or FRP processes . . ." We received a copy of this USCIS communication from the parole beneficiary's attorney.

15. Attached as **Exhibit 48** is a true and correct copy of a communication, sent on February 28, 2025, from USCIS to a Military Parole in Place sponsor , indicating that "due to the current administration," the MPIP sponsor's application "is now on hold until further notice." We received a copy of this USCIS communication from the sponsor's attorney.

16. Attached as **Exhibit 49** is a true and correct copy of a communication, dated March 5, 2025, from a USCIS Immigration Services Officer to a U4U parole beneficiary, stating that due to the January 20, 2025 Executive Order entitled "Security Our Borders," USCIS "has placed an administrative hold on all benefit requests filed by [individuals] who are or were paroled into the United States under the U4U, CHNV, or FRP processes . . ." We received a copy of this USCIS communication from the parole beneficiary's attorney.

17. Attached as **Exhibit 50** is a true and correct copy of USCIS's webpage regarding the G-1055, its fee schedule, available at https://www.uscis.gov/g-1055.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on this 17th day of March, 2025.

/s/ Esther H. Sung

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EXHIBIT 37

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

History of INA § 212(d)(5), 8 U.S.C. § 1182(d)(5)

As enacted in 1952:

The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

As amended in 1980 (additions in blue):

(A) The Attorney General may, except as provided in subparagraph (B), in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207 [of the INA, 8 U.S.C. § 1357].

As amended in 1990 (addition in blue):

(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f) [of the INA, 8 U.S.C. § 1184(f)], in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

As amended in 1996 (deletion in ~~red~~, addition in blue):

(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe ~~for emergent reasons or for reasons deemed strictly in the public interest~~ only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

EXHIBIT 38

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

Table 1

Programmatic or categorical parole orders under section 212(d)(5) of the Immigration and Nationality Act

Number	Date	Order	Adjustment of Status	Other Act*
1	11/12/54	Parole from detention		
2	11/13/56	Setting a limit of 5,000 parolees from Hungary	P.L. 85-559	
3	12/1/56	Setting a limit of 15,000 parolees from Hungary	P.L. 85-559	
4	1/2/57	Removing the limit on parolees from Hungary	P.L. 85-559	
5	12/6/57	Pre-examination parole		
6	12/6/57	Parole of crewmembers		P.L. 104-208
7	1/8/58	Parole at ports		
8	1/1/59	Paroling small numbers of Cubans	P.L. 89-732	
9	1/1/62	Paroling Cubans, not referring to hearings	P.L. 89-732	
10	1/27/60	Guam Parolee Defense program		
11	7/14/60	Fair Share Act parole	P.L. 86-648	
12	12/8/61	Parole of crewmembers expanded		P.L. 104-208
13	5/23/62	Hong Kong Chinese parole	P.L. 95-412	
14	11/15/62	Guam Reconstruction and Rehabilitation Parole Program		
15	3/15/63	Guam Reconstruction and Rehabilitation Parole Program extension		
16	5/10/63	Russian Orthodox Old Believer parole	P.L. 95-412	
17	11/15/63	Guam Reconstruction and Rehabilitation Parole Program extension		
18	3/15/64	Guam Reconstruction and Rehabilitation Parole Program extension		
19	11/15/64	Guam Reconstruction and Rehabilitation Parole Program extension		
20	3/15/65	Guam Reconstruction and Rehabilitation Parole Program extension		
21	11/6/65	Cuba Airlift Parole	P.L. 89-732	
22	11/15/65	Guam Reconstruction and Rehabilitation Parole Program extension		
23	3/15/66	Guam Reconstruction and Rehabilitation Parole Program extension		
24	11/15/66	Guam Reconstruction and Rehabilitation Parole Program extension		
25	3/22/67	Parole of crewmembers expanded		P.L. 104-208
26	5/15/67	Guam Reconstruction and Rehabilitation Parole Program extension		

Sources: See links and text above

*Note: Other acts refer to congressional references to the use of parole, extension of benefits to parolees, extensions of deadlines to apply for adjustment of status, etc.

Table 1

Programmatic or categorical parole orders under section 212(d)(5) of the Immigration and Nationality Act

Number	Date	Order	Adjustment of Status	Other Act*
27	11/15/67	Guam Reconstruction and Rehabilitation Parole Program extension		
28	3/15/68	Guam Reconstruction and Rehabilitation Parole Program extension		
29	11/15/68	Guam Reconstruction and Rehabilitation Parole Program extension		
30	3/15/69	Guam Reconstruction and Rehabilitation Parole Program extension		
31	11/15/69	Guam Reconstruction and Rehabilitation Parole Program extension		
32	1/2/70	Czechoslovak parole	P.L. 95-412	
33	10/1/71	Soviet Union minority religious groups	P.L. 95-412	
34	12/11/71	Advance parole		P.L. 96-422
35	9/30/72	Ugandan Asians	P.L. 95-412	
36	10/26/73	Cuban third country parole	P.L. 89-732	
37	3/25/75	Vietnamese orphans	P.L. 95–145	
38	4/18/75	Vietnamese refugees	P.L. 95–145	
39	6/12/75	Detained Chilean dissidents	P.L. 95-412	
40	8/1/75	Vietnamese and Cambodian refugees	P.L. 95–145	
41	5/6/76	11,000 refugees from Vietnam, Cambodia, or Laos	P.L. 95–145	
42	10/27/76	South Americans	P.L. 95-412	
43	8/11/77	15,000 refugees from Vietnam, Cambodia, or Laos	P.L. 95–145	
44	1/25/78	7,000 "boat cases" from Vietnam	P.L. 95–145	
45	6/14/78	South Americans	P.L. 95-412	
46	6/14/78	Long Range Parole program for 25,000 from Vietnam, Cambodia, or Laos	P.L. 95–145	
47	12/1/78	Soviet Jews and Romanians	P.L. 95-412	
48	12/5/78	Long Range Parole program increased to 46,875	P.L. 95–145	
49	12/6/78	1,000 Lebanonese refugees	P.L. 95-412	
50	12/6/78	3,500 Cuban political prisoners and family	P.L. 95-412	
51	4/10/79	Asylum Parole Regulation	P.L. 96-212	
52	4/16/79	Iranian parole	P.L. 95-412	
53	4/13/79	40,000 refugees from Vietnam, Cambodia, or Laos	P.L. 95–145	
54	10/16/79	3,000 refugees from Eastern Europe	P.L. 95-412	
55	10/16/79	14,000 refugees from Vietnam, Cambodia, or Laos per month	P.L. 95-412	

Sources: See links and text above

*Note: Other acts refer to congressional references to the use of parole, extension of benefits to parolees, extensions of deadlines to apply for adjustment of status, etc.

Table 1

Programmatic or categorical parole orders under section 212(d)(5) of the Immigration and Nationality Act

Number	Date	Order	Adjustment of Status	Other Act*
56	12/15/79	3,000 refugees from Eastern Europe	P.L. 95-412	
57	12/15/79	14,000 refugees from Vietnam, Cambodia, or Laos per month	P.L. 95-412	
58	6/20/80	Cuban/Haitian entrant parole	P.L. 99-603	P.L. 96-422
59	10/21/80	Cuban/Haitian entrant parole extended	P.L. 99-603	P.L. 96-422
60	12/14/84	Cuban political prisoner parole	P.L. 89-732	
61	5/1/86	Border Khmer parole	P.L. 101-167	
62	12/28/87	Parole of Mariel boatlift Cubans detained since the boatlift ended	P.L. 89-732	
63	12/8/88	2,000 Soviets per month who were denied refugee status	P.L. 101-167	P.L. 102-391
64	2/1/89	Orderly Departure Vietnam parole	P.L. 101-167	P.L. 106–429
65	11/21/89	Hungarian and Polish parole	P.L. 104–208	
66	6/12/05	Undated 1990s parole processes		
67	4/11/90	Chinese parole from detention	P.L. 102-404	
68	7/27/90	Parole of crewmembers expanded		P.L. 104-208
69	5/1/90	Pilot parole program from detention for asylum seekers		
70	1/31/91	Salvadorans and Guatemalans, ABC settlement asylum parole	P.L. 105-100	
71	9/30/91	Haitian Parole	P.L. 105-277	
72	4/20/92	Parole program from detention for asylum seekers		
73	9/9/94	Cuban migration accord first lottery	P.L. 89-732	
74	10/14/94	Cuban Guantanamo parole of certain children and elderly	P.L. 89-732	
75	11/25/94	Adoptee parole	P.L. 104-51	
76	12/2/94	Cuban Guantanamo parole of all children	P.L. 89-732	
77	5/2/95	Cuban Guantanamo parole of everyone else	P.L. 89-732	
78	5/2/95	Wet Foot, Dry Foot Cuban parole		
79	3/15/96	Cuban migration accord second lottery	P.L. 89-732	
80	9/17/96	Iraqi parole	P.L. 105–277	
81	3/6/97	Re-establishing parole categories under new parole statute		
82	3/6/97	Clarifying and extending parole for crew members		
83	6/15/98	Cuban migration accord third lottery	P.L. 89-732	
84	10/7/98	Presumption in favor of paroling asylum seekers		

Sources: See links and text above

*Note: Other acts refer to congressional references to the use of parole, extension of benefits to parolees, extensions of deadlines to apply for adjustment of status, etc.

Table 1

Programmatic or categorical parole orders under section 212(d)(5) of the Immigration and Nationality Act

Number	Date	Order	Adjustment of Status	Other Act*
85	12/21/00	Parole of people ordered removed who could not be removed		
86	4/6/04	Crew lightering parole		P.L. 104-208
87	8/11/06	Cuban Medical Professional Parole program	P.L. 89-732	
88	6/21/07	Parole in Place for family of U.S. veterans		P.L. 116–92
89	8/6/07	Transferring responsibility for 2 parole programs to USCIS		
90	11/21/07	Cuban Family Reunification Parole program	P.L. 89-732	
91	9/1/08	Re-establishing various parole categories and agency responsibility		
92	12/8/09	Re'nstating the presumption in favor of asylum parole		
93	1/13/10	Haitian parole		
94	1/18/10	Haitian orphan parole	P.L. 111-293	
95	1/25/10	Haitian advance parole extension		
96	11/15/13	Parole in Place for family of U.S. veterans formalized and expanded		P.L. 116–92
97	11/14/14	Central American Minors program		
98	12/18/14	Haitian Family Reunification Parole		
99	5/9/16	Filipino World War II Veterans Parole		
100	6/26/16	Central American Minors program expansion		
101	11/23/16	Parole in Place for family of U.S. veterans expanded again		P.L. 116–92
102	1/17/17	International Entrepreneur Rule		
103	3/10/21	Partial reopening of the Central American Minors program		
104	6/15/21	Expansion of the Central American Minors program		
105	7/31/21	Parole from Border Patrol detention		
106	8/23/21	Afghan evacuation parole		P.L. 117–43
107	10/12/21	Haitian Family Reunification Parole restart		
108	10/12/21	Filipino World War II Veterans Parole restart		
109	11/2/21	Parole + Alternatives to Detention from Border Patrol for families		
110	3/11/22	Ukrainian port of entry parole		P.L. 117–128
111	3/29/22	Asylum Parole Rule		
[illegible]	[illegible]	[illegible]		P.L. 117–

Sources: See links and text above

*Note: Other acts refer to congressional references to the use of parole, extension of benefits to parolees, extensions of deadlines to apply for adjustment of status, etc.

Table 1

Programmatic or categorical parole orders under section 212(d)(5) of the Immigration and Nationality Act

Number	Date	Order	Adjustment of Status	Other Act*
99	5/9/16	Filipino World War II Veterans Parole		
100	6/26/16	Central American Minors program expansion		
101	11/23/16	Parole in Place for family of U.S. veterans expanded again		P.L. 116–92
102	1/17/17	International Entrepreneur Rule		
103	3/10/21	Partial reopening of the Central American Minors program		
104	6/15/21	Expansion of the Central American Minors program		
105	7/31/21	Parole from Border Patrol detention		
106	8/23/21	Afghan evacuation parole		P.L. 117–43
107	10/12/21	Haitian Family Reunification Parole restart		
108	10/12/21	Filipino World War II Veterans Parole restart		
109	11/2/21	Parole + Alternatives to Detention from Border Patrol for families		
110	3/11/22	Ukrainian port of entry parole		P.L. 117–128
111	3/29/22	Asylum Parole Rule		
112	4/27/22	Uniting for Ukraine parole		P.L. 117–128
113	5/16/22	Cuban Family Reunification Parole program restart	P.L. 89-732	
114	7/18/22	Parole + Alternatives to Detention from Border Patrol for all		
115	10/19/22	Venezuelan parole process		
116	1/9/23	Venezuelan parole process cap increased		
117	1/9/23	Haitian parole process		
118	1/9/23	Nicaraguan parole process		
119	1/9/23	Cuban parole process	P.L. 89-732	
120	3/13/23	Ukrainian port of entry parole re-parole extension		P.L. 117–128
121	4/11/23	Further expansion of the Central American Minors program		
122	6/8/23	Afghan parole extension		P.L. 117–43
123	7/10/23	Colombian family reunification parole process		
124	7/10/23	Salvadoran family reunification parole process		
125	7/10/23	Guatemalan family reunification parole process		
126	7/10/23	Honduran family reunification parole process		

Sources: See links and text above

*Note: Other acts refer to congressional references to the use of parole, extension of benefits to parolees, extensions of deadlines to apply for adjustment of status, etc.

EXHIBIT 39

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

The STATE OF TEXAS; the STATE OF ALABAMA; the STATE OF ALASKA; the STATE OF ARKANSAS; the STATE OF FLORIDA; the STATE OF IDAHO; the STATE OF IOWA; the STATE OF KANSAS; the COMMONWEALTH OF KENTUCKY; the STATE OF LOUISIANA; the STATE OF MISSISSIPPI; the STATE OF MISSOURI; the STATE OF MONTANA; the STATE OF NEBRASKA; the STATE OF OHIO; the STATE OF OKLAHOMA; the STATE OF SOUTH CAROLINA; the STATE OF TENNESSEE; the STATE OF UTAH; the STATE OF WEST VIRGINIA; and the STATE OF WYOMING, *Plaintiffs*, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY; ALEJANDRO MAYORKAS, Secretary of the United States Department of Homeland Security, in his official capacity; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; UR JADDOU, Director of CUSTOMS & BORDER PROTECTION; TROY MILLER, Acting Commissioner of U.S. Customs & Border Protection, in his official capacity; U.S. IMMIGRATION & CUSTOMS ENFORCEMENT; and TAE JOHNSON, Acting Director of U.S. Immigration & Customs Enforcement, in his official capacity, *Defendants*, and VALERIE LAVEUS; FRANCIS ARAUZ; PAUL ZITO; ERIC SYPE; KATE SUGARMAN; NAN LANGOWITZ; and GERMAN CADENAS, *Intervenors.*	§	Civil Action No. 6:23-CV-00007 Judge Drew M. Tipton **EXPERT DECLARATION OF YAEL SCHACHER**

EXPERT DECLARATION OF YAEL SCHACHER

I, YAEL SCHACHER, hereby declare pursuant to 28 U.S.C. § 1746:

BACKGROUND

1. I am an historian of immigration to the United States and I currently serve as the Director for the Americas and Europe at Refugees International, a non-partisan, non-profit organization founded in 1979.

2. I have published peer reviewed academic articles on immigration law and policy in, for example, the *Journal of American History* and *Whose America?: U.S. Immigration Policy Since 1980* (University of Illinois Press). A list of all publications I have authored in the past ten years is attached to this declaration. I have also taught courses on United States immigration history at the University of Connecticut and at Georgetown University. I have not testified as an expert witness in the last four years.

3. My academic focus is on the relationship between foreign policy and migration policy, particularly as it relates to humanitarian protection. As part of my doctoral (Harvard University Ph.D., 2016) and postdoctoral (University of Texas at Austin, 2017-2018) work, I have conducted extensive archival research on the Executive branch's use of the statutory parole authority.

4. My archival research has focused particularly on parole programs whereby the Executive defines a group (typically by nationality plus additional factors) whose entry on parole may be justified by humanitarian and/or public benefit reasons, with applications of individuals therein considered on a case-by-case basis. I refer to this below as "programmatic" uses of parole.

5. I have been retained by counsel for the Intervenor Defendants to explain and summarize the legislative and administrative history of parole programs under 8 U.S.C. § 1182(d)(5), with particular focus on the programmatic use of parole, including after the statute was revised in 1980 and 1996, and how the Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole processes compare to past parole programs.

6. In preparing this declaration I reviewed the following documents:

a. Plaintiffs' complaint

b. Federal Register Notices for the CHNV, U4U, and other past parole programs

c. DHS policy documents about parole programs

d. Congressional hearings and reports relating to parole

e. Documents compiled in *Foreign Relations of the United States*

f. State and Justice Department (including Immigration and Naturalization Service) records at the National Archives relating to parole

g. Documents from the USCIS Historical Library relating to parole

h. Documents from papers of members of Congress and Presidential libraries

i. Articles and books about U.S. parole and refugee programs

SUMMARY OF OPINIONS

7. Overall, my research shows that parole has for many decades been an important, flexible, and frequently used tool of successive administrations of both political parties to facilitate entry into the United States of large groups of non-citizens.

8. Congress has frequently responded to parole programs by seeming to approve of the Executive's programmatic use of parole by, for example, extending immigration and other benefits to individuals who were or will be paroled through a program; and by declining

to amend the parole provision to limit the use of parole to narrow, highly prescriptive circumstances that likely would significantly constrain its programmatic use.

9. Most recently, Congress amended the parole statute in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to state that parole may be granted "only on a case-by-case basis." Long before 1996, however, the Executive made case by case determinations for parole even in the context of parole programs. The executive specified classes of people to apply for parole and then assessed each applicant individually. The addition of the "case-by-case" language thus did not materially change the way Executives have used parole programmatically. Since 1996, just as before, Congress has several times extended benefits to large numbers of parolees who have (or will) come to the United States through parole programs.

10. Although the specific humanitarian and/or public benefit justification has varied, programmatic uses of parole have frequently been heavily influenced by U.S. foreign policy and humanitarian objectives. Especially since 1980, these have prominently included (though have not been limited to) deterring dangerous irregular migration, promoting the reception and protection of migrants by other countries, and family unification.

11. The Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) Parole Processes—as well as the ongoing Uniting for Ukraine Parole Process, on which they were modelled, and through which the Biden Administration has paroled more than 120,000 Ukrainians—are well within this historical tradition of the programmatic use of parole.

Congress and the Executive on Parole

12. Section 212(d)(5) of the 1952 Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1182(d)(5), established that "the Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent

reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States." Congress did not define the terms "emergent" or "public interest" reasons and did not modify the wording of the parole provision for 28 years. Congress did, however, extend benefits to noncitizens who came in through multiple different parole programs, such as the ability to become lawful permanent residents (e.g., "green card" holders) who would eventually be eligible to naturalize.

13. For example, in late 1956 and early 1957, President Dwight D. Eisenhower directed his Attorney General to parole about 32,000 Hungarian nationals who had fled Soviet repression of the Hungarian Revolution. Each parolee was personally screened before entry to the United States. In 1958, Congress enacted legislation (Public Law 85-559) enabling Hungarian parolees to become lawful permanent residents.

14. Parole of Cubans into the United States began in 1961, with almost 100,000 Cubans paroled into the United States in just a three-year period, from 1961 to 1963.

15. In 1965, members of Congress expressed awareness of (and some concern about) large parole programs, but in amending the INA that year, Congress made no changes to the parole statute. Overall, between 1965 and 1975, about 310,000 Cubans—coming directly from Cuba or from third countries—were paroled into the United States after individual screening.

16. In 1966, Congress enacted the Cuban Adjustment Act (CAA), which granted past and future Cuban parolees the ability to adjust status to lawful permanent residence.

17. In the midst of a complicated Vietnamese displacement crisis further discussed below, Congress added a restriction to the parole authority in the Refugee Act of 1980 (Public Law § 203(f)): "The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest

with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee."

18. Beginning in 1988, the Attorney General authorized the parole of people from Vietnam, Laos or Cambodia and the Soviet Union who had been *denied* refugee status. Congress, in 1989, passed a law (Public Law 101-167 § 599E) providing that such parolees could adjust their status to lawful permanent resident after one year. The same law specified that certain categories of people from the Soviet Union, Vietnam, Laos and Cambodia could be granted refugee status on a lower evidentiary burden. The latter is referred to as the "Lautenberg amendment."

19. Some in Congress became concerned that parole was being used to allow large groups of noncitizens who may not have had a path to permanent legal status to remain in the United States for long periods. Congress addressed this concern in IIRIRA in a provision that limits immigration because of the presence of long-term parolees. Section 603 of the IIRIRA requires that nearly all long-term parolees who have yet to become legal permanent residents be counted against annual numerical caps on family-sponsored immigration, thereby diminishing the available number of family-based visas from a particular country by the same number of its nationals who are long-term parolees in the United States.

20. IIRIRA also mandated annual reporting to Congress on the Executive's use of parole and replaced the "emergent reasons or for reasons deemed strictly in the public interest" language that had been in the parole criteria since 1952 with "urgent humanitarian reasons or significant public benefit." As before, Congress left those terms undefined and therefore up to interpretation by the executive.

21. In contrast, an alternative proposal that the House Judiciary Committee considered would have defined those terms with great particularity. *See* H. Rep. 104-469 (1996) at

77-78. That proposal defined the "urgent humanitarian reasons" basis for parole to refer only to certain medical emergencies (i.e., the parolee donating an organ or visiting a dying relative) and defined the "strictly in the public interest" basis as applying only where the parolee assisted the U.S. Government in a law enforcement activity or was to be criminally prosecuted. It also would have explicitly prohibited using parole for noncitizens "who have applied for and have been found to be ineligible for refugee status or any alien to whom the provisions of this paragraph do not apply." To explain the proposed extensive amendments to the parole statute, the report criticized the programmatic use of parole, including the Clinton Administration's September 1994 migration agreement with Cuba discussed more below. This House Judiciary Committee report's parole amendment proposal *did not become law*; the provisions defining and restricting when parole could be used were removed from the legislation even before the bill was considered by the full House.

22. IIRIRA also amended the parole statute to specify that parole must be granted "only on a case-by-case basis." As described above, it had long been understood by the Executive that, even when used programmatically, the statutory parole authority required assessing individual applicants for parole.

23. There were times before the passage of IIRIRA when this individualized assessment was explicitly referred to as "case by case." For example, a September 30, 1994, INS Focus pamphlet from the Office of the Commissioner of the Immigration and Naturalization Service (INS) explained that "the INS authorizes parole, under delegated authority from the Attorney General, on a case-by-case basis." A September 1995 GAO report on the parole of Cubans in 1994 (available at www.gao.gov/assets/nsiad-95-211.pdf) likewise referred to it as a "case-by-case" process.

24. In the nearly 30 years since the parole authority was amended to include the "case-by-case" language, the Executive and Congress have continued to indicate that the statute permits programmatic uses of the parole.

25. In June 2001, for example, INS General Counsel Bo Cooper issued a legal opinion on the continued INS authority to parole individuals from the former Soviet Union who are denied refugee status (I understand that this opinion is in the administrative records for the CHNV litigation). Cooper concluded:

> "Designating, whether by regulation or policy, a class whose members generally would be considered appropriate candidates for parole does not conflict with the 'case-by-case' decision requirement, since the adjudicator must individually determine whether a person is a member of the class and whether there are any reasons not to exercise the parole authority in the particular case. . . . So long as individual consideration is given to parole decisions, the Service's determination—that it is generally in the public interest to parole denied refugee applicants from Moscow who belong to groups specified in the Lautenberg amendment-—does not violate the case-by-case requirement."

26. After the passage of IIRIRA, the Executive has continued to use parole programmatically, where individual members of a group or class defined by agency policy to be considered on a case-by-case basis. Such programs include, for example, the Central American Minors Program whereby at-risk children from El Salvador, Honduras, and Guatemala are individually considered for parole if denied refugee status.

27. Also since the passage of IIRIRA, Congress has taken a number of legislative actions that seem to endorse the programmatic use of parole by the Executive.

28. For example, in section 1758 of the 2020 National Defense Authorization Act (Public Law 116-92), Congress essentially mandated as a legislative matter a parole program that had been created years earlier by the Executive. Like the Executive-created program, the legislation defined a class (certain family members of those in the military) and then ordered case-by-case consideration of requests for parole of individual members of that class.

29. In 2021 (Public Law 117-43) and 2022 (Public Law 117-128), Congress extended benefits to Afghans and Ukrainians, respectively, who had already been paroled in through one of the programs created by the Biden Administration, and to certain Afghans and Ukrainians who might be paroled into the United States sometime in the future.

The Use of Parole as a Tool of Foreign Policy

30. Regardless of the particular statutory language, administrations have been heavily influenced by matters of foreign policy and diplomatic relations when deciding whether and how to use parole on a programmatic basis.

31. The Eisenhower administration used parole for tens of thousands of Hungarians, for example, in order to support opponents of communism non-militarily, shore up Cold War alliances (especially with Austria and Yugoslavia, where most Hungarians initially fled), and reassert America's moral leadership by promoting solutions to refugee and migration crises.

32. In the wake of the passage of the Refugee Act of 1980 and IIRIRA in 1996, parole programs for Vietnamese and Cubans helped achieve important foreign policy objectives, as discussed below. Most prominent among them were promoting orderly (and safe) migration and encouraging other countries to receive migrants as well.

The Use of Parole from Vietnam

33. In the wake of the war in Vietnam, the United States made extensive use of its parole authority for twenty five years. Parole was used to effectively control and collaboratively manage irregular migration, to ensure countries of first asylum in Southeast Asia (not signatories to the UN Refugee Convention and Protocol) would shelter refugees, and to ensure Vietnamese of concern to the United States (including Amerasian children and those released from re-education camps) could enter the United States with their relatives.

34. Congress was well informed of the extensive use of parole authority to achieve these goals and, not only in 1989 (as mentioned above) but several additional times, including in the Indochinese Parole Adjustment Act of 2000, provided for the adjustment to permanent status of Vietnamese paroled into the United States through the late 1990s. As discussed below, the Executive's programmatic use of parole was crucial to achieving long-term foreign policy objectives.

35. As Congress in 1979 debated the legislation that ultimately became the Refugee Act of 1980, the number of people leaving Vietnam to seek refuge in other countries in the region (i.e., overland to Thailand, by boat to Malaysia) increased dramatically. The Office of the United Nations High Commissioner for Refugees (UNHCR) and Vietnamese officials signed a memorandum of understanding to try to better control migration called the Orderly Departure Program (ODP). At a conference in Geneva in the summer of 1979, the Vietnamese government agreed to stop boats from embarking while the United States (and other nations such as Canada, France, and Australia) agreed to receive individuals directly from Vietnam through ODP. By 1985, more Vietnamese were leaving via the ODP process than were arriving by boat in countries of first asylum in the region thus indicating that the program was successfully working to bring order to Vietnamese migration.

36. But, in 1986, the Vietnamese government suspended the ODP program, accusing the United States of not following through on its responsibility to process applicants, stating an applicant backlog had developed of thousands of people wishing to unite with family in the United States.

37. At this time, the United States—to fulfill a law passed by Congress—wanted to process Amerasians in Vietnam for resettlement in the United States. The Vietnamese

government insisted that Amerasians were not refugees but American children, yet most Amerasians in Vietnam were not claimed by American fathers and also had mothers and siblings in Vietnam who needed to be processed with them lest families be separated.

38. To ensure the continuing cooperation of the Vietnamese government with the ODP (and especially the issuing of exit permits) and release and emigration to the United States of those imprisoned in reeducation camps as a result of their close association with the United States (a population of unanimous concern to the Senate as indicated in Resolution 205 of May 1, 1987) it was crucial to use the parole authority.

39. Between 1990 and 1995, over 45,000 Vietnamese—mostly family members of Vietnamese ineligible for immigrant visas, former United States government employees and former reeducation prisoners denied refugee status, and accompanying relatives of Amerasians and former prisoners—were paroled into the United States as part of the Orderly Departure Program. In the decade and a half after the passage of the 1980 Refugee Act, the continued use of parole *alongside* refugee resettlement to unite Vietnamese families and allow for the migration of Amerasians and prisoners with their relatives was crucial to the normalization of U.S.-Vietnam relations, especially the United States' decisions to permit international financial institutions to lend to Vietnam in July 1993, lift the embargo in February 1994, and establish formal diplomatic relations in July 1995.

40. In 1995, first countries of asylum insisted on closing camps of screened-out refugees (i.e., individuals who had been determined *not* to meet the refugee definition) and on pushing back all future Vietnamese boat arrivals. In response, the United States and Vietnam negotiated an agreement called Resettlement Opportunity for Vietnamese Returnees (ROVR). The

program accepted the requirement that all screened-out migrants return to Vietnam but offered returnees one more chance to apply for resettlement to the United States from Vietnam.

41. The use of parole continued alongside resettlement in the ROVR program; over an eight-month period ending in April 1998, nearly 20 percent of the Vietnamese who came to the United States through ROVR were paroled. The existence of the program prevented forced repatriation in the region and upheld a commitment to resettle families together. Ending the program at the end of the millennium honorably brought to a close a 20-year U.S. engagement on the Vietnamese refugee crisis and paved the way to the U.S. awarding Vietnam most favored nation status in late 2021.

Parole Programs for Cuban Nationals

42. The use of parole to advance important U.S. foreign policy interests, both before and after the 1996 changes to the parole authority, can also be seen in the longstanding and robust use of parole for certain Cuban nationals.

43. Parole programs for Cubans put in place during the Clinton and George W. Bush administrations were designed to regularize migration, promote family unification, and put pressure on Cuba to promote political and economic reform and transition to democracy.

44. In late 1984, the United States and Cuba negotiated an agreement whereby Cuba would accept the return of a certain number of Cubans excluded from the United States and would allow for the emigration of 3,000 political prisoners and their families, while the United States would issue 20,000 visas for Cubans to immigrate to the United States annually.

45. In 1985, after the United States launched Radio Marti, a U.S. sponsored broadcaster that transmits to Cuba, Castro suspended implementation of the agreement. Though the agreement was restarted in 1987, the United States interests section in Havana issued only

11,222 visas between 1988 and 1994. In 1993 and 1994, when the United States issued fewer than 1,000 visas annually, the number of Cubans arriving in the United States by raft more than doubled (to over 4000 annually from less than 2000 in 1991, during the first half of which Representative Lawrence J. Smith said Florida found approximately 860 corpses along its coasts).

46. In the spring and summer of 1994 there was a huge uptick in irregular sea migration from Cuba; there were more than 3,000 Cubans interdicted by the Coast Guard on some days in August. The Clinton administration was determined not to allow a repeat of the Mariel boatlift of 1980, when more than 125,000 Cubans traveled by sea to the United States over a period of months, so it adopted a policy of interdicting Cubans heading to Miami and bringing them to the U.S. Naval Base in Guantanamo Bay. Although the U.S. Government wanted to return many of these individuals to Cuba in order to deter irregular journeys by sea, it also was concerned about the safety of such people upon being returned.

47. In September 1994, the United States and Cuba came to an agreement. The Cuban government agreed to take steps to discourage Cuban nationals from departing by boat in exchange for the Clinton administration allowing 20,000 Cubans to enter the United States annually, not counting the immediate relatives of U.S. citizens.

48. To get to the annual 20,000 migrants and to include among them people likely to migrate irregularly via rafts, the Attorney General created several programmatic parole programs for Cuban nationals in Cuba, most notably the Special Cuban Migration Program through which those between the ages of 18 and 55 who met specified criteria could register for a parole lottery. Those selected in the lottery were then interviewed about their qualifications and to ensure they met medical, criminal and public charge requirements. This was done in the public

interest of stemming irregular migration and promoting "safe, legal, and orderly" migration from Cuba.

49. In early 1995, the two countries reached another agreement, memorialized in a joint statement, that specifically addressed how Cubans paroled from Guantanamo would be counted toward the 20,000 figure. As the United States decided to no longer transport interdicted Cuban migrants to Guantanamo but to instead generally repatriate them to Cuba, the agreement also included certain assurances that no actions would be taken against repatriated individuals. Between May 1995 and the end of June 1997, the U.S. Coast Guard interdicted only 771 Cuban migrants attempting to migrate to the United States, the lowest Cuban interdiction rates since the late 1980s.

50. Due to the success of the programmatic parole programs from Cuba, Castro was unable to use the threat of irregular migration to push for change in other U.S. policies towards Cuba, such as the embargo.

51. Congress seems to have appreciated this approach of using parole to advance foreign policy: in section 606 of IIRIRA, Congress reaffirmed (rather than repealed, as was considered and rejected by Congress) the Cuban Adjustment Act of 1966, mandating that it stay in place until the President determines that a democratically elected government in Cuba is in power. As mentioned above, the Cuban Adjustment Act permits Cubans paroled into the United States the ability to become lawful permanent residents after one year.

52. Between January 2004 and June 2009, the Department of State cancelled talks with Cuba because it was not abiding by the agreements by refusing to discuss the issuance of exit permits, to allow registration for the Special Cuban Migration Program, to permit U.S.

diplomats to travel to monitor returned migrants, and to accept the return of Cuban nationals the United States wished to deport.

53. It was in this context that the United States once more turned to the statutory parole authority to advance a significant public benefit in the eyes of the Executive and to support U.S. foreign policy objectives with respect to Cuba.

54. The George W. Bush administration created two parole programs for Cubans. The Cuban Family Reunification Parole Program (CFRP) was designed to "expedite family reunification through safe, legal, and orderly channels of migration to the United States and to discourage irregular and inherently dangerous maritime migration." The program allowed Cuban nationals in Cuba who were the beneficiaries of approved relative visa petitions for which visas were not yet available to be considered for parole on a case-by-case basis.

55. The Bush administration also created the Cuban Medical Professionals Parole (CMPP) Program, which allowed Cuban doctors and other medical professionals working in third countries such as Venezuela or Namibia to request that they and their dependents be paroled into the United States. The Cuban Medical Professionals Parole Program served U.S. foreign policy interests by undermining Cuba's efforts to cultivate foreign influence through its medical aid program. More than 9,000 Cuban medical professionals and their family members were paroled into the United States under the program before its termination in 2017.

56. The Obama's administration's decision to terminate that parole program in early 2017 illustrates how the changing landscape on foreign policy shifted the U.S. government's analysis of whether the parole of Cuban medical professionals advanced a significant public benefit to the United States. By that point, the United States had worked with Cuban doctors to

respond to humanitarian needs in Haiti in the wake of that country's 2010 earthquake and as part of other public health efforts.

57. The U.S. Government was also rethinking its policy toward Cubans who traveled by land to the U.S.-Mexico border (under the so-called "wet foot/dry foot" policy, whereby Cubans caught attempting to enter the United States by sea would be returned to Cuba or to a third country, but if apprehended on land would get a chance to remain in the United States). This was partially in response to complaints by several countries in South and Central America through which Cubans traveled to the border that the policy encouraged irregular and unsafe migration, increased smuggling and trafficking among Cubans en route, as well as insecurity and humanitarian needs among those stranded in transit.

58. As a step toward normalizing relations with Cuba and toward a more regional and multilateral approach to managing migration and forced displacement, the Obama Administration decided in January 2017 to terminate both the Cuban Medical Professionals Parole Program and its longstanding wet foot/dry foot policy.

59. Parole programs established by the Obama administration in 2014—the Central American Minors (CAM) Program and the Haitian Family Reunification Parole Program (HFRP)—were designed to unite families and address humanitarian and protection needs in origin countries while stopping dangerous migration in the hands of smugglers by land (through several transit countries) and sea. In response to a rise in child arrivals at the U.S. border and as part of a multifaceted effort to stop children from taking "irregular" and "dangerous" journeys through Mexico, the Obama administration announced the creation of the Central American Minors program in its late 2014 Report to Congress on 2015 refugee admissions.

60. The CAM Program continues today; it allows certain parents and legal guardians with authorized presence in the United States to request that their unmarried children in El Salvador, Guatemala, and Honduras under the age of 21, as well as some of the child's relatives, receive a refugee resettlement interview. When those interviewed are not deemed to be a refugee but nonetheless determined to be at risk of harm in their country, USCIS decides whether each person merits a grant of parole. As with the parole of Vietnamese nationals through the Orderly Departure Program, commitments of support from a U.S.-based supporter are required to be considered for parole through CAM.

61. The Haitian Family Reunification Parole (HFRP) Program, like its Cuban predecessor, is for certain beneficiaries of approved family-based immigrant visa petitions. The Federal Register Notice on the program explains that "[b]y expanding existing legal means for Haitians to immigrate, the HFRP Program serves a significant public benefit by promoting safe, legal, and orderly migration to the United States." The Notice additionally recognized that using parole for HFRP Program beneficiaries would facilitate the ability of beneficiaries to more quickly work lawfully in the United States and earn money that could be sent back to Haiti in the form of remittances to help fund the "rebuilding and development of a safe and economically strong Haiti," a multi-year project and "a priority for the United States." Approximately 8,300 applications for parole have been approved through the HFRP program.

CHNV Processes Resemble Previous Uses of Parole

62. In the wake of Russia's invasion of Ukraine, over twenty thousand Ukrainians traveled to Mexico in order to come to the United States via the land border. The Biden administration started the Uniting for Ukraine parole program to provide an alternative, more orderly pathway for displaced Ukrainians to come to the United States directly through airports.

Just as with Hungarians and Vietnamese, parole is being used for Ukrainians alongside refugee resettlement and to complement the reception of displaced people in other countries. Similar to several other parole programs discussed above—most notably the Orderly Departure Program and the CAM Parole Program—Ukrainian nationals seeking parole through the program must be supported by one or more individuals or entities in the United States who have demonstrated to USCIS that they have sufficient income or immediate access to sufficient financial resources to support the parole beneficiaries for the duration of the parole (typically two years). Unlike the CHNV parole programs, the Ukrainian parole program does not have any monthly numerical caps.

63. The justifications provided in the Federal Register Notices for the CHNV Parole Processes are similar in many respects to the humanitarian, foreign policy, and migration control goals of past parole programs.

64. The CHNV processes are designed to provide a safe pathway for migrants from four countries experiencing humanitarian and human rights crises—and from which in-country consular processing, and to which removals, are a challenge, if not impossible—to enter the United States through an airport, as an alternative to them coming to the U.S.-Mexico border. Just like the parole programs for Vietnamese and Cubans discussed above, the CHNV programs are designed to deter dangerous irregular migration frequently facilitated by smugglers. Each potential parolee is assessed on a case-by-case basis, as the Executive has long understood the parole statute to require, as discussed above. Each must have a financial supporter in the United States, as was the case with the Orderly Departure Program and the Uniting for Ukraine, and each must pass background checks, as was the case with individuals paroled through all the past programs discussed in this declaration.

65. Consistent with the historical use of the parole statute discussed above, CHNV is also part of a broader foreign policy strategy—articulated at the 2022 Summit of the Americas and through collaborative engagement on the L.A. Declaration on Migration and Protection—to address the unprecedented challenge of displacement in the Western Hemisphere. Like the handling of Vietnamese discussed above, this effort involves the United States taking the lead in working with key allied countries and international organizations towards resolution of a regional displacement crisis. Just as with the Uniting for Ukraine program, the Biden administration is planning also to resettle Cubans, Haitians, Nicaraguans and Venezuelans as refugees and the CHNV processes complement the reception of, for example, Nicaraguans in Costa Rica and Venezuelans in Colombia. Since the start of the CHNV processes, the United States has continued to work with Colombia and Costa Rica to curb irregular migration of CHNV nationals.

66. Like in several prominent past parole programs, such as those related to parolees from Vietnam and Cuba discussed above, the number of people considered for parole is linked to relations and negotiations with foreign governments, including origin and transit or regional countries. Regarding the current program, the number of people from Cuba, Haiti, Nicaragua, and Venezuela that may be paroled into the United States (30,000 per month) is tied directly to the number of people of the same four nationalities that Mexico has agreed to accept for removal.

67. Through the parole of Cubans in the CHNV program, the United States is also reviving migration talks with Cuba to accept return of its nationals—in April of this year, deportations to Cuba were restarted for the first time in two years—similar to how parole programs have been used by past administrations as a tool to achieve foreign policy objectives in a bilateral context.

I declare under penalty of perjury that the foregoing is true and correct.

Yael Schacher

Executed on June 19, 2023 in Washington, D.C.

Appendix – Publications of Yael Schacher

A list of Yael Schacher's publications for Refugees International can be found here: https://refugeesintpro.wpengine.com/authors/yael-schacher/

"Misreading History: The United States Supreme Court and the Thwarting of the U.S. Asylum System since the 1980s," *Whose America?: U.S. Immigration Policy since 1980*, ed. Maddalena Marinari and Maria Cristina Garcia, Univ. of Illinois Press, 2023, 209-236.

Review of *The Deportation Machine* by Adam Goodman, *Federal History,* Issue 15 (2023), 132-135, https://shfg.wildapricot.org/page-18388

"The Wedge of the Refugee As Worker: Litigation over Asylum Seeker Work Authorization in the United States, 1974-2021," *Global Labor Migration: New Directions,* ed. Julie Greene, Eileen Boris, Heidi Gottfried, and Joo-Cheong Tham, Univ. of Illinois Press, 2022, 171-189.

"Return of the Repressed," *Journal of American History*, Vol. 109, Issue 2, Sept. 2022, 375–387.

"Exclusions and Exceptions: The History of Asylum in the United States," *The State of Human Rights: Historical Genealogies, Political Controversies, and Cultural Imaginaries,* ed. Kerstin Schmidt, Universitatsverlag Winter, 2020, 71-84.

"Family Separation and Lives in Limbo," *Annals of the American Academy of Political and Social Science*, Vol. 690, July 2020, 192-199.

"'I Hate to See Human Beings Kicked Around by Fate & by Law:' Edith Lowenstein's Asylum Advocacy in the 1950s and 1960s," *Journal of American Ethnic History*, Vol. 30, No. 3, Spring 2020, 49-74.

"Diversity in American Letters," *American Literature in Transition: The 1930s,* ed. Ichiro Takayoshi (Cambridge UP, 2018), 177-197.

Review of *Making Refuge: Somali Bantu Refugees and Lewiston, Maine* by Catherine Besteman, *Border Criminologies*, July 13, 2018, https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/07/book-review

Review of "A View from the Bridge," Nov. 20, 2017, *Not Even Past* (UT Austin), https://notevenpast.org/a-view-from-the-bridge-directed-by-sidney-lumet-1962.

Review of *Captivity Beyond Prisons: Criminalization Experiences of Latina (Im)migrants*, by Martha D. Escobar, *Journal of American Ethnic History,* Vol. 37, No.1, Fall 2017, 92-95.

"Refugees and Restrictionism: Armenian Women Immigrants to the United States in the Post WWI Era" in *Gender, Migration, and Categorisation,* eds. Marlou Schrover and Deirdre Maloney, Amsterdam Univ. Press, 2013, 55-74.

EXHIBIT 40

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

The STATE OF TEXAS; the STATE OF ALABAMA; the STATE OF ALASKA; the STATE OF ARKANSAS; the STATE OF FLORIDA; the STATE OF IDAHO; the STATE OF IOWA; the STATE OF KANSAS; the COMMONWEALTH OF KENTUCKY; the STATE OF LOUISIANA; the STATE OF MISSISSIPPI; the STATE OF MISSOURI; the STATE OF MONTANA; the STATE OF NEBRASKA; the STATE OF OHIO; the STATE OF OKLAHOMA; the STATE OF SOUTH CAROLINA; the STATE OF TENNESSEE; the STATE OF UTAH; the STATE OF WEST VIRGINIA; and the STATE OF WYOMING, *Plaintiffs*, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY; ALEJANDRO MAYORKAS, Secretary of the United States Department of Homeland Security, in his official capacity; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; UR JADDOU, Director of CUSTOMS & BORDER PROTECTION; TROY MILLER, Acting Commissioner of U.S. Customs & Border Protection, in his official capacity; U.S. IMMIGRATION & CUSTOMS ENFORCEMENT; and TAE JOHNSON, Acting Director of U.S. Immigration & Customs Enforcement, in	§	Civil Action No. 6:23-CV-00007 Judge Drew M. Tipton **DECLARATION OF ERIC SCHWARTZ**

his official capacity,	§
	§
Defendants, and	§
	§
VALERIE LAVEUS; FRANCIS ARAUZ; PAUL ZITO; ERIC SYPE; KATE SUGARMAN; NAN LANGOWITZ; and GERMAN CADENAS,	§
	§
	§
Intervenors.	§
	§

DECLARATION OF ERIC P. SCHWARTZ

ERIC P. SCHWARTZ declares pursuant to 28 U.S.C. § 1746:

Background

1. I am currently a Professor of Public Affairs at the Hubert H. Humphrey School of Public Affairs at the University of Minnesota. From 2011 to 2017, I was both a professor and the dean of the Humphrey School.

2. Between 2017 and 2022, I served as the President of Refugees International, an independent nonprofit organization that advocates for assistance and protection for forcibly displaced persons, while on leave from the Humphrey School and the University of Minnesota.

3. Prior to academia, much of my career was spent working for the federal government, principally in the executive branch, although my career in government began as a Congressional Subcommittee staff member. Throughout my time in government, I focused on matters of migration and humanitarian protection, particularly as it intersects with foreign policy.

4. From July 2009 to October 2011, I served as Assistant Secretary of State for the Bureau of Population, Refugees, and Migration ("PRM"). Before that, from 1993 to 2001, I served as the principal human rights and humanitarian official on the National Security Council ("NSC") staff, ultimately in the role of Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs. Prior to that I served from 1989 to 1993 as staff consultant to the U.S. House of Representatives Foreign Affairs Subcommittee on Asian and Pacific Affairs.

5. The Assistant Secretary of State for PRM is the senior-most State Department official devoted primarily to migration, refugee, and humanitarian issues. The Assistant Secretary is also the senior-most State Department official for whom a principal focus, day-in and day-out, is diplomacy on U.S. foreign policy issues involving international migration and humanitarian objectives. In that role, I regularly interacted with the heads of offices and agencies such as the International Committee of the Red Cross, the UN High Commissioner for Refugees, the UN Office for the Coordination of Humanitarian Affairs, and the UN Relief and Works Agency for Palestine Refugees in the Near East, among others. I pursued U.S. foreign and international humanitarian objectives not only with leaders of these international organizations, but also with heads of state and other senior officials in countries dealing with issues of forcible displacement. During my tenure as Assistant Secretary, the Bureau I led had an annual budget of about $1.85 billion.

6. During the eight years that I served in the White House, I was the principal official on the NSC staff overseeing refugee- and international migration-related issues. In that role I was involved in a broad array of issues that impacted U.S. national security interests and were of deep concern to the NSC, such as forced migration from Haiti connected to political

violence in that country, U.S. refuge and/or resettlement of Kosovars in the context of the Serbian government attack on that population, and emigration of asylum-seekers from Vietnam, among many other issues.

7. During the more than three years I served on the staff of the House of Representatives Foreign Affairs Subcommittee on Asian and Pacific Affairs, I advised Members of Congress, including the subcommittee's chairman, Representative Stephen J. Solarz, on a range of migration-related issues. This included working on legislative proposals to expand access to refugee resettlement to certain nationals from the former Soviet Union to also include nationals from Vietnam, Cambodia, and Laos.

8. Based on my experience as Assistant Secretary of State for PRM, my years on the NSC and with the House Foreign Affairs Subcommittee, and my career focused on humanitarian and migration issues, I understand that foreign relations matters are frequently complex, delicate, and of great importance to the national interest. This is particularly true when such matters involve sensitive, fragile, and often tense bilateral or multilateral negotiations with foreign governments in which all parties are working to secure an agreement that advances their own foreign policy priorities.

9. As I have seen, when engaging in negotiations with a foreign government(s), it is critical for the Executive to have as many legislative and administrative tools at its disposal as possible. This is especially the case in the humanitarian context, when flexibility in particular can be critical to ensuring life-saving and life-sustaining action that furthers human rights objectives long-articulated by executive and legislative branches.

10. The development and implementation of migration policy frequently has significant impacts beyond the borders of the United States and, as a result, on U.S. objectives around the world.

11. Based on my professional experience, the ability to make commitments regarding migration policy that are within the purview of the Executive can be a powerful foreign policy tool to promote the interests of the United States, through advancing negotiating objectives with foreign governments, and through achieving humanitarian, human rights, anti-trafficking, and regional security goals, among others. I am aware of the periodic use of the statutory parole authority by past administrations to advance this nation's foreign policy interests, and I have had personal experience with several of those instances. I believe that in each of these instances, parole was the only reasonable approach to serve urgent humanitarian needs or to otherwise advance the national interest. Other options were, as a practicable matter, unavailable due, for example, to constraints related to access to affected populations and the need to move quickly to secure foreign policy and national security objectives.

The Cuban Migration Accords and Parole

12. During my tenure on the NSC, I was involved in White House and agency deliberations around Cuban migration, including migration accords between the United States and Cuba.

13. Early during the administration in 1994, we began to see a significant increase in the departure of boats from Cuba filled with would-be migrants headed to the United States. Cuba was experiencing economic and political turmoil, due in large part to the end of financial support that the country had been receiving from the Soviet Union prior to its collapse. As conditions in the country worsened, Cuban president Fidel Castro criticized what he claimed

were inadequate U.S. efforts to stem hijacking and loosened restrictions on people seeking to leave, which resulted in tens of thousands of Cubans taking to the seas en route to the United States.

14. This migration was irregular and disorderly, and it not only posed a significant risk to the lives of these migrants but also consumed Coast Guard resources due to interdiction and rescue efforts.

15. As Castro had decades earlier deployed a similar tactic that spurred a tremendous out-migration from Cuba culminating in the 1980 Mariel boatlift, this renewed wave of Cuban nationals taking to the sea created significant tensions between the United States and Cuba.

16. This was a topic of great public concern in the United States that represented a major humanitarian and border management challenge. It was of great importance to the administration and to the country that the Clinton Administration find some way of directing Cuban migration into safe, legal, and orderly channels.

17. After months of negotiations, in September 1994 the United States agreed to provide a minimum of 20,000 travel documents each year to Cuban nationals interested in immigrating to the United States, not including the immediate relatives of U.S. citizens, in exchange for the Cuban government's commitment to discourage irregular and unsafe departures by sea. Both countries also agreed to continue to discuss Cuba's willingness to accept the return of Cuban nationals excludable from the United States. Communique Between the United States of America and Cuba, 94-909, signed at New York Sept. 9, 1994, entered into force Sept. 9, 1994.

18. The United States understood at the time that some share of the 20,000 figure would come through immigrant visa programs and an in-country refugee program operated out of the U.S. Interests Section in Havana, Cuba. The United States also understood that we

would have to rely heavily on the ability of the Attorney General to use the statutory authority to parole a significant number of Cuban nationals into the country in order to meet the U.S. government's commitment.

19. Shortly after this agreement was reached, the Immigration and Naturalization Service ("INS"), in partnership with the Department of State, created the Special Cuban Migration Program ("SCMP") to select applicants who met certain, preset requirements for parole in an effort to meet the 20,000 figure to which we had committed.

20. Individuals interested in participating in the SCMP would register and be selected randomly to receive individualized consideration of their application. Potential parolees had to meet certain criteria established by the Executive, and several were based on education, work experience, and/or U.S. family ties. Of course, the program was open only to Cuban nationals. Registration periods for the program took place in fiscal years 1994, 1996, and 1998, and enough individuals registered during those periods that individuals could continue to be selected, interviewed, and paroled for many years after that.

21. If the U.S. Government had not been able to rely upon the statutory parole authority when it negotiated the 20,000 figure with the Government of Cuba, it is not clear that the agreement could have been reached and it is not clear that Fidel Castro would have taken steps to discourage continued largescale irregular migration to the United States by boat.

22. Similarly, if the U.S. Government had not been able to utilize parole effectively in the years following the agreement it is all but certain that the U.S. Government would have failed to uphold its commitment and diplomatic relations between the countries would have been diminished. That would have caused significant harm to U.S. foreign policy interests,

including by potentially triggering an increase once more in largescale Cuban migration to the United States by sea.

23. Had the executive's ability to use its statutory parole authority been unduly constrained, it also would have likely interfered with the U.S. government's ability to reach a second migration-related agreement with Cuba in May 1995 in which the United States began returning to Cuba certain Cuban nationals interdicted at sea or apprehended entering the U.S. Naval Base at Guantanamo Bay and Cuba agreed not to take any punitive actions against such people. In that agreement, the United States and Cuba also reached an understanding about how the United States would proceed with the approximately 20,000 Cuban nationals who had been interdicted at sea beginning in August 1994 and taken to a safe haven at the U.S. Naval Base at Guantanamo Bay. Although a small number who met certain specified criteria were already being paroled into the United States on a case-by-case basis and a small number had agreed to voluntarily return to Cuba, the large majority remained at Guantanamo and the situation required resolution.

24. In the May 1995 Joint Statement on Migration, both countries agreed that the limited criteria for Cuban nationals remaining at Guantanamo to be considered for parole would need to be expanded and that up to 5,000 paroles could be counted each year toward the 20,000 annual figure provided in the September 1994 agreement. The United States anticipated that the large majority of Cubans at Guantanamo—about 15,000 people—would be paroled into the United States, also on a case-by-case basis, and the remainder would be returned to Cuba with negotiated assurances that such individuals would face no reprisals for their decision to leave Cuba. The same assurances would apply to Cuban nationals interdicted at sea en route to the United

States who similarly would be returned to Cuba after first being screened for refugee status. Office of Public Affairs, U.S.-Cuba Joint Statement on Migration, White House, May 2, 1995.[1]

25. As the then-NSC director for human rights, refugees, and migration, in the NSC Office of Global Affairs and Multilateral program, I worked closely with the NSC Office of Democracy, led by my colleague Morton Halperin, in the evolution of the overall approaches on Cuban migration.

The Rescue and Resettlement of Kurds in Northern Iraq Using Parole

26. A dramatic and compelling example of the critical importance of the parole authority involved the 1996 rescue and resettlement of Kurds affiliated with U.S. non-governmental organizations who fled northern Iraq. These individuals were at risk of persecution and/or death at the hands of Saddam Hussein, and the administration initiated a large-scale evacuation following Cabinet-level deliberations in which I was directly involved. Ultimately, some five thousand or more individuals were assisted by U.S. agencies and paroled into the United States.

27. Having this quick and flexible authority was absolutely critical to the administration's capacity to achieve critical foreign policy objectives—including the avoidance of atrocities against individuals who had been affiliated with U.S. agencies. Needless to say, the United States not only had a moral interest in achieving this objective, but also an interest related to communicating to others that the United States will stand by—and not abandon—those who seek to promote humanitarian and human rights objectives.

[1] *Available at* https://www.american.edu/centers/latin-american-latino-studies/upload/1995-migration-agreement.pdf.

The Resettlement Opportunity for Vietnamese Returnees Initiative and Parole

28. Also during my tenure on the NSC and beginning in around 1996, I led a U.S. government effort to establish the Resettlement Opportunity for Vietnamese Returnees ("ROVR") initiative. Along with State Department officials, I was also involved in negotiations with the Government of Vietnam on this initiative. And I advised the U.S. National Security Advisor, Anthony Lake, who was also involved in efforts to secure the program.

29. For many years preceding the establishment of ROVR, the United States had used a variety of migration pathways—including both refugee admissions and parole—to bring large numbers of Vietnamese nationals and their family members to the United States. There were critically important foreign policy objectives that were served through these efforts: international humanitarian goals that are critical components of U.S. foreign policy as well as communicating to others around the world that the United States government will not walk away from those who have in been associated with the U.S. government or U.S. government agencies. And in fact, the effective execution of such programs also helped to lay the groundwork for normalization of relations with Vietnam, and to support countries in the region that were hosting large numbers of Vietnamese nationals for long periods of time.

30. As countries in southeast Asia that had long hosted Vietnamese refugees worked to close their camps and repatriate Vietnamese nationals back to their home country—most of whom at this point had already been screened by the United Nations High Commissioner for Human Rights and others and determined not to be refugees—the United States wanted to provide one final opportunity to consider these individuals for resettlement in the United States.

31. During our efforts to establish ROVR, it became clear that U.S. processing directly from host countries would not be possible, in large measure because governments of these

countries would have been concerned that it could draw additional refugees into the camps from other areas or countries. That would run counter to their efforts to close the camps. As a result, we worked with the Government of Vietnam to facilitate prompt interviews for U.S. resettlement for these individuals upon their return to Vietnam.

32. The United States would submit lists of names to the Government of Vietnam in order for them to be cleared for interviews by U.S. personnel. Due to various cumbersome requirements initially imposed by the Government of Vietnam, things got off to a slow start, but we negotiated efficiencies and the program improved.

33. Although ROVR was primarily a refugee admissions program, as with other parole programs, individuals who were determined not to be refugees were considered for parole and many ultimately were paroled into the United States in furtherance of the United States's important foreign policy objectives.

34. More broadly, through the pre-existing Orderly Departure Program for resettlement of Vietnamese that was established in 1979, many thousands of people who were denied refugee status in the United States were favorably considered for parole and allowed to travel to the United States if they paid for their own travel and had affidavits of support from relatives or organizations in the United States.

35. For all programs of resettlement from Vietnam after the conflict had ended, parole was an important tool—and its absence would have created significant foreign policy challenges. In particular, it would have undermined the United States' ability to meet our humanitarian objectives and risked causing additional and unnecessary friction with the Government of Vietnam as we sought to move our bilateral relationship in a new direction.

The Lautenberg Refugee Program and Parole

36. As staff consultant to the House Foreign Affairs Subcommittee on Asian and Pacific Affairs, I was involved in the evolution of legislation that was enacted in 1989 that both (a) relied upon the continued and expanded use of parole for certain populations that were of particular interest to U.S. foreign policy; and (b) extended to these individuals the ability to adjust their status in the United States to that of a lawful permanent resident (i.e., a "green card" holder).

37. Specifically, in 1988, then-Attorney General Edwin Meese wrote in a letter to the White House that he had determined that Soviet refugee applicants were being processed at the U.S. Embassy in Moscow in a manner inconsistent with the Refugee Act of 1980 and that he was sending INS personnel to the Embassy to address the issue. *See* Letter from Edwin Meese III, Attorney General, to Lt. Gen. Colin Powell, Assistant to the President for National Security Affairs, Aug. 4, 1988.[2] Although his particular concern was left unstated in the letter, I recall that he believed refugee status determinations—in which refugee officers determine whether or not an individual meets the legal definition of a "refugee," which is the same one that is used in the asylum context—needed to be made on more of a case-by-case basis rather than with a presumption of refugee status based on proof that an individual is a member of a persecuted group. Attorney General Meese was clear that the changes he would be implementing likely would decrease the refugee grant rate, but he committed to using his parole authority to allow potentially a "significant number of emigrants" determined not to be refugees to nevertheless enter the United States.

38. The refugee grant rate did, in fact, drop significantly for these Soviet refugee applicants, and many who were denied were Jews, Evangelical Christians, and others and who nonetheless risked discrimination in the Soviet Union. This was of great concern to many

[2] *Available at* https://archive.org/details/sovietrefugeeshe00unit/page/128/mode/2up.

humanitarians and humanitarian organizations, as well as to Members of Congress. As a result, Members began work on legislation to provide for more favorable treatment for these individuals in the refugee status determination process. In particular, the legislation effectively created presumptions of refugee status for members of historically persecuted groups mentioned in the legislation. The chair of the House Foreign Affairs Subcommittee for which I worked supported similarly heightened humanitarian protection for other populations of particular concern to U.S. foreign policy interests—Vietnamese, Cambodians, and Laotians.

39. In 1989, Congress enacted legislation commonly referred to as the Lautenberg Amendment that modified the refugee status determination process for certain nationals of the Soviet Union, Vietnam, Cambodia, and Laos. Moreover, the legislation authorized individuals from these countries denied refugee status who had been paroled into the country—and those who still would be paroled into the country in the remainder of the fiscal year—to adjust their status to that of a lawful permanent resident.

40. Congress has repeatedly reauthorized and extended that legislation, demonstrating congressional approval not only of the modified refugee status determination process for these individuals, but also for the continued use of parole for individuals determined not to meet the legal definition of a "refugee" and for the continued ability of those parolees to become lawful permanent residents (and ultimately, the opportunity to apply for U.S. citizenship).

41. The flexibility provided by Congress to the executive in deciding when, whether, and how to use the parole authority—within certain specified constraints—has been of great value to the advancement of U.S. foreign policy interests. In particular, after winning often hard-fought concessions from foreign governments to permit the emigration of their nationals, parole has enabled the United States to meet its undertakings to those governments about our

willingness accept individuals who have been forced to flee but who might not have met all the requirements for refugee status. In addition, it has demonstrated that the United States will not break faith with those who have been subject to discrimination and abuse, communicating U.S. global credibility as a proponent of human rights and humanitarian values.

The Cuban, Haitian, Nicaraguan, and Venezuelan Parole Processes

42. I am very familiar with the Cuban, Haitian, Nicaraguan, and Venezuelan Parole Processes that the Department of Homeland Security recently began to implement as part of a broader suite of migration management policies. I understand that these processes were adopted—and are continuing to be implemented—in furtherance of extensive bilateral negotiations with the Government of Mexico regarding the management of migration at the U.S.-Mexico border and throughout South and Central America, and that the United States Government has specifically secured a commitment from the Government of Mexico that while the former will parole up to 30,000 nationals from Cuba, Haiti, Nicaragua, and Venezuela each month, the latter will accept the removal or return of up to 30,000 nationals from these countries each month. I further understand that these processes were adopted to advance commitments made by the U.S. Government as part of the Los Angeles Declaration on Migration and Protection and that other countries that are signatories to that Declaration have similarly enacted laws and adopted policies in furtherance of their commitments.

43. The stated goal of the Cuban, Haitian, Nicaraguan, and Venezuelan Parole Processes—to facilitate safe, legal, and orderly migration and discourage dangerous irregular migration, in partnership with foreign governments in the region—is essentially the same goal that the United States pursued nearly 30 years ago when it agreed to use the statutory parole authority as part of the 1994 and 1995 agreements with Cuba. *See* Joint Communiqué on Migration, U.S.-

Cuba (Sept. 9, 1994) ("Representatives of the United States of American and the Republic of Cuba today concluded talks concerning their mutual interest in normalizing migration procedures and agreed to take measures to ensure that migration between the two countries is safe, legal, and orderly."); Joint Statement With the Republic of Cuba on Normalization of Migration (May 2, 1995) ("The United States of America and the Republic of Cuba have reached agreement on steps to normalize further their migration relationship. These steps build upon the September 9, 1994 agreement and seek to address safety and humanitarian concerns and to ensure that migration between the countries is safe, legal, and orderly.").

44. It is also the very same goal reflected in the George W. Bush administration's decision in 2007 to create the Cuban Family Reunification Parole Program that remains in place today. *See* Department of Homeland Security, Cuban Family Reunification Parole Program, 72 FR 65588 (Nov. 21, 2007) ("The purpose of the program is to expedite family reunification through safe, legal, and orderly channels of migration to the United States and to discourage irregular and inherently dangerous maritime migration.").

45. And just as decreasing dangerous arrivals by boat was a priority of the U.S. Government in negotiating agreements with Cuba in the mid-1990s and in adopting the Cuban Family Reunification Parole Program, the recent modifications to the Cuban and Haitian Parole Processes that disqualify people for parole consideration if they are interdicted at sea subsequent to the modifications demonstrate how important this priority remains to the Government of the United States. *See*, *e.g.*, Department of Homeland Security, Implementation of a Change to the Parole Process for Cubans, 88 FR 26329, 26331 (Apr. 28, 2023) ("In response to the increase in maritime migration and interdictions, and to disincentivize migrants from attempting the dangerous journey to the United States by sea, DHS will make individuals who have been

interdicted at sea after April 27, 2023 ineligible for the parole process for Cubans. Further, DHS expects this change in eligibility criteria to materially reduce the number of maritime interdictions, by incentivizing migrants to use safe and orderly means to access the United States.").

46. I further understand that the new Cuban Parole Process was created in part to support United States Government negotiations with the Government of Cuba to "reactivate the Migration Accords." Department of Homeland Security, Implementation of a Parole Process for Cubans, 88 FR 1266, 1270 (Jan. 9, 2023). The U.S. Government's stated reason for seeking to reactivate the Migration Accords is that it could help the United States secure the cooperation of the Cuban government in accepting the repatriation of many more of its nationals who are ordered removed from the United States after attempting entry without authorization, which, in turn, is expected to decrease further irregular migration and instead channel people through various safe, legal, and orderly pathways. *Id.* at 1270-71. The Cuban Parole Process in particular, therefore, is very clearly grounded in a complex and shifting diplomatic relationship with the Government of Cuba that has been ongoing for nearly 30 years—and certainly longer.

I declare under the penalty of perjury that the foregoing is true and correct.

Eric P. Schwartz

Executed in Silver Spring, Maryland, on June 17, 2023.

EXHIBIT 41

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

The STATE OF TEXAS; the STATE OF ALABAMA; the STATE OF ALASKA; the STATE OF ARKANSAS; the STATE OF FLORIDA; the STATE OF IDAHO; the STATE OF IOWA; the STATE OF KANSAS; the COMMONWEALTH OF KENTUCKY; the STATE OF LOUISIANA; the STATE OF MISSISSIPPI; the STATE OF MISSOURI; the STATE OF MONTANA; the STATE OF NEBRASKA; the STATE OF OHIO; the STATE OF OKLAHOMA; the STATE OF SOUTH CAROLINA; the STATE OF TENNESSEE; the STATE OF UTAH; the STATE OF WEST VIRGINIA; and the STATE OF WYOMING, *Plaintiffs*, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY; ALEJANDRO MAYORKAS, Secretary of the United States Department of Homeland Security, in his official capacity; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; UR JADDOU, Director of CUSTOMS & BORDER PROTECTION; TROY MILLER, Acting Commissioner of U.S. Customs & Border Protection, in his official capacity; U.S. IMMIGRATION & CUSTOMS ENFORCEMENT; and TAE JOHNSON, Acting Director of U.S. Immigration & Customs Enforcement, in	§ §	Civil Action No. 6:23-CV-00007 Judge Drew M. Tipton **DECLARATION OF MORTON H. HALPERIN**

his official capacity,	§
	§
Defendants, and	§
	§
VALERIE LAVEUS; FRANCIS ARAUZ; PAUL ZITO; ERIC SYPE; KATE SUGARMAN; NAN LANGOWITZ; and GERMAN CADENAS,	§
	§
	§
Intervenors.	§

DECLARATION OF MORTON H. HALPERIN

MORTON H. HALPERN declares pursuant to 28 U.S.C. § 1746:

1. After a six-decade career in national security, foreign policy, and democracy work, I recently retired and am continuing to support the causes in which I believe through such roles as Chair of the Executive Board of the Center for Ethics and the Rule of Law at the University of Pennsylvania, member of the Board of Directors of The ONE Campaign and ONE Action, and member of the Board of J Street.

2. During my career in public service, I worked as a national security advisor in the Johnson, Nixon, and Clinton administrations. During the period of time most relevant to this declaration, from 1994 to 1996, I served as a Special Assistant to President Clinton and Senior Director for Democracy at the National Security Council ("NSC").

3. In that capacity, I had the opportunity to see how the statutory parole authority provided the executive with a critically needed tool to advance the public interest by furthering foreign policy objectives of great importance to the president and the nation.

4. At the NSC during the Clinton administration, from August 1994 until May 1995 I was the lead official in the White House working day-to-day on all issues related to Cuba, including guiding U.S. policy and diplomacy to respond to a dramatic spike in Cuban migrants taking to the sea in hopes of reaching the United States. In the period following the Mariel boatlift, when more than 125,000 Cubans left the island with the encouragement of Fidel Castro and arrived in the United States between April and October 1980, relatively few Cubans attempted to make this journey by sea. In 1989 and 1990 that figure began to rise, reaching several thousand people annually in 1992 and 1993 before jumping to more than 37,000 in 1994.

5. The large majority of this increase took place beginning in August 1994. As civil unrest began to grow in Cuba, Castro blamed the United States government for his difficulties and threatened to once again remove his restrictions on Cubans leaving the country so that many Cubans could depart for the United States by boat. Eventually that was precisely what he did. Within the administration, this was viewed as a tactic by Castro to attempt to gain leverage over United States foreign policy and to essentially dictate our immigration policy as well. It was also viewed as a way for him to distract from the poor social and economic

conditions in Cuba, as well as to encourage dissidents and others who exacerbated his political challenges to leave, allowing him to better consolidate power. Finally, it was incredibly cruel to the migrants themselves, who placed their lives in jeopardy every time they left on unsafe vessels; U.S. Coast Guard personnel began to encounter boats with Cuban migrants who had lost their lives as well as empty boats, suggesting that some migrants drowned, and their bodies could not be recovered.

6. The Clinton administration focused significant attention on how to address this situation, recognizing that U.S.-Cuba relations were complicated and delicate. President Clinton was committed to the policy contained in the Cuban Democracy Act, legislation that was signed by President George H.W. Bush in October 1992. The legislation sought to capitalize on the fall of the Soviet Union, which removed a powerful supporter of the Castro government, and it promoted a two-track approach—on the one hand strengthening the diplomatic, political, and economic isolation of the Cuban government, particularly through the economic embargo, and on the other opening the possibility for humanitarian assistance and increased information-flow to the people of Cuba to promote the transition to democracy.

7. By the middle of August 1994, hundreds of Cuban migrants were being interdicted at sea by the Coast Guard each day and the number kept growing.

8. Senior officials in the administration from various government agencies and within the White House proposed options for addressing the rising crisis. **Exhibit A** is an example of one kind of "options" paper that would have been

circulated within the administration; it is a true and correct copy of a memorandum that I obtained via a records request to the William J. Clinton Presidential Library, which is administered by the National Archives and Records Administration (NARA), except that phone and fax numbers on the first page have been redacted.

9. On August 18, 1994, I convened a meeting at the White House of senior officials from the relevant agencies, including the Department of State, the Department of Defense, and the Department of Justice, to discuss options to stop the flow of Cuban traveling by sea. There was agreement at the meeting that dramatic action was needed, and consensus was reached on recommending to the President that the Coast Guard begin taking Cubans picked up in international waters to the U.S Naval Base at Guantanamo Bay, Cuba. The Defense Department agreed to accept them.

10. Immediately after the meeting I drafted a short memo to the President reporting this consensus and recommending that he approve the recommendation. The Deputy National Security Advisor and the National Security Advisor approved the memo and it was immediately sent to the President. Early in the evening I was informed by the Staff Secretary that the President had approved the recommendation. I immediately informed the relevant Cabinet Offices. The Attorney General came to the White House and held a late-night press conference announcing the new policy which took effect immediately.

11. The following day, on August 19, 1994, President Clinton gave a press conference announcing the significant change in the U.S. Government's

approach to Cubans interdicted at sea. Up until that time—and for three decades—Cuban nationals who were interdicted at sea, frequently on makeshift boats that were unseaworthy, were brought to the United States and paroled into the country using the Attorney General's statutory parole authority. Those who reached the United States on their own and set foot on dry land were similarly paroled into the country. Because of the Cuban Adjustment Act, legislation enacted in 1966, such individuals typically would be able to apply for lawful permanent resident status one year later.

12. President Clinton announced that effective immediately, Cubans interdicted at sea would instead be taken to a safe haven at Guantanamo where they would be free to voluntarily return to Cuba proper but would also be free to remain on the U.S. base and receive basic subsistence from the Department of Defense. The Cubans brought to the U.S. base would not be allowed entry into the United States. The message we were sending to Cubans was clear: do not attempt to come to the United States by boat.

13. In the days following the August 19 policy change, interdictions of Cubans at sea continued to rise dramatically—more than 1,000 on August 20 and 21 and more than 2,500 and 3,000 on August 22 and 23, respectively.

14. President Clinton understood that given Castro's active encouragement of these migration flows, there were limits to what we could achieve unilaterally to prevent a repeat of the Mariel boatlift. As a result, it would be necessary to engage in diplomatic talks with Cuba. But because public outreach to Cuba would be seen by many as legitimizing Castro's government and a premature

turn toward normalization of diplomatic relations with the country without securing critical democracy and human rights reforms, including the release of political prisoners, outreach had to be done carefully.

15. President Clinton made quiet contact with Castro through President Salinas of Mexico, sending the message that he would be willing to negotiate changes in the embargo that was putting so much pressure on the Castro Government's hold on the country but not until the countries worked together to fix the migration situation. Moreover, negotiations over the embargo could not be tied to negotiations over migration, which we made explicit in public comments. **Exhibit B**, for example—which is true and correct copy of a document I obtained via a records request to the William J. Clinton Presidential Library—shows edits that I made to draft talking points to ensure that they were consistent with administration policy toward Cuba. The edits emphasize how central resolving the issue of migration was to U.S. foreign policy toward Cuba during this time period.

16. The Cuban Government accepted the proposal to engage in talks focused exclusively on migration and the American government explained to the public that such talks were a continuation of migration negotiations that began during the Reagan Administration in 1984. At that earlier time, the United States committed to issuing up to 20,000 preference-based immigrant visas each year to Cuban nationals in Cuba, not counting immigrant visas for Cuban parents, spouses, and children under the age of 21 of United States citizens and Cuba agreed to accept

the return of 2,746 Cuban nationals who arrived during the Mariel boatlift and who had been deemed ineligible to enter the United States.

17. The 1984 agreement was suspended by Cuba shortly after it was reached and although it was restarted several years later, the United States never came close to issuing 20,000 preference-based immigrant visas each year.

18. In advance of the 1994 negotiations with Cuba, I convened an interagency meeting and proposed that we agree to allow a certain number of Cubans to come to the United States legally each year. Someone in the meeting said that we should not put such a number on the table in negotiations because we had never met the commitment we made in 1984. I responded that the difference between now and then was that this time we would actually do it. The decision to provide entry to up to 20,000 Cuban nationals that was ultimately included in the 1994 agreement was therefore not only motivated by the need to deal with the immediate flow of people migrating via makeshift rafts from the island, but also as a way of getting the Cuban government to see that we intended to live up to our agreement. That was an important step in advancing the United States' foreign policy interests.

19. The negotiations were conducted between the Cuban delegation to the United Nations and an inter-agency U.S. Government team. The fact of the negotiations was public. The talks were held in secret. I took no part in these negotiations.

20. On September 9, 1994, the United States and Cuba issued a joint communique announcing the completion of talks regarding our countries' "mutual

interest in normalizing migration procedures" and agreement "to take measures to ensure that migration between the two countries is safe, legal, and orderly." Among other things, the United States committed to using provisions of United States law to ensure that a minimum of 20,000 Cubans could migrate legally to the United States each year, not counting the immediate relatives of United States citizens. Cuba agreed to "take effective measures in every way it possibly can to prevent unsafe departures using mainly persuasive measures." Both parties agreed to continue facilitating the voluntary return to Cuba of individuals who arrived in the United States or at safe havens outside the United States following the August 19, 1994, policy change announced by the Clinton administration, and to continue discussing the non-voluntary return of Cuban nationals who were ordered excluded from the United States.

21. To reach the 20,000 figure, the U.S. increased visa processing out of the Special Interests Section in Havana. We also expanded our in-country refugee process out of the Special Interests Section. As individuals in Cuba were issued family-based immigrant visas and were identified as refugees for admission to the United States, the United States decided to parole family members of these individuals—unmarried sons and daughters and extended family members in the same household and economic unit—who would not have counted as derivatives on their applications into the United States. Parole also would be used to allow into the United States certain Cuban nationals waiting for immigrant visas to become available. But still more was needed.

22. During the negotiations that took place at the U.N. in New York, Cuban officials focused not only on making sure the United States would meet the 20,000 figure that we had proposed, but also that some of these slots would be available to those who fit the "rafter" profile (i.e., people who may not have had family members in the United States who could sponsor them and who may not have had refugee claims, and who might risk trying to come to the United States on an unsafe boat or raft). We provided assurances that some such people would be included within the 20,000 figure. The Special Cuban Migration Program that we created to allow an estimated 5,000 Cuban nationals to enter the United States each year through parole was therefore critical to reaching the agreement with Cuba through which we successfully abated the unsafe and disorderly flow of Cuban migrants.

23. As explained in materials prepared following the agreement, the use of parole in the Special Cuban Migration Program and for family members of immigrants and refugees beyond spouses and minor children who would ordinarily be allowed to travel together as a family advanced the public interest by helping to normalize the immigration flow from Cuba to the United States as part of a broader effort to "redirect the abnormal flow into a legal one." **Exhibit C** is an example of these materials; it is undated but I believe it is from October 1994. It is a true and correct copy of a document that I obtained via a records request to the William J. Clinton Presidential Library.

24. In the months that followed, irregular migration dropped precipitously as Cubans understood both that they would be taken to Guantanamo

and not the United States if they were interdicted at sea and that there were other options available to them. However, there were around 20,000 Cubans at the Guantanamo Bay safe haven and thousands more at a safe haven that we had negotiated with the government of Panama to establish there who did not want to return to Cuba.

25. Some proposed allowing all of them to come to the United States, but we expected that that would undo the progress we had made in dramatically reducing the number of boats leaving Cuba since August and September.

26. Another option would have been to try to return them all to Cuba, but that would have required securing Cuba's agreement to take them as well as significant assurances that they would be kept safe upon their return.

27. The U.S. Government explored opportunities to resettle these Cuban nationals in third countries. By April 1995, more than 4,000 Cubans at Guantanamo had expressed interest in being resettled in 75 different countries around the world, but efforts to secure agreements from such third countries were hitting significant setbacks.

28. To address a portion of the Cubans held at the safe havens, in late 1994, we established criteria to allow certain people to be considered for parole into the United States. This included individuals with certain medical needs and elderly people over the age of 70, together with their family members, and unaccompanied children. State Department officials at Guantanamo reported that Cubans at the safe haven were optimistic about these parole processes and were hopeful that a

broader parole process would be announced for mothers and children. The State Department officials cautioned that if no such process was created, people could become despairful. Over time, thousands of Cubans were paroled from the safe havens into the United States under these policies, but the vast majority remained.

29. But by April 1995, the situation at Guantanamo had become unsustainable. Not only was the U.S. Government paying approximately $1 million each day to maintain the facility for its residents, but the Acting Chairman of the Joint Chiefs of Staff warned the White House that once the particularly vulnerable people were paroled into the United States from Guantanamo Bay, the remaining 14,500 Cubans could become despairful and that could lead to anger and violence as well as self-mutilations and suicides. Riots at the Panama safe haven in late 1994—which were prompted by concerns that the targeted parole processes were changing and becoming less effective—resulted in injuries to 300 U.S. personnel and the deaths of two Cuban nationals. This situation posed a growing risk to the safety of the residents at Guantanamo and U.S. military personnel, and could have led to concerns about mistreatment of the Cubans at Guantanamo, which would have jeopardized the interests of the country and undermined our ongoing efforts to reengage with the Cuban government. There were also reports that Castro might again encourage unsafe and uncontrolled migration from Cuba. **Exhibit D** is a true and correct copy of an unedited transcript of an April 12, 1995, Department of State press briefing that I obtained via a records request to the William J. Clinton Presidential Library.

30. To find a path forward, the United States once more entered into negotiations with Cuban officials. As with the negotiations that resulted in the September 1994 agreement, the United States made clear in public statements that talks would be focused on normalizing migration. But consistent with the two-track approach to Cuban relations contained in the Cuban Democracy Act, we entered the April negotiations with the longer-term goal of advancing Track II measures once the migration agreement was reached and encouraging the Cuban government to take steps toward democracy, including by freeing political dissidents.

31. I conducted some of the negotiations myself, meeting informally with senior Cuban officials who were in the United States. The key negotiating session between a senior State Department official and a senior official of the Cuban government was held in Canada in great secrecy over a weekend. It resulted in agreement on a joint statement to be issued by the two governments once approved by the two leaders—Castro and Clinton. I drafted the instructions for our negotiator. When he returned with an agreed text, I sent it to the President with a recommendation that he approve. Once again the memo came out of the Oval Office quickly with the "approved" box checked.

32. The agreed joint statement was released on May 2, 1995, reaffirming the 1994 agreement and modifying it in certain respects. To deal with the Cubans at Guantanamo, the United States agreed to use its parole authority to allow approximately 15,000 individuals to enter the United States. We secured the agreement of Cuba that no more than 5,000 of these parolees each year would count

against the 20,000 figure to which we had committed in September 1994. Cuba agreed to accept the return of those individuals at Guantanamo deemed ineligible for parole for certain reasons. **Exhibit E** is a true and correct copy of talking points and anticipated questions and answers prepared in advance of the May 2, 1995, announcement that I obtained via a records request to the William J. Clinton Presidential Library.

33. With respect to the use of parole in the agreement, Attorney General Reno explained that such decisions would continue to be made on a case-by-case basis, and sponsorship and resettlement assistance would be secured prior to entry. **Exhibit F** is a true and correct copy of the transcript of the May 2, 1995, White House press briefing that I obtained via a records request to the William J. Clinton Presidential Library.

34. A key agreement between the two countries was that Cubans interdicted at sea would no longer be transferred to Guantanamo but would instead be returned directly by the Coast Guard to Cuba after receiving a shipboard fear screening. The Cuban government agreed to specific procedures to ensure the safety of such returnees, including that such returnees would land on Cuban beaches in U.S. Coast Guard ships and first be met at the Cuban port by U.S. officials who could apprise them of their ability to go to the Special Interests Section to pursue a refugee determination or to register for some other legal pathway to the United States.

35. Once more, the ability to use the statutory parole authority to advance the public interest—as determined by the executive—was critical to securing

an agreement that furthered foreign relations priorities of great importance to the president and the country.

I declare under the penalty of perjury that the foregoing is true and correct.

Morton H. Halperin

Executed in Washington, DC, on June 16, 2023.

AUG 18 '94 09:42 FAX 10 71

U.S. Department of Justice

Immigration and Naturalization Service

AUG 18 1994

425 Eye Street N.W.
Washington, D.C. 20536

URGENT.....URGENT.....URGENT.....URGENT.....URGENT.....

TO: Capt. James Carmichael
Office of the Coast Guard
[redacted]
SECURE FAX: [redacted]

John Goetchius
Joint Chiefs of Staff
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SECURE FAX: [redacted]

Tim Atkin NSC
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Dennis Hays
Mark Susser
Department of State
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Ray Ruga
Department of Defense
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FROM: T. Alexander Aleinikoff
General Counsel
Immigration & Naturalization Service

Subject: Options Paper on Cuba

Attached is a very rough draft of an options paper. Please take an immediate look and fax comments by 11:00 a.m.

OFFICE PHONE: [redacted]
Office fax number: [redacted]
Secure fax number is: [redacted]

Options on the Cuban Flow

We are currently witnessing a flow of more than 300 Cuban migrants a day. The usual procedure is for the Coast Guard to pick up the migrants on the high seas and transport them to Key West for INS processing. This memo explores options for reducing the Cuban flow.

1. Negotiate with Castro to prevent outflows

It is apparent that the increased flow of rafters is attributable in large part to Castro's instructions to the Cuban Coast Guard that it tolerate departures. The surest way to abate the flow would be a decision by Castro that it should end. Accordingly, the US could attempt to induce Castro to stop the flow, either by entering into some form of negotiations or by unilaterally adopting policies that meet his goals.

Leaving aside the obvious issue of whether the USG wants to be in a negotiation, it is the State Department's view that there is little that we would be willing to offer at this point that would produce a fruitful negotiation. On the immigration front, Castro is likely to seek return of migrants who have hijacked vessels or committed acts of violence and repeal of policies permitting Cubans entry and granting lawful residence. State further believes that Castro's goals go far beyond immigration issues; what he seeks is what he has sought for years: an end to the embargo and to "hostile" broadcasts from the US. If these are in fact Castro's terms, then there appears to be no point to seeking any sort of negotiation. [It should be added that State believes that it still may be worthwhile to have private contact with Castro to allow him to vent frustration in a non-public forum.]

2. Direct return of migrants to Cuba

Coast Guard advises that this option can not be effected with the consent of the Cuban government. Cutters can not turn around rafts or escort them back to Cuban territorial waters without serious risk to the lives of the rafters. Safe return can only be accomplished if cutters are permitted to dock in Cuban ports--an option clearly within the control of Castro.

3. Long-term Detention of Cubans in the US

Currently Cuban migrants know that if they are picked up at sea they will be brought to the US and quickly released. Institution of a policy of detention (as is used for Chinese involved in smuggling operations) is likely to have a significant impact on decisions to leave Cuba. If an emergency is declared and Operation Distant Shore is invoked, then long-term detention

could occur in DOD facilities. Such a policy would be costly and would no doubt bring demands for release of Cubans with close family members in the US. It would also be subject to the criticism that it is unreasonable to detain aliens whom we have no prospect of returning to their country of origin; we currently continue to detain Mariel Cubans--some for years--who have committed crimes in the US but whom Castro will not accept back.

[Although attention has been focussed on the Cuban Adjustment Act, it is not obvious that repeal of the Act (or a decision by the Attorney General not to exercise her authority under the Act to adjust paroled Cubans) would materially affect the flow of rafters. Because of the inability of the USG to return Cubans without Castro's consent, any Cuban who gets to the US may anticipate an indefinite stay. Moreover, any Cuban present in the US may file for political asylum and remain here while that claim is being adjudicated.]

4. Safe Haven in a Third Country

Cubans intercepted at sea could be taken to safe havens in third countries. As we have witnessed with the Haitian flow, denying migrants a chance to come to the US provides a major disincentive to take to boats. Safe haven offers protection and non-return and requires no negotiation with Castro. The difficulty with this option is the identification of third countries willing to take Cubans. It may also impose significant costs if camps are to be constructed (although it is possible that countries in the region would accept Cubans without requiring they be detained).

5. Safe Haven at GTMO

We currently have capacity for 23,000 migrants at GTMO. The Haitian population is now below 15,000, leaving some 8000 spaces for Cubans. Use of GTMO would likely be viewed as provocative by Castro, who could simply remove the Cuban guards outside GTMO and permit tens of thousands of Cubans to enter in a short period of time.

TALKING POINTS

-- This is a critical moment in relations between our countries. The migration crisis has produced a situation which must be resolved quickly because, if it is not, pressures on both governments will increase. If, on the other had, a mutually satisfactory result is achieved on migration issues, it might be possible for the United States and Cuba to talk about other issues that been discussed between us in the past. For example, your representative at the December 1993 migration talks suggested that we discuss narcotics issues. Telecommunications is another such subject. That would be a good idea.

-- However, this will not be possible unless the migration issue is resolved.

-- I would also like to mention Guantanamo, a subject which Ambassador Skol told me you and he agreed was an important one for both Cuba and the United States. Neither of us want to have a large number of Cubans held indefinitely in Guantanamo and we are ready to begin moving Cubans out of Guantanamo to other safe havens in the region. However, unless this matter is resolved quickly and the flow cutoff, we may have no choice but to provide haven for large numbers of Cubans in Guantanamo and to begin making improvements in the facilities for Cubans there.

-- I understand that you are working on your version of a proposed joint communiqué. As long as it is confined to migration issues, Mike is ready to work with you constructively and we hope that agreement can be reached quickly.

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Cuba Legal Migration Program
Qs and A's

I. LOTTERY

Q.: How does one apply for the lottery?

A.: All details of the lottery - how to apply, when to apply, etc. - will be well advertised in the US, Cuba proper, and the safehavens by November 1st. The lottery is designed to offer Cubans who might not qualify under previously existing programs an opportunity to come to the US. We will be looking for people who can be self-sufficient and have manifested an interest in coming to the US.

Q.: Will having family ties be a requirement for selection in the lottery?

No. Legal migration will be available to people with no direct family ties in the United States.

Q.: Will Cubans in safehavens be able to participate in the lottery?

Yes. Cubans in safehavens will have to return home to participate in the lottery, but we will make sure that they do not suffer any disadvantage if they cannot return in a timely fashion. We anticipate that many Cubans in safehavens will meet some of the criteria we are looking for.

II. Refugee Processing

Q.: Who is eligible to qualify for refugee status?

A.: Refugee status in the US may be granted to persons who have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Q.: In what way have the interview criteria been expanded?

A.: Eligibility for the in-country program in Havana originally was limited to former political prisoners. The program now gives priority to Cubans who are (1) former political prisoners; (2) members of persecuted religious minorities; (3) human rights activists; (4) forced labor conscripts during the period 1965-1968; (5) persons deprived of their professional credentials or subjected to other disproportionately harsh or discriminatory

treatment resulting from their perceived or actual political or religious beliefs; and (6)others who appear to have a credible claim that they will face persecution as defined in the United Nations Refugee Convention.

Q.: If a Cuban already has applied for refugee status and did not qualify, can (s)he apply again?

A.: Any person denied refugee status can ask to have his or her case reconsidered on the basis of new information. A Cuban who was denied a refugee interview under the old criteria might be eligible under the new criteria. The USG will review pending and previously denied refugee cases to identify those qualifying under the expanded criteria.

Q.: What about Cubans in safehavens?

A.: If a Cuban chooses to return home and believes that (s)he qualifies for the refugee program, (s)he should contact USINT in Havana for a determination of eligibility. US government representatives in the safehavens will provide general information on the program.

Q.: What about Cubans in safehavens who fear persecution in Cuba if they return?

A.: Our policy is clear: Nobody will be forced or encouraged to return. Persons who fear persecution, like all other Cubans in safehavens, can remain in a safehaven if they so choose. Efforts are continuing to be made to improve quality of life in Guantanamo and Panama. We share the desire to find durable solutions for bona fide refugees in safehavens who fear returning home. For this reason, we also will be exploring with UNHCR alternatives for such people as the situation develops, including voluntary resettlement in third countries.

III. Parole of Additional Family of Refugees and Visa Beneficiaries.

Q.: What is new about the additional family parole?

Typically, immigrants are only allowed to bring in their spouse and minor unmarried children. Under this new program, we are extending the group of family members who can accompany a Cuban issued an immigrant visa or granted refugee status to include: (1) family members who reside in the same household and are part of the same economic unit as the immigrant or refugee; (2) unmarried sons and daughters of the immigrant or refugee regardless of age or place of residence.

Q.: How will this program work?

Cubans to whom it is possible to issue immigrant visas in fiscal year 1995 are being informed by USINT of their new opportunity to bring additional family members with them. The USG will make other efforts to identify and contact possible beneficiaries of this program.

Q.: Can Cubans in safehavens benefit from this program?

Yes, if they choose to return home. Cubans in Guantanamo and Panama will be provided information about this program by US representatives. The USG will try to assist Cubans in safehavens with this program. If a Cuban in a safehaven believes he or she might be eligible under this program, (s)he should contact a USG representative.

IV. Immigrant Visas and Visa Waiting List

Q.: How does one get an immigrant visa?

A.: The U.S. is continuing to issue immigrant visas to qualified Cubans, and relatives in the US are encouraged to file visa petitions on behalf of their family members in Cuba. Visa petition forms (I-130's) are available by calling the INS toll-free number, 1-800-755-0777. They also can be picked up in the US Federal Building in Miami, located at 51 SW 1st Avenue, Room 630, or at any INS office in the United States.

Q.: What is being done with the backlog?

A.: USINT has received names and addresses of all those on the immigrant visa waiting list. Efforts have begun to notify Cubans who are eligible.

Q.: Can Cubans in safehavens benefit from this program?

Yes, if they choose to return home. Cubans in Guantanamo and Panama will be provided information about this program by US representatives. If a Cuban in a safehaven believes that a relative has filed a petition for him or her, and that (s)he might be on the waiting list, (s)he should contact a USG representative.

V. Voluntary Return

Q.: How many Cubans who requested to return have been able to do so?

A.: An initial group of 17 Cubans who chose to go home were returned on October 7. They were flown from Guantanamo to Havana. We are anticipating the return of Cubans who have made the request to proceed on a regular basis.

Q.: How many Cubans have requested to return?

A.: Several hundred

Q.: Will Cubans in safehavens be forced to return?

A.: No. They can remain in the safehavens indefinitely.

Q.: Is the US government encouraging Cubans to return?

A.: No. We have provided Cubans in safehavens full information about their options, including the possibility of going back home or of remaining in the safehavens.

Q.: How can we be sure that Cubans who choose to return will not be persecuted when they do?

A.: As part of the Cuba/US talks, we made clear that people who wish to return should not be subject to negative treatment. These migration talks will be ongoing, and will next be resumed at the end of the month. This is a subject that can and will be monitored.

Q.: If individuals are not cleared for return by the Cuban authorities, what will be their eligibility for migration to the US?

A.: We will do our very best to ensure that individuals who wish to return are able to go home. We also will ensure that all individuals who are eligible to migrate legally to the US will have an opportunity to do so.

VI. Parole (in general)

Q.: Will any conditions be placed on paroled Cubans? Will there be any time limit?

A.: No. They will be paroled into the US for a two-year period. After one year, they will be eligible to apply for permanent residence.

Q.: How many Cubans do you anticipate will be receiving parole?

We will be using a combination of our programs to reach the 20,000 figure in the agreement.

VII. Legal Authority

Q.: What legal authority does the Attorney General have to exercise her parole authority in this way?

A.: Under section 212(d)(5) of the Immigration and Nationality Act, the Attorney General is given the authority, at her discretion, to parole aliens into the US "for reasons deemed strictly in the public interest." Normalizing the immigration flow between Cuba and the US is "strictly in the public interest." The parole program is part of an overall effort to redirect an abnormal flow into a legal one.

Q.: Doesn't such a parole program intrude upon Congress' law-making authority?

A.: No. The purpose of the program is to facilitate a normalization of migration between the two countries. It is perfectly consistent with overall congressional goals to stem irregular migration and promote legal migration.

Q.: Isn't the parole program inconsistent with the 1980 Refugee Act which provides that the AG "may not parole into the US an alien who is a refugee . . . except in compelling, individual circumstances"?

A.: No. People admitted as refugees will not be paroled. The US has operated for a number of years - and will continue to operate - an in-country refugee program in Havana under which several thousand Cubans are admitted into the US each year.

Q.: Why isn't a similar program being established for Haitians?

Historically we have had a special migration relationship with Cuba. We did not regularly parole in and legalize virtually every Haitian who reached our shores. The Cuban Adjustement Act is unique to Cubans. Moreover, we expect conditions that have produced large irregular migration from Haiti to change with the restoration of democratic government.

VIII. Cubans at Krome and Port Isabel

Q.: What are the plans for Cubans in Florida and Texas?

A.: Cubans at Krome and Port Isabel have been placed in normal immigration proceedings.

Q. How many Cubans have been paroled in from Krome and Port Isabelle?

A.: Children and their caregivers have been paroled in.

UNEDITED

U.S. DEPARTMENT OF STATE
DAILY PRESS BRIEFING

DPC #50

WEDNESDAY, APRIL 12, 1995, 1:28 P. M.
(ON THE RECORD UNLESS OTHERWISE NOTED)

MR. BURNS: Good afternoon, ladies and gentlemen. Welcome to the State Department briefing. I apologize for being late. We'll try not to make a habit of that. I don't have any prepared statements for you, so I'm glad to go directly to your questions.

Q Do you have any reaction -- today is the parliament-in-exile they're establishing in The Netherlands.

MR. BURNS: Excuse me, I didn't hear the last part of your question.

Q The Kurdish parliament-in-exile -- do you have any reaction. They established today.

MR. BURNS: We have seen the reports that the PKK Parliament-in-exile will be meeting in The Netherlands. We've expressed our views both to the Government of Turkey and to the Government of The Netherlands that we think that the PKK is a brutal terrorist organization, and we obviously don't support the creation of any kind of parliament-in-exile that is associated with the PKK.

We've made those views known to both governments in the last 24 hours.

Q Are you expected to ask The Netherlands to somehow make it impossible for this parliament to have its meeting there? I mean, did you make any representations to that effect?

MR. BURNS: I don't have details on our conversations with the Dutch Government, and I leave it to them to characterize their views on this. But I believe that the organization -- the people who will be meeting have not violated -- at least we understand they have not violated Dutch law, and therefore there wasn't any grounds to deny them the right to meet.

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NSN 7540-01-317-7388 5099-101 GENERAL SERVICES ADMINISTRATION

Cuba portion begins page 2

But I do want to reaffirm that it's our position that this is a brutal terrorist organization, and we obviously don't support the convening of a parliament of this nature in any way.

Q There's a story in the Post today that suggests that the Cubans are upset about the Helms' proposal and that a new exodus of migrants could be unleashed if it's approved. Do you have any comment? And I should mention that this is what the Cubans have informed the State Department.

MR. BURNS: I do have a comment. I have a general comment about our policy towards -- on the migration talks that I think might help with this question, George.

I'll just take you back to last September and remind you that the measures announced by President Clinton last September provide for a safe and orderly flow of migrants from Cuba to the United States.

We have an agreement with Cuba that is being implemented by the United States and by Cuba. We are on track to meet our commitments under this September 9 migration agreement, and we certainly expect the Cuban Government to meet its own obligations, and we believe it is meeting its obligations.

Remember that we pledged to issue 20,000 travel documents. I believe it's 16,000 people -- Cubans have been approved for migration, 11,000 of whom fall under this category to receive benefits under the 20,000 number.

It remains our policy that Cubans intercepted attempting unauthorized migration will not be taken into the United States but will be offered safehaven at Guantanamo. This policy has discouraged over many months, and we believe that it will continue to discourage unsafe voyages.

The Cuban Government has not communicated to us any message about a looming large-scale migrant problem. If you have any specific questions on the numbers of people at Guantanamo or who has been paroled and who hasn't, I've got some figures for you. But let me take the next question, George, if you have one.

Q In effect, then you seem to be denying a point in this Post story which was that the Cubans informed the United States or warned the United States that if the Helms' legislation were to go through, that would result in a large-scale exodus, uncontrollable exodus. Are you saying that they didn't say that?

MR. BURNS: I checked with our experts this morning, the people who deal with the Cubans every day, and I understand that we have not received any such kind of a dire warning from the Cuban Government on this issue.

Q Is this something short of a dire warning, Nick?

MR. BURNS: No --

Q Has there been any concern -- I mean, use any word you want, but has there been any sort of communication that might indicate they would do that?

MR. BURNS: Our general view is that this agreement is in force; that both sides are meeting it; that the refugees -- excuse me -- the migrants are being handled in a constructive and orderly way, and that there isn't a large-scale problem here, and we have not heard anything of the kind from the Cuban Government in our private discussions with them.

Q Can I just try that another way. Have they told you that a refugee outflow would be "difficult to control" if the Helms' measure was passed?

MR. BURNS: I have not been in discussions with the Cuban Government on this issue, so I can't speak to everything that has been said. But after seeing the piece this morning, we certainly looked into this and discussed it with a lot of people, including those people who are responsible for Cuban affairs, and I'm giving you in essence this morning a quite categorical response to the story.

Q Are there any major issues concerning this September 9th agreement still pending that the United States expects to raise when the migration talks resume next week?

MR. BURNS: The migration talks will resume -- will take place next week in New York. I think we announced that last week. This provides an opportunity for the United State and Cuba to review -- and we've done this a couple of times since this September 9th agreement -- review the major issues surrounding the migrant program, to review the status of the individuals who are still at Guantanamo -- and I think there are a little over 22,000 Cuban migrants who are still in Guantanamo -- and we look forward to the review.

Q Nick, can I try again from another angle, as Carol said. Regardless of what the Cubans may or may not have told you, it's not brain surgery to know that they don't like the Helms' amendment, and the threat of migration is their only trump card in this sort of thing.

Are you folks worried about the Helms' amendment passing and what that might mean for possibly a migration?

MR. BURNS: I can't speak to the Cuban view of the Helms-Burton legislation, but I can speak to an American Government view. As you know, we have been discussing this legislation for some time with interested members of Congress. Our policy towards Cuba is based on the Cuban Democracy Act of 1992. We believe that is a very good foundation for our policy.

Some aspects of the Helms-Burton legislation support the Cuban Democracy Act, are beneficial, and we could support some aspects. There are other aspects that are troubling to us, and we have made our views known to the interested members of Congress.

Q (Inaudible)

MR. BURNS: I don't think it's wise for me to go into our discussions with the members of Congress on the bill in detail. I think a general response really suffices for the moment.

Q And it's fair to say also you have gotten a number of letters and complaints from allied governments on this, have you not?

MR. BURNS: I think certainly some allied governments have spoken publicly about potential problems that they see in this legislation. Some of those problems are problems that we have identified, and we've made our views known directly to the interested members of Congress.

Q I'd like to switch subjects if there are no other questions on that.

Q Wait. I have one more question.

MR. BURNS: Betsy.

Q Has there been any planning or thinking in this building about what to do to Guantanamo? I mean, are you just going to leave twenty-some thousand people there or less? I mean, has there been any kind of long-range planning at all as to what to do with that facility? If you keep taking Cubans there, there must be some kind of permanent housing or something.

MR. BURNS: It's obviously a very difficult situation, and the status of the people at Guantanamo is of great concern to us. We have made one clear decision, and

that is we are not going to compel anyone to leave Guantanamo. No one will be required by force to leave.

I can give you some background on the status of the people there. I believe that nearly 9,000 Cuban migrants have been paroled into the United States of humanitarian grounds or have been medically evacuated to the United States since this agreement came into effect in early September.

Roughly 7700 of those people are from Guantanamo and roughly 1200 from Panama. There are no longer any Cuban migrants in Panama.

We are operating under the provisions of humanitarian parole. Humanitarian parole is granted by the Attorney General on a case-by-case basis, so I'm unable really to tell you how many more Cubans at Guantanamo will be paroled into the United States, Because it's done on a case-by-case basis. We don't have set numbers and set targets, but they will be eligible for humanitarian parole in accordance with criteria that the President set down many months ago, and I can get into that if you'd like.

Q I asked at the beginning of the week. Christine said it was being investigated. An article in The New York Times on Saturday said that Iran had shipped two oil rigs enroute to Serbia in violation of U.N. sanctions. Have you got anything on that?

MR. BURNS: We're interested in that question. We are looking into it, and we don't have anything for you on it. But on the question of sanctions in general, obviously we're still committed to the sanctions against Serbia. That question has sparked our interest, and I hope to get something for you, but I don't have anything for you today.

Q Since we're on the subject of Serbia, the Contact Group meeting in -- Mr. Milosevic, has he accepted the deal now, so on and so forth?

MR. BURNS: I have something, yes. The Contact Group representatives met in Belgrade yesterday, as you know, with the Serbian President. That meeting gave no cause for optimism regarding early movement towards the mutual recognition among the former Yugoslav republics or really any optimism about a Bosnian cease-fire.

As you know, the group had to cancel its planned travel to Bosnia today, April 12, because the Serbs in the region would not guarantee the security of the Contact Group's plane to land at Sarajevo airport.

TALKING POINTS

-- At 12:00 noon, the United States and Cuba will be announcing that they have agreed to modifications of the September 9, 1994 migration agreement.

-- The statement will present the broad outlines of the new agreement soon to be finalized.

-- The new agreement represents an important step towards regularizing migration procedures with Cuba, finding a humanitarian solution to the situation at Guantanamo, and preventing another uncontrolled and dangerous outflow from Cuba.

-- Our general policy toward Cuba remains committed to the Cuban Democracy Act and to its central goal - promoting a peaceful transition to democracy in Cuba. We will continue to enfoce the economic embargo to pressure the Cuban regime to reform. We will continue to reach out to the Cuban people through private humanitarian assistance and through the free flow of ideas and information to strengthen Cuba's fledgling civil society as presented under Track II of the Cuban Democracy Act. And we remain ready to respond in carefully calibrated ways to meaningful steps toward political and economic reform in Cuba.

PAROLE FROM GUANTANAMO

-- The new agreement will provide for the continued humanitarian parole of migrants currently at Guantanamo after the current program has been completed. There will be about 15,000 Cuban migrants remaining at Guantanamo this summer, once we complete the parole process on the basis of existing criteria. Many of them were caught in the midst of a changing migration policy, have been living in difficult conditions, at a cost to the U.S. of $1 million per day, and with security risks for U.S. personnel.

-- The Joint Staff has expressed its concern at the continued presence of thousands of Cuban migrants at Guantanamo.

-- As in the case of prior parole programs for children, the elderly, and medical hardship cases, we will proceed carefully, on a case by case basis. We will seek adequate sponsorship guarantees for the parolees and verify their criminal and medical backgrounds. Every effort will be made to minimize the impact of the parole program on state and local economies.

-- Beginning in September 1995 and over the following three years, Cubans paroled from Guantanamo under this agreement will count toward meeting the minimum of 20,000 Cubans which we agreed

to admit every year from Cuba under the September 9, 1994 agreement. To be concrete: We will parole into the U.S. Cubans currently at Guantanamo who do not meet existing parole criteria. In order to lessen the burden on state and local economies, we will reduce the number of Cubans allowed to migrate legally from Cuba to the U.S. over the next three years to reflect this added influx from Guantanamo. As agreed with the Cuban government, we will be able to offset up to 5,000 Cubans paroled into the U.S. under this agreement (regardless of when they are paroled) against the 20,000 we had agreed to admit legally from Cuba.

-- Cuba has agreed to take back those Cubans who would be ineligible for admission into the United States, based either on their criminal record, their medical condition, or the commission of acts of violence while at Guantanamo.

UNSAFE, IRREGULAR DEPARTURES FROM CUBA

-- At the same time, in order to ensure against a resumption of dangerous, irregular migration from Cuba to the U.S., the two countries have agreed that, effective immediately, migrants intercepted at sea by the United States and who are attempting to enter the U.S. as well as Cubans who enter Guantanamo illegally, would be taken back to Cuba. The Cuban government will continue to take appropriate steps to prevent irregular departures from Cuba, in accordance with the September 9 agreement.

-- Of course, the United States will continue to abide by its international responsibilities with regard to *bona fide* refugees, and we will take appropriate steps to ensure their protection. U.S. policy in this regard will conform as much as possible to our practices towards migrants from other countries.

-- Cuban migrants who make it to the United States will be placed in deportation proceedings, consistent with U.S. policy towards other illegal migrants.

-- We have a commitment from the Cuban government that no migrant taken back to Cuba will suffer reprisals, be prosecuted, lose any type of benefit, or be prejudiced in any manner, as a result either of an attempted irregular departure or of applying for refugee status at the U.S. Interests Section. US officials in Cuba will monitor this situation carefully.

-- U.S. officials will be at the dock upon the return of Cuban migrants to provide assistance for asylum applicants. Cuba has agreed to this procedure as well as to U.S. monitoring of the treatment of Cuban nationals who are taken back to Cuba.

-- Cubans must know that nobody leaving Cuba irregularly by boat will be resettled in the United States. The only way to come to the U.S. is through the migration process in Cuba which includes in-country refugee processing, our new lottery program, and expanded opportunities for family members of immigrant visa beneficiaries. That process is now well underway.

-- In particular, Cubans who believe they have a valid asylum claim should apply at the U.S. Interests Section. Cuba is one of only three countries in which the U.S. offers in-country processing for asylum claimants, and we are making great efforts to meet the needs of Cubans who fear persecution. The Administration has vastly increased the number of Cubans who can be admitted to the U.S. as refugees each year. It is now approximately 7,000.

Q's and A's

Q1. Are there any secret, side agreements with Cuba?

A. No.

Q2. Were any other topics discussed?

A. In the course of our conversations with the Cuban representatives, we have made clear our intention to continue with Track II efforts to increase contacts between our two people. We also explained the Administration's position on the Helms/Burton bill, which we had previously communicated to the Congress. Finally, we reiterated our willingness to respond to meaningful steps towards economic and political reform in a carefully calibrated manner. In that context, we indicated that we were following the state of the recently allowed farmers markets. If progress were to continue, we would consider appropriate steps, consistent with the Cuban Democracy Act. We made clear that any additional steps would have to await changes more significant than we have seen to date.

Q3. How were these discussions conducted?

A. Through diplomatic channels.

Q4. Doesn't this represent a total reversal of policy?

A. Our goal was and remains the establishment of safe, legal, and orderly migration. The Guantanamo safehaven was one element toward that goal. But, as we know, it raised significant problems -- in humanitarian terms, in financial terms, and in safety terms. This new approach permits us to find a humanitarian solution to the situation at Guantanamo without encouraging a new unsafe and uncontrolled migration, and preserving the broad legal migration program for Cubans in Cuba. The approach furthers our goal and U.S. national interests.

Q5. How will you ensure the protection of migrants who claim refugee status?

A. Any Cuban with a legitimate political asylum claim should go to the U.S. Interests Section in Havana where such claim will be processed. As for Cubans intercepted at sea, as I have said, we will take adequate measures to ensure that cases of those with a genuine need for protection will be examined before return.

I also want to emphasize that Cuba is one of the very few countries in the world in which we maintain an in-country processing center. The Cuban government has given us assurances

that returnees will not suffer reprisals (including persecution, withholding of benefit or other detrimental action) for applying for refugee status. The situation of refugee applicants will be followed by U.S. officials to ensure that the Cuban government lives up to its commitment.

Q6. What form of screening will take place on the Coast Guard cutters?

A. As we have said, we will ensure that the rights of individuals to claim refugee status is fully protected and we will deal with each situation as it arises. We will develop whatever procedures are appropriate given our experience under this new program. Our firm intention is to provide each migrant who so desires an opportunity to make an asylum claim in a setting free of coercion. Beyond that, I see no purpose in getting into the details of the procedures we will be applying to ensure such protection.

Q7. Will all Cubans at Guantanamo be paroled into the U.S.?

A. The Cuban government has agreed that we could parole as many Cubans currently at Guantanamo as we deem necessary on humanitarian grounds. Cuba also has agreed to the return of migrants who would be ineligible for admission into the U.S. This would include Cubans previously deported from the U.S., Cubans with a criminal record, or Cubans responsible for acts of violence at Guantanamo.

As we have done in the case of children, the elderly and medical hardship cases, we will assess the situation of Cuban migrants on a case-by-case basis, bearing in mind the impact of paroles on state and local economies and the need for adequate sponsorship. In particular, no migrants will be brought from Guantanamo until sponsorship and resettlement assistance has been obtained through the Justice Department's Community Relations Service and the national voluntary agencies with which CRS works. That is why we have given ourselves up to a year to complete this process.

Q8: I don't really understand what you are saying about the Guantanamo population. Will people in the safe haven be returned to Cuba against their will?

A: Cubans in the safe haven who are ineligible for entry into the United States -- such as those who have serious criminal histories, who were previously removed from the United States for committing crimes, or who committed violent acts in Guantanamo -- may be returned to Cuba.

Q9: Isn't this going to pose a great burden on the State of Florida?

A: We think precisely to the contrary. By reducing further the risk of uncontrolled migration, this program further minimizes the greatest burden on the state and its subdivisions. Moreover, migrants are brought in from Guantanamo in a manner that is quite deliberately designed to minimize the impact on Florida. No one is brought in without sponsorship arranged in advance, and migrants without direct family links in Florida are resettled elsewhere in the United States.

Of course, we are sympathetic to the burden that the State of Florida is carrying with regard to migration from Cuba, and we will be considering steps we can take to come to Florida's assistance.

Q10. Are you prepared to use force in case Cubans intercepted at sea refuse to return to Cuba?

A. The Coast Guard will apply its regular guidelines regarding the return of migrants rescued at sea. We expect that, given expanded possibilities for legal migration from Cuba and our commitment to facilitate the processing of refugee claims in Havana, Cuban migrants rescued at sea will cooperate with U.S. Coast Guard.

Q11. If Cuba is the repressive, outlaw regime our government says it is, how can you justify returning people who are fleeing for their lives?

A: This program is in no way an endorsement of the Castro regime. The United States has an obligation both to protect itself against uncontrolled and illegal immigration and to protect the rights of refugees in accordance with international law. We believe the program we are implementing today represents a significant step in furtherance of both goals.

Q12: You have said that Cubans who reach the United States illegally will be placed in exclusion proceedings, detained, and treated like illegal migrants from other countries. Does this mean you are going to go after Cubans who previously arrived illegally?

A: The vast majority of Cubans now in this country are here legally. We will treat those who are already here and have violated the terms of their admissions consistent with the policy that has been in effect until this day.

Q13: The Cuban government has long expressed interest in the return to Cuba of certain people now living in the United States who

are accused of crimes in Cuba. Will you now return those people against their will?

A: Cubans who are legally in this country and who have not violated the terms of their admission will not be returned. [We have no extradition treaty with Cuba.]

Q14: Does this mean you now favor repeal of the Cuban Adjustment Act?

A: No.

Cuba Call List

NSC

SANDY BERGER
CALLS:

To be made at 8:30 in order to precede calls made by Sen. Graham:

Mack
Torricelli

Other calls to be made by Sandy:

Rangel
Mfume

Other NSC calls:

Dole
Daschle
Specter
Kerrey
Gingrich
Gephardt
Armey
Bonior
DeLay
Combest
Dicks
Meek
Young
Gibbons
Canady
Miller
Dave Weldon
Mark Foley
Meek
Shaw

STATE

Calls to be made by Tarnoff or Watson at 8:30 to precede Graham calls:

Menedez
Ros-Lehtinen
Diaz-Balart
Goss

Other State calls:

Helms-P
Pell
Coverdell-P
Dodd-P
Leahy
McConnell
Gilman
Hamilton
Burton-P
Obey
Livingston
Hastings
Deutsch-P
Johnston-P
Payne-P

DOD

Thurmond
Nunn
Stevens
Inouye
Spence
Dellums
Young-P
Murtha
McDade

DoJ

Hatch-P
Biden-P
Simpson-P
Kennedy-P
Hyde-P
Conyers-P
Lamar Smith-P
Bryant-P
McCollum-P
Schumer-P

P-- Principal call, other calls staff or principal

Briefings should be offered to SFRC, HIRC, Judiciary Committees and Fla. delegation.

Calls that we will ask Sen. Graham to make beginning at 9 am:

Mack
Torricelli
Menendez
Diaz-Balart
Goss

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 2, 1995

PRESS BRIEFING
BY ATTORNEY GENERAL JANET RENO,
GENERAL JOHN SHEEHAN, COMMANDER IN CHIEF OF
THE U.S. ATLANTIC COMMAND,
AND UNDER SECRETARY OF STATE
FOR POLITICAL AFFAIRS PETER TARNOFF

12:15 P.M. EDT

MR. MCCURRY: Good afternoon, everybody. As you know, we're here to discuss some matters related to Cuban migration policy. But I know a lot of you have got interest in the Oklahoma City investigation. For that reason, I've asked the Attorney General to start with just a very brief statement on that subject. She's not in a position to take many questions. We will then move on to the Cuban migration discussion.

Attorney General.

ATTORNEY GENERAL RENO: At approximately 6:45 a.m. this morning, the FBI arrested Robert Jacks and Gary Land in Carthage, Missouri based on material witness warrants issued by a magistrate judge in Oklahoma, based on probable cause to believe that they possessed information concerning the April 19, 1995 bombing in Oklahoma City. The arrest occurred without incident. Jacks and Land are cooperating with the FBI in the investigation, and have agreed to be interviewed and provided consent to search their property. The investigation is continuing.

Also today, at the request of Director Freeh, I have approved his appointment, Larry Potts as the Director of the FBI. Director Freeh's recommendation was based on Mr. Potts's long and distinguished career in law enforcement and the confidence the Director has in him.

Director Freeh has described Mr. Potts as the very best the FBI has. Mr. Potts has been directing the investigation of the Oklahoma City bombing, and the results to date are a tribute to his ability to coordinate a complex, nationwide, multi-agency investigation.

Q How did you find those guys?

Q Madam Attorney General, are these two considered suspects in the bombing?

ATTORNEY GENERAL RENO: I would not comment and I would ask everyone to let the investigation proceed and not jump to conclusions.

Q Well, is either believed to be John Doe II?

ATTORNEY GENERAL RENO: Again, I would not comment and would reiterate my concern.

Q General Reno, is the search --

Q Can you tell us how they were discovered, how you found them? Could you tell us how you found them? Did they give themselves up, or did you get an informant tip, or how were they discovered?

ATTORNEY GENERAL RENO: Again, as I have told you all, it's just not right for me to comment on how the investigation is conducted, what leads us to a certain point, because that can only lead to an interruption of the investigation, and I know we want to have it proceed as --

Q In other words, you're not going to say anything? (Laughter.)

ATTORNEY GENERAL RENO: I have told you again and again that I don't comment on pending investigations, because I think --

Q Ma'am can you tell us please why Potts was named and what's the reason -- and the head of -- the Assistant Director of FBI --

Q Could you tell us how the search for John Doe II is proceeding?

ATTORNEY GENERAL RENO: Again, as I have said before, we are following every lead, and there are many. The people of this country are cooperating in an extraordinary fashion, and the investigation is proceeding.

Q And you're looking for others, are you?

Q Are there other suspects that you are still looking for at this point?

ATTORNEY GENERAL RENO: I think it's fair to say that we're following every lead with respect to any information that would lead us to anybody responsible for this bombing.

Q Ms. Reno, could you talk about the death threats you've been getting?

MR. MCCURRY: I think that's about all. We want to move on.

Q Well, I think she might answer my question, which was fully on the floor. I want to know why Mr. Potts's named and have we had a man like this designated in the FBI before and what's the reason for this?

ATTORNEY GENERAL: As Director Freeh has said, he appointed Mr. Potts as the Deputy Director of the FBI based on his very distinguished career in law enforcement. Larry Potts is an extraordinary agent, a dedicated law enforcement official. He has been the person responsible in this instance for the day-to-day operation of the Oklahoma City investigation, and I think it has been a landmark for law enforcement efforts.

Q Ms. Reno, can you talk about the death threats?

MR. MCCURRY: Okay, we're going to move on now to the subject of Cuba. At this hour, the United States and the Republic of Cuba are releasing a joint statement on agreements that they have reached to regularize further their migration relationship. That's what our cast here is to talk about. I'm going to ask Attorney General Reno to open with a statement on that. We will have a copy of the joint statement that we are issuing along with the Republic of Cuba. That will be available to you at the conclusion of the briefing.

Attorney General Reno will speak and then I've also asked General John Sheehan, who is the Commander In Chief of the U.S. Atlantic Command, to talk a little bit about Guantanamo Bay and some aspects of the migration agreement. We also have Doris Meissner, the Commissioner of the Immigration and Naturalization Service, Admiral Kramek, who is the Commandant of the Coast Guard, and Under Secretary of State for Political Affairs, Peter Tarnoff, who is here as well. And they're available as you might have any questions related to the agreement that we discussed today. So I'll start again with Attorney General Reno.

ATTORNEY GENERAL RENO: It has long been the policy of the United States that Cubans who wish to migrate to the United States should do so by legal means. The U.S. interest section in Havana accepts and processes requests for visas, and it also operates an in-country program for those Cubans who seek refugee status for entry into the United States.

Pursuant to this policy, last August I announced that Cubans attempting a regular means of migration to the United

States on boats and rafts would not be allowed to enter this country, but, rather, would be brought to the United States Naval Base at Guantanamo Bay where they would be offered safe haven.

Last September, following negotiations with representatives of the Cuban government, the United States announced that it would increase Cuban migration to the United States to permit 20,000 legal entrants per year. This program, which includes immigrant visas, refugee applications and a special Cuban migration program designed to broaden the pool of potential entrants, is on target, and we expect to continue Cuban legal migration at this level in the years to come. This year alone, we expect to bring 7,000 Cuban refugees to the United States through our in-country program in Havana.

The United States is now prepared to make another important step towards regularizing Cuban migration between Cuba and the United States. First, with respect to Guantanamo, we will continue to bring to the United States those persons who are eligible for special humanitarian parole under the guidelines announced by the President last October and December.

The government of Cuba has agreed to accept all Cuban nationals in Guantanamo who wish to return home, as well as persons who have previously been deported from the United States and persons who would be ineligible for admission to the United States because of criminal record, medical, physical or mental condition, or commission of acts of violence while at Guantanamo.

All other Cubans in the safe haven will be admitted into the United States on a case-by-case basis as special Guantanamo entrants, bearing in mind the impact of paroles on state and local economies and the need for adequate sponsorships. As has been true for all Cubans and Haitians previously paroled into the United States from Guantanamo, sponsorship and resettlement assistance will be obtained prior to entry. The number of these special Guantanamo entrants admitted to the United States will be credited against the 20,000 annual Cuban migration figure. Thus, there will be no net increase in Cuban migration.

Effective immediately, Cuban migrants intercepted at sea, attempting to enter the United States or who enter Guantanamo illegally will be taken to Cuba where U.S. consular officers will assist those who wish to apply to come to the United States through already-established mechanisms. Cubans must know that the only way to come to the United States is by applying in Cuba.

All returnees will be permitted to apply for refugee status at the U.S. interest section in Havana. Cuba is one of only three countries in the world in which the United States conducts in-country processing for refugees. The government of Cuba has committed to the government of the United States that no

one will suffer reprisals, lose benefits or be prejudiced in any manner, either because he or she sought to depart irregularly, or because he or she has applied for refugee status at the United States interest section.

The Cuban government made a similar commitment in the context of the September, 1994 agreement and we are satisfied that it has been honored. Moreover, the government of Cuba will permit monitoring by U.S. consular officers of the treatment of all returnees.

Migrants intercepted at sea or in Guantanamo will be advised that they will be taken back to Cuba where U.S. consular officials will meet them at the dock and assist those who wish to apply for refugee admission to the United States at the interest section in Havana. They will be told that the government of Cuba has provided a commitment to the United States government that they will suffer no adverse consequences or reprisals of any sort, and that U.S. consular officers will monitor their treatment. they will also be told that those persons who seek resettlement in the United States as refugees must use the in-country refugee program.

Measures will be taken to ensure that persons who claim a genuine need for protection which they believe cannot be satisfied by applying at the U.S. interest section will be examined before return. Cubans who reach the United States through irregular means will be placed in exclusion proceedings and treated as are all illegal migrants from other countries, including giving them the opportunity to apply for asylum.

The United States government reiterates its opposition to the use of violence in connection with departure from Cuba and its determination to prosecute cases of hijacking and alien smuggling.

These new procedures represent another step towards regularizing migration procedures with Cuba, finding a humanitarian solution to the situation at Guantanamo and preventing another uncontrolled and dangerous outflow from Cuba.

I want to make clear that the United States policy towards Cuba remains the same. We remain committed to the Cuban Democracy Act and its central goal -- promoting a peaceful transition to democracy in Cuba. We will continue to enforce the economic embargo to pressure the Cuban regime to reform.

We will continue to reach out to the Cuban people through private humanitarian assistance and through the free flow of ideas and information to strengthen Cuba's fledgling civil society. And we remain ready to respond in carefully calibrated

ways to meaningful steps towards political and economic reform in Cuba.

UNDER SECRETARY TARNOFF: Thank you very much. I would like to applaud the effort on the part of the Attorney General to regularize this process for three very simple reasons -- first, the safety of the 6,000 American servicemen that are serving in Guantanamo Bay, Cuba. As you know, we were moving down a trail where there was distinct possibility of some of those servicemen and some of those Cubans being hurt.

Second, from a military perspective, it's costing us $1 million a day to run the camps at Guantanamo Bay, Cuba. That money now can be turned -- and once we return these servicemen back to the parent units, back into the readiness accounts and we can start plussing up the readiness capability to military forces. In addition to that, we're about ready to spend $100 million to make the camps more permanent, and so all of these collective things, I think, go, and I would like to truly applaud the efforts on the part of the Attorney General to regularize this process.

MR. MCCURRY: Let me just add one closing comment before we go to questions. In developing the approach that the administration has outlined today, we have consulted very closely with both Governor Chiles and with Senator Graham. And I must say that the President is grateful for the fact that they have both authorized the White House to indicate that they are fully supportive of the policy that we are reviewing today with you.

With that, let's go to questions and you can direct them anywhere.

Q How about Senator Mack?

MR. MCCURRY: Well, we will continue consultations. There have been consultations ongoing this morning with other members as well.

Q Was this policy forced because it was about to blow up on Guantanamo?

ATTORNEY GENERAL RENO: What we have tried to do from the beginning is regularize migration from Cuba so that anybody who came to this country came legally and safely. It was clear as we put the process into effect that it was beginning to work. We now have a track record since September of legal migration procedures working so that people can apply safely for refugee status. Over 6,000 have been determined to be refugees; 800 have all ready been brought to this country; and I think people can understand that legal migration does work.

At the same --

Q That's not an answer to my question. The General indicated safety --

ATTORNEY GENERAL RENO: You asked what prompted this, and I'm --

Q No, I didn't ask what prompted it. He indicated there was a safety problem.

ATTORNEY GENERAL RENO: Well, I'm telling you what prompted the particular change. Seeing that worked, seeing however, that the migrants at Guantanamo had been dislocated, had lost their jobs, had not been able to watch firsthand how it was working, I think that this represents a humanitarian way to address the issue while putting everybody on notice that legal migration processes are working and that they will be utilized.

Q Well, General, you said that any Cubans who tried to leave Cuba now must do so through the Cuban interest section, will be intercepted at sea and brought back to Cuba. But you were equally as firm last summer, as was the President, in saying that this is not the way to get to the United States and that those who were in Guantanamo would never be admitted to the United States. Why should anybody in Cuba believe the new policy when the old policy was reversed?

ATTORNEY GENERAL RENO: One of the things that we have tried to do in this whole process is avert a mass migration to this country and to avoid a tremendous outflow of illegal immigrants. What we did then was to put into place a system that we knew worked. Obviously, it was not that convincing to those at Guantanamo, but it has been convincing to people in Havana, in Cuba who can see that it's worked and who are utilizing those processes now. We think that this is the best way to move forward to further regularize migration from Cuba.

Q General, how long would you anticipate this will take? You said all of those there now would be eligible, but you said on a case-by-case basis. Which is it?

ATTORNEY GENERAL RENO: Not all. Those with --

Q I understand. All who qualify, but -- but basically, you've got a large number of people --

ATTORNEY GENERAL RENO: What we want to do is to admit those that are not excludable that don't have criminal histories. We want to admit them in an orderly way based on appropriate sponsorships, based on concern for the community that they're going to. What we have been doing to date is paroling in on a

humanitarian basis the children and their families at roughly 500 a week, and I would expect that rate would continue.

Q That it would continue to be 500 a week until you've emptied the compound there at Guantanamo? Is that the --

ATTORNEY GENERAL RENO: Again, what we want to do -- it may be that, or it may be as we formulate it and see just what's involved, that we can speed it up, but we want to make sure that it's done in an orderly way.

Q Can the General tell us a question, please? You said, sir, I believe I understood you to say that you were going to spend $100 million making permanent the camps down there?

GENERAL SHEEHAN: That's correct.

Q Well, if you're taking these people away from there and back to Cuba, why do you need to spend $100 million on camps if it was already perfect there?

GENERAL SHEEHAN: What I said was that this act, on the part of regularizing the process has averted that $100 million that we can use now to put back into the readiness O & M accounts so the readiness of the forces will not suffer as a result of this housing migrants.

Q Yes, but you said you were going to spend $100 million on making permanent the camps.

Q No, no, no.

GENERAL SHEEHAN: No. What I said was, it averts that $100 million cost.

Q General, how explosive was the situation in the camps there? You alluded to that at --

GENERAL SHEEHAN: I think the Attorney General has a right. This is a process of a lot of dynamics. There are 6,000 people in the camps right now who are in the process of coming into the United States at a rate that the Attorney General has spoken about. As we saw this summer going down and the protocols ran out, where there was no exit strategy for the camps; then clearly, the frustration level on the camps was going to be very high. These were essentially young males, 15 to 32 years old, very, very talented people.

I think that you need to understand that better than 50 percent of these kids are high school graduates, but nine percent of college degrees and two percent have graduate degrees. There

are 127 doctors in the camps; but, yet, if there's no exit strategy for them, they're frustrated.

Q But how did you see that frustration become manifested?

GENERAL SHEEHAN: It's manifested itself twice in Guantanamo previously and once in Panama when the Cubans who were there thought they were going to be -- end up in a permanent internment process.

Q So there is a threat of violence. Is that what you're saying?

GENERAL SHEEHAN: There is always a threat of violence in that type of situation. I would call it civil disturbance as opposed to violence, but there is some violence probability, yes.

Q Can you tell us a little bit about how this was negotiated, who did the negotiating for the U.S. and who did the negotiation for the Cubans?

UNDER SECRETARY TARNOFF: I think all I'd like to say is that this was negotiated through normal diplomatic channels and not go into the details of how the conversation was --

Q Well, we don't really have such normal diplomatic relations with the Cubans.

UNDER SECRETARY TARNOFF: Yes, we do. We have a U.S. interest section in Havana, there is a Cuban interest section here, and we have regular migration talks, the last of which occurred, I think, a couple of weeks ago in New York.

Q Was this, Mr. Tarnoff, negotiated in the context of those migration talks, or was this a separate, secret negotiation?

UNDER SECRETARY TARNOFF: I'd rather not go into the details of how this was actually conducted, because this was, again, done in diplomatic channels, but it certainly was consistent with the administration's policy decided last summer to be in touch with the Cubans on migration matters.

Q Did anyone from the U.S. have a direct discussion with Fidel Castro?

UNDER SECRETARY TARNOFF: I'm not going to talk about the specifics of what the exchanges were, but I can say that what happened was fully consistent with and in the context of the migration talks that we've been having with the Cubans over the last nine years.

Q Has Cuba been provided with any assurances that any of the sanctions added last August would be rolled back?

UNDER SECRETARY TARNOFF: None whatsoever.

Q -- or, these sanctions would be eased in any way?

UNDER SECRETARY TARNOFF: None whatsoever.

Q How about that the administration will oppose the Helms bill?

UNDER SECRETARY TARNOFF: The administration stated its position on the Helms-Burton legislation. At the end of last week, the State Department informed Chairman Gilman of the House International Relations Committee that, while we supported many of the objectives of the Helms-Burton draft legislation as we see it, namely the promotion of an acceleration of democracy in Cuba, the endorsement of the continued vigilance and reinforcement of the embargo, the other provisions of the Cuban Democracy Act, and also features of that bill which allow the United States to begin assistance to a transition government in Cuba, all of those we regard as quite positive. There are, nonetheless, certain other aspects of the bill, the extraterritoriality of it and other things which do causes problems, but we are available to have discussions with sponsors of the bill on the legislation.

Q Mr. Secretary, does this agreement between the United States and Cuba improve the relationship between the two countries?

UNDER SECRETARY TARNOFF: I don't believe the overall relationship is affected. This is a narrow agreement on migration matters that is a direct result of the September 9, 1994 accord between us, and it's a natural extension from that, and limited to migration matters.

Q To follow up, has there ever been a case where the United States has forcibly returned refugees to a communist country?

UNDER SECRETARY TARNOFF: Well, let me talk to the Attorney General or the -- but we do have policies in other countries with respect to returning nationals to those countries.

Q Has the U.S. ever returned forcibly any refugee to a communist country?

ATTORNEY GENERAL RENO: We are trying to make sure that our policy with respect to returns are consistent. As you have seen, there have been situations with respect to Chinese boats

that have come within or near our shores, and we're trying to make sure that everybody understands that we need to address the problem through legal migration standards.

Q Was there any agreement on the part of the Cubans to crack down on boat people?

ATTORNEY GENERAL RENO: There was no agreement, other than the September agreement.

Q A question for General Reno. How long have the Guantanamo Bay Cubans -- how long has the process of admitting them been going on? Do I understand that 500 a week --

ATTORNEY GENERAL RENO: As you will recall, the President, early on in October, noted that there were humanitarian cases of the elderly, of people who were ill, and we started addressing those acute humanitarian concerns. We all were concerned with the status of the children at Guantanamo, and in December the President made clear that we were going to try to review each case and bring in the children and their immediate families.

Q But have you gone past those humanitarian concerns already?

ATTORNEY GENERAL RENO: No. We are still bringing the children out in an orderly way, trying to do it -- and as a person reaches 70 or as a medical problem develops, we've tried to address those humanitarian concerns and will continue to do so. But when we reach the end of that group, then we will admit all others who are not excludable because of criminal records or other factors and bring them in, again in an orderly way, on a case-by-case basis.

Q And how many would you think that will be?

ATTORNEY GENERAL RENO: We're going to start reviewing the whole process and be geared up to do it in as orderly a way as possible.

Q How many Haitians are still in Guantanamo?

Q How many will be coming into the U.S.? How many will go back to Cuba? Do you have any figures?

ATTORNEY GENERAL RENO: I wouldn't speculate on that. We'll just see as the process works out. But again, I would stress that it is not an increase that will not produce a net increase in legal migration from Cuba.

Q Will Cuba continue to curb the exodus of migrants as they promised last September, or is that null and void now?

ATTORNEY GENERAL RENO: Cuba made that commitment last September, has honored that commitment, and every indication is that it will continue to honor that commitment.

Q What do you mean --

Q Does that mean that you will slow the influx of Cubans from Cuba, the legal migration to reward these people who fled their country and were taken to Guantanamo.

ATTORNEY GENERAL RENO: What we've tried to do is address the issue of those who seek immigrant visas, those who have applied for refugee status, and even then, through the legal migration process there are others. We have then developed the special program for Cuba that establishes the lottery, and these would be part of the lottery, in effect.

Q General Reno, where are these people going to end up, and who is going to pay for their relocation and for the rest of -- until they get settled?

ATTORNEY GENERAL RENO: We have worked with people in the community to develop sponsorships. The community relations service works with various groups to ensure proper sponsorship, works with families, and where they end up will depend on where families are located across this country.

Q Do you expect them mostly, however, in Florida -- Miami area?

ATTORNEY GENERAL RENO: I think Florida will certainly be a place that many of them seek to reside, and the community has pulled together in an extraordinary way in trying to develop sponsorships. They have worked closely with the community relations service in arranging for sponsorships for those people that are currently being brought in for humanitarian concerns.

Q Will any federal resettlement funds be made available for these people?

ATTORNEY GENERAL RENO: There are provisions now for Cuban Haitian resettlement, and we will work with the states as we try to work with all states to address the issue.

Q Could you talk for a second? We understand you're under increased death threats -- numerous ones. Are you doing anything about it? Is it true? Can you talk at all about them?

ATTORNEY GENERAL RENO: I don't know. I'll let you talk to the FBI. I don't pay any attention to it.

Q Secretary Tarnoff, if Cuba is a safe and democratic enough place to forcibly repatriate --

Q General, what have you done to bring Governor Chiles and Senator Graham on board? They're obviously concerned about the effect on Florida of this influx. What steps have you taken to appease them?

ATTORNEY GENERAL RENO: We have worked with everybody concerned by our efforts beginning last summer to regularize migration from Cuba. What we have tried to avoid is a massive flow into South Florida in ways that could adversely affect the community, just in terms of a vast number of people coming in, in a short period of time. We have worked with the Governor, with the Senator in trying to address these problems and trying to make sure that what we do regularizes migration so that people can understand where they stand, that we do so in accordance with humanitarian interests and that we maintain an adherence to international migration policy, and I think we've been able to do it, and I appreciate both the Governor's and the Senator's great assistance in this effort.

Q General Reno, what happened with the Haitians that are in Guantanamo now? Do you foresee any similar policy in the future for them?

ATTORNEY GENERAL RENO: What we're doing right now with respect to the unaccompanied minors in Haiti, we worked with United States -- United Nations High Commission for Refugees. We asked them to become involved so that we could relocate the children based on what was in the best interest of the child. We are attempting to place them with their families in Haiti. Where families are not located, we're trying to see what is in the best interest. And so that we made sure we did everything consistent with international migration policy, we have been working with the U.N. High Commission on Refugee Status.

Q How many Haitians are there in --

ATTORNEY GENERAL RENO: I don't know the last number. A little over 400 the General tells me.

Q General, Representative Tauzin from Louisiana says he has -- he thinks he has voluntary with the fertilizer industries to neutralize their product so it can't be used to make bombs. Does that sound like a good idea to you, or do you think we still may need the legislation, perhaps like Europe, so fertilizer cannot be used for bomb-making?

ATTORNEY GENERAL RENO: I think what we need to do is what we have all ready initiated -- a thoughtful, good, bipartisan discussion on what needs to be done. The ATF will look at the situation -- I certainly think they would consider such legislation -- see what can be done to minimize the use of these otherwise legal products in terms of bomb manufacture.

Q Attorney General Reno, you're talking about regularizing migration, why not regularize something else?

Q What happened to your recommendation on easing -- lifting the -- sanctions, for instance?

UNDER SECRETARY TARNOFF: Well, our policy has been consistent in support of the Cuban Democracy Act which involves strict monitoring of the embargo and pursuit of what is called Track 2, and that is programs of direct benefit to the Cuban people. And we are continually seeking to implement that, to find new ways to strengthen both parts of that.

But this migration agreement has nothing to do with that. It's a separate -- and I might add that the reason we have to conclude these migration agreements with Cuba is because Cuba is not a free society, it's not a democratic society, it has not offered hope to its people, and only when Cuba is well on the road to democracy could our relationship improve significantly and will this migration problem disappear.

Q There's an older law which is to grant Cubans asylum. So that is essentially being superseded by what the Attorney General did, by intercepting them and forcibly repatriating them.

ATTORNEY GENERAL RENO: We will continue, and I have stressed in my remarks, that we will continue to provide the opportunity for refugee status which is asylum in-country, and for those who think that there are extreme circumstances that warrant asylum processing or refugee processing otherwise, we are going to continue to adhere to international migration policy with respect to refugees and asylum.

Q Secretary Tarnoff, this shows, obviously, that you can cut a worthwhile deal with Castro. Why not use this as a basis for broader negotiations on appropriation of property, the embargo and the transition to democracy?

UNDER SECRETARY TARNOFF: Again, let me go back to my statement and to say that this agreement builds on what we concluded with the Cubans last summer. It was in the interest of the United States to regularize migration in Cuba, from Cuba, and this is a further step which goes in that direction.

Our policy mark with respect to all other aspects of Cuban policy and U.S. attitudes toward Cuba remains the same. And there is nothing in this agreement which affects in any way, shape or form our overall approach to Cuba, which is the one I described beforehand.

Q Secretary Tarnoff, you just said that Cuba is not a democratic society. What guarantees have you received from that government that U.S. officers there, consular officers there will be able to monitor the Cubans that are repatriated or caught at sea and repatriated to their country?

UNDER SECRETARY TARNOFF: We had understandings last summer in connection with the September 9th agreement that Cuba would do nothing to impede the attempts by Cuban nationals to go to the interest section and to apply for admission to the United States. There have also bee 1,600 Cubans who have returned from Guantanamo voluntarily, over 200 of whom have also applied for regular admission status at the interest section. So it was based on our experience with the Cubans, our ability to have people on the ground, more people, if necessary, to monitor the situation that the Attorney General concluded that it was possible for us to have this kind of an agreement with a high degree of assurance that the Cubans would continue to honor it.

Q Mr. Tarnoff, how can you justify in moral terms the repatriation, the forced repatriation of people to a society that by the administration's own reckoning does not value basic human rights.

UNDER SECRETARY TARNOFF: The rationale that we are using is for the purposes of legal migration to the United States. We believe we have not only a commitment by the government of Cuba, but experience with that government over the last nine months that they will not interfere with the ability of these people to either return to their homes, resume their lives, or come to the interest section and begin the process of legal migration to the United States. This has nothing to do with the broader reaches of Cuban society where the attitudes of the United States is well-known.

MR. MCCURRY: Thank you. I want to thank everyone for the briefing. I've got copies here of the joint statement that has been simultaneously issued in Havana and will be issued here.

THE PRESS: Thank you.

END

12:48 P.M. EDT

EXHIBIT 42

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STATE OF TEXAS, *et al.*,	§	
	§	
	§	
Plaintiffs,	§	
	§	
	§	Civil Action No. 6:24-CV-00306
v.	§	
	§	Judge J. Campbell Barker
UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,	§	
	§	
	§	
Defendants	§	

DECLARATION OF DEBRA ROGERS

I, DEBRA ROGERS, hereby declare pursuant to 28 U.S.C. § 1746:

1. My name is Debra Rogers and I am currently a leadership coach drawing upon experiences gained during my 38-year career in public service.
2. I began my service with the Immigration and Naturalization Service (INS) in 1986 and remained with the agency through the creation of the Department of Homeland Security (DHS) in 2002. From 2008 to 2023, I was a Senior Executive at DHS, primarily with the U.S. Citizenship and Immigration Services (USCIS). During that time, I served in many different capacities, including as Deputy Associate Director for Domestic Operations, Associate Director for Field Operations, Deputy Citizenship and Immigration Services (CIS) Ombudsman, Deputy Associate Director for Customer Service and Public Engagement, and for the last two years of my government service, I served as a Senior Counselor to the USCIS Director and was detailed to the DHS Office of the Secretary as the Director of the Immigrant Military Members and Veterans Initiative (IMMVI).

3. I first became aware of hardships experienced by military service members married to noncitizens without lawful immigration status in the early 2000s, when I was serving as an INS manager and later as the USCIS District Director in San Diego, California. At the time, U.S. service members—of which there are many in the San Diego region— occasionally came into our office expressing concerns about the possibility that their undocumented family members would be subjected to immigration enforcement, particularly while the service members were away on periods of deployment. In some cases, their family members were eligible to become lawful permanent residents (green card holders) by adjusting their status from within the United States, but in other cases family members were unable to adjust status because they had not been inspected and admitted or paroled, as required by immigration law. For some but not all of these individuals, leaving the country to consular process—often while seeking an inadmissibility waiver abroad—was an option, but it came with uncertainties and the risk of potentially lengthy delays. I know from my own casework that such families often expressed great concern to me about the prospect of being separated for an unknown length of time, but they also worried about the prospect of remaining in the country, subject to the possibility of immigration enforcement. These concerns about the welfare of their family impacted the U.S. service member's military readiness.

4. At the time, USCIS had approximately 26 district offices and 84 field offices. As I knew from my own observations, beginning in 2006 when I held supervisory roles at USCIS Headquarters overseeing national operations, the absence of a policy on the matter resulted in different offices handling these cases differently. Some offices assisted by expediting advance parole requests and coordinating with the State Department, while other offices

granted parole in place to family members of military personnel. For instance, I recall that the San Antonio Field Office, which covered a geographic area containing several military bases that were home to these families, granted parole in place in some circumstances. Other offices did not know or understand that parole in place was an option. Our office in San Diego consulted with our local counsel to identify possible options that included coordinating closely with our State Department counterparts, typically in Mexico, to expedite visa processing outside the United States and re-entry at the U.S. Port of Entry. This ad hoc, office-by-office approach to the issue continued for a number of years, with different offices around the country handling seemingly like cases in materially different ways.

5. During that period, thousands of adjudicators nationwide had general guidance and training regarding how to consider requests for humanitarian or significant public benefit parole under the statute, 8 U.S.C. 1182(d)(5)(A), but lacked specific guidance regarding whether or how they could exercise the statutory parole authority to help military personnel or their family members avoid periods of family separation, including where that could promote military readiness.

6. The lack of specific guidance or a formal policy about these cases resulted in inconsistent adjudications across the agency, which was challenging from a management perspective and meant that military service members and their families requesting assistance from the agency could not reasonably predict how a request for parole would be handled or understand where and how to make such a request.

7. The lack of such guidance or policy also meant that most of these cases were raised by attorneys with particular expertise in handling immigration matters pertaining to military

personnel and their family members. The broader public, including military personnel and their family members who lacked counsel, were less likely to request discretionary relief such as parole in place.

8. In 2009, when I was serving as the Associate Director for Field Operations, I began working with others on a DHS/USCIS policy recommendation designed to improve USCIS' use of its discretionary authorities to help military service members and their close family members who lacked lawful immigration status.

9. In 2010, Secretary of Homeland Security Janet Napolitano confirmed in a letter to Members of Congress that DHS was utilizing parole, on a case-by-case basis, to assist military personnel and their family members, including to shorten periods of family separation and to facilitate adjustment to lawful permanent residence from within the United States, where possible and appropriate. Letter from Janet Napolitano, Secretary, DHS, to Hon. Zoe Lofgren, August 30, 2010, attached as **Exhibit A**.

10. Also in 2010, and as part of the agency's regular communications with its workforce, information was conveyed through USCIS leadership channels to officers in the field to remind them about the availability of parole in place as a potential option for noncitizen family members of U.S. military service members.

11. In October 2010, I left USCIS to take the position of Deputy CIS Ombudsman and served for a period of time in 2012 as Acting CIS Ombudsman. By statute, the role of the CIS Ombudsman is to assist stakeholders in resolving problems with USCIS, identify areas in which stakeholders have such problems, and, to the extent possible, propose changes in the administrative practices of USCIS to mitigate those problem areas. *See* 6 U.S.C. § 272(b). Among other things, the statute also requires the CIS Ombudsman to regularly report to

Congress the Ombudsman's findings, recommendations, and the actions taken (and not taken) regarding recommendations and identified problems. *Ibid.* § 272(c).

12. In my roles in the Office of the CIS Ombudsman, I continued to receive concerns from both within USCIS and from outside stakeholders about the lack of clear and consistent guidance provided to USCIS field offices on how to exercise their discretionary authorities, including parole in place, with respect to family members of U.S. service members, as well as similar concerns about the lack of guidance for the public about how to make such requests.

13. The Office of the CIS Ombudsman raised those concerns repeatedly within the Department to USCIS and in several reports to Congress. *See, e.g.*, Citizenship and Immigration Services Ombudsman, Annual Report 2011, June 29, 2011 ("2011 CIS Ombudsman Report to Congress"), available at https://www.dhs.gov/sites/default/files/publications/cisomb-annual-report-2011.pdf; Citizenship and Immigration Services Ombudsman, Annual Report 2012, June 25, 2012 ("2012 CIS Ombudsman Report to Congress"), *available at* https://www.dhs.gov/sites/default/files/publications/cisomb-2012-annualreport.pdf.

14. In the 2011 Annual Report to Congress, the CIS Ombudsman wrote with respect to "Discretionary Relief for Military Families," that "Members of Congress and U.S. military leaders have consistently emphasized to the Department of Homeland Security that military immigration issues (e.g. military naturalization; regularization of military dependent immigration status; preserving military family unity) are aspects of military readiness that USCIS must address." 2011 CIS Ombudsman Report to Congress, 20. The report further noted that although USCIS had "committed to issuing policies on the use of discretionary relief for military family members," it had "not indicated when it will publish these

policies." *Ibid*. The report continued, "Stakeholders report a great deal of confusion regarding the exact nature of the relief available to military family members and how to request it. Meanwhile, overseas deployments of military members continue, as do their concerns regarding the immigration status of dependent spouses, children, and parents who remain in the United States during such deployments." *Ibid*.

15. On May 22, 2012, I authored a letter on the topic as Acting CIS Ombudsman to then-USCIS Director, Alejandro Mayorkas. In that letter, I explained that despite the assurances provided by Secretary Napolitano to Congress in August 2010 regarding the consideration of available discretionary options for family members of service members, "[t]he lack of guidance has led to troubling inconsistency across the country." Letter from Debra Rogers, Acting CIS Ombudsman, to Alejandro Mayorkas, Director, USCIS, May 22, 2012, attached as **Exhibit B**. I provided the following examples:

    a. "Some USCIS field offices consider parole requests on a case-by-case basis for any immediate family member of a U.S. Serviceman or woman; others consider requests from spouses only; and the remainder does not consider requests at all.

    b. "Some USCIS field offices will consider parole requests for immediate family members of U.S. Servicemen or women and also accept and adjudicate related adjustment of status applications; and other offices will only consider parole requests, but will not accept or consider adjustment of status applications, claiming they lack guidance from USCIS Headquarters to proceed.

    c. "Some USCIS field offices require an I-131 application with fee before they will consider a parole request; and other offices require only a letter from the family requesting parole.

d. "In addition, there is no instruction to the public or those who assist military families on how to request a review of their circumstances to determine which discretionary benefits are available to them."

16. I explained in that letter that "[p]ermitting widespread inconsistency across USCIS field offices is untenable," and relayed the experience of the spouse of a deployed U.S. Serviceman who recently had spent two nights in U.S. Immigration and Customs Enforcement custody after having been arrested by local police on a minor traffic violation while driving to buy candles for the couple's young daughter's birthday party. In that case, a request for parole had been filed and left pending with a local USCIS office for months.

17. In the 2012 Annual Report to Congress, when I was still serving as Acting CIS Ombudsman, I reiterated the Office of CIS Ombudsman's ongoing concern with the lack of guidance provided by USCIS to its field offices on how to administer discretionary relief, including parole in place, for family members of U.S. service members. 2012 CIS Ombudsman Report to Congress, 23.

18. On November 15, 2013, the Office of the Director issued USCIS Policy Memorandum PM-602-0091, addressing the use of parole for certain family members of active-duty members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and former members of the U.S. Armed Forces and Selected Reserve. The Policy Memorandum amended relevant portions of the Adjudicator's Field Manual. *See* USCIS Policy Memorandum PM-602-0091, Parole of Spouses, Children and Parents of Active Duty Members of the U.S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i) (Nov. 15, 2013).

19. The policy acknowledged that both current and former service members "face stress and anxiety because of the immigration status of their family members in the United States." To address these and other concerns, a new section was added to the Adjudicator's Field Manual, which is relied upon by line and supervisory adjudicators in individual cases, stating that "[t]he fact that the individual is a spouse, child or parent" of a current or former service member "ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an individual."

20. During my career I acted in various capacities as a supervisory adjudications officer. That was the case when I was the District Director in San Diego and before that when I served as a Supervisory Immigration Officer. In those roles, I understood how adjudicators routinely applied broad policy guidance to the specific facts presented in individual adjudications to make case-by-case determinations. That was no different with parole in place adjudications under the 2013 military families parole policy or under the version of that policy that superseded the original in 2016. Adjudicators would continue to look at each case individually, weighing the positive factors identified generally by the policy with any negative factors that could weigh against a grant.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct.

Executed at Ashburn, VA on October 19, 2024

Debra Rogers

EXHIBIT A

Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 30, 2010

The Honorable Zoe Lofgren
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lofgren:

Thank you for your July 9, 2010 letter regarding the immigration needs of soldiers and their families. The Department of Homeland Security (DHS), including U.S. Citizenship and Immigration Services (USCIS), is committed to assisting military families. In partnership with the Department of Defense, USCIS launched the Naturalization at Basic Training Initiative in August 2009, a program that gives non-citizen enlistees an opportunity to naturalize immediately before graduation from basic training. Since January 2009, USCIS has naturalized over 500 military personnel through this initiative.

In addition, a new DHS policy under this Administration promotes the use of several discretionary authorities to help military dependents secure permanent immigration status in the United States as soon as possible. On a case-by-case basis, DHS utilizes parole and deferred action to minimize periods of family separation, and to facilitate adjustment of status within the United States by immigrants who are the spouses, parents and children of military members. Where military dependents have already departed the United States to seek an immigrant visa through consulate processing, DHS in collaboration with the Department of State, is expediting the adjudication of all necessary waivers, including the Form I-601, Waiver of Inadmissibility.

Finally, DHS as a matter of policy does not initiate removal proceedings involving military dependents absent the existence of serious, negative factors indicating that the individuals pose a threat to public safety or national security. On a case by case basis, we also consider requests for joint motions to reopen past proceedings where relief for a military dependent appears to be available.

Thank you for your concern. I hope to continue to foster a close working relationship with you on this and other important issues. An identical letter will be sent to the representatives who co-signed your letter. If you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,

Janet Napolitano

www.dhs.gov

EXHIBIT B

U.S. Department of Homeland Security
Washington, DC 20528-1225

Homeland Security

May 22, 2012

Alejandro Mayorkas, Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Dear Director Mayorkas:

I would like to bring to your attention issues that are adversely affecting U.S. Servicemen and women and their families, and urge you to provide USCIS field directors with guidance on how to effectively implement programs to support the U.S. Military.

As you know, on July 9, 2010 eighteen Members of Congress sent a letter to DHS Secretary Napolitano urging her to address, within her authority, the immigration needs of U.S. Servicemen and women.[1] The letter stressed that keeping families together is a military readiness issue, quoting Retired Lieutenant General Ricardo Sanchez, former commander of ground forces in Iraq: "We should not continue to allow our citizenship and immigration bureaucracy to put our war-fighting readiness at risk."[2] In addition, the letter encouraged DHS to join in motions to reopen where legal relief may be available, consider deferred action where no permanent relief is available but strong equities exist, and consider favorably exercising parole authority for close family members that entered without inspection.

In response to this letter, Secretary Napolitano outlined a number of options available to members of the military and their families, including the Naturalization at Basic Training Program and the use of discretionary authorities to help military dependents secure permanent immigration status.[3] The letter states that, on a case-by-case basis, DHS will consider parole and deferred action to minimize periods of family separation and to facilitate adjustment of status for spouses, parents and children of military members. Most of the options outlined in Secretary Napolitano's letter are within the purview of USCIS.

Your agency is commended for fully implementing the Naturalization at Basic Training initiative in partnership with the Department of Defense (DOD). The four largest branches of the U.S. Military now provide U.S. Servicemen and women the opportunity to apply for naturalization and, if found eligible by USCIS, become citizens upon graduation from basic training. This initiative required a great deal of coordination with the DOD and an abiding commitment from USCIS Headquarters and Field leadership; it offers a lasting benefit to all who participate.

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[1] Letter from Congress of the United States House of Representatives, July 9, 2010.
[2] *Id.*
[3] Letter from Secretary Janet Napolitano, U.S. Department of Homeland Security, August 30, 2010.

www.dhs.gov/cisombudsman

Unfortunately, USCIS has not provided its field offices with consistent guidance on how to administer available discretionary options for family members of U.S. Servicemen and women. The lack of guidance has led to troubling inconsistency across the country. For example:

- Some USCIS field offices consider parole requests on a case-by-case basis for any immediate family member of a U.S. Serviceman or woman; others consider requests from spouses only; and the remainder does not consider requests at all.

- Some USCIS field offices will consider parole requests for immediate family members of U.S. Servicemen or women and also accept and adjudicate related adjustment of status applications; and other offices will only consider parole requests, but will not accept or consider adjustment of status applications, claiming they lack guidance from USCIS Headquarters to proceed.

- Some USCIS field offices require an I-131 application with fee before they will consider a parole request; and other offices require only a letter from the family requesting parole.

In addition, there is no instruction to the public or those who assist military families on how to request a review of their circumstances to determine which discretionary benefits are available to them.

Our office has expressed concern about these issues for over a year, emphasizing the customer impact and the need for resolution. Permitting widespread inconsistency across USCIS field offices is untenable. Just recently, the spouse of a deployed U.S. Serviceman was apprehended by local police for a minor traffic violation on her way to pick up candles for their young daughter's birthday party. She was turned over to Immigration and Customs Enforcement and spent two nights at an immigration detention center before being released. Meanwhile, her request for parole had been pending for months at a local USCIS office. Imagine the impact on their child.

Our office is asking you to empower your field directors to fully and fairly exercise the authority entrusted to them, and to work in collaboration with the DOD to address the urgent needs of U.S. Servicemen and women. Our troops need to know that their government, specifically USCIS, will do everything in its power to care for their families while they are protecting our country and when they return home. USCIS has the honor of demonstrating a true commitment to our Servicemen and women and we urge you to do so.

Sincerely,

Debra Rogers

Debra Rogers
Acting CIS Ombudsman

EXHIBIT 43

to Plaintiffs' Motion for a Preliminary Injunction
and a Stay Under 5 U.S.C. § 705

U.S. Department of Justice
Immigration and Naturalization Service

HQCOU 90/15-P; HQCOU 120/17-P

Office of the General Counsel

425 I Street NW
Washington, DC 20536

JUN 15 2001

MEMORANDUM FOR JEFFREY L. WEISS, DIRECTOR
OFFICE OF INTERNATIONAL AFFAIRS

FROM: Bo Cooper
General Counsel

SUBJECT: Legal Opinion: Parole of Individuals From the Former Soviet Union Who Are Denied Refugee Status

I. Question Presented:

1. May the Attorney General continue to parole individuals into the United States from the Former Soviet Union after they are denied refugee status?

II. Summary Conclusion:

1. Yes. Section 212(d)(5)(A) of the Immigration and Nationality Act, as amended, authorizes the Attorney General to parole individuals into the United States from the Former Soviet Union after they are denied refugee status.

III. Analysis:

A. Introduction

This memorandum explores the legal basis upon which, and the extent to which, the Immigration and Naturalization Service (INS) may continue to parole into the United States individuals who are denied refugee status after applying through the in-country refugee program in Moscow. Since 1988, the INS has exercised its discretionary authority to parole into the United States aliens from the Former Soviet Union who were denied refugee status. In 1996, the 104th Congress amended the standards which guide the Attorney General's exercise of the parole power. As amended in 1996, section 212(d)(5)(A) of the Immigration and Nationality Act (INA, or the Act) does not curtail the Attorney General's legal authority to parole into the United States individuals from the Former Soviet Union who are denied refugee status.

B. Refugee Processing and Parole in the Context of the Former Soviet Union

Before 1988, Soviet refugee applicants were processed in Rome. The shift to in-country processing in Moscow began in August 1988 with approximately 2000 Armenians who were divested of their Soviet citizenship, but unable to leave the Soviet Union for lack of State Department funding for their transportation and temporary support in Rome. At the inception of in-country refugee processing in Moscow, INS adjudicators apparently construed refugee eligibility more broadly than permitted by the statute and, as a result, approval rates were high. Attorney General Edwin Meese instructed INS to bring the Moscow program "into sync" with existing statutes and INS procedures, but nonetheless offered to parole into the United States those individuals who did not qualify as refugees.[1]

The Lautenberg Amendment (1990): When INS aligned its overseas refugee processing with the standards set out in the Act, refugee approval rates in the Moscow program declined appreciably. Congress responded by adopting a provision, commonly known as the Lautenberg Amendment, designed to restore the traditionally high approval rates for certain categories of refugee applicants by reducing the evidentiary burden for establishing eligibility for refugee status.[2] While not expressly endorsing parole of those denied refugee status, section 599E of the Lautenberg Amendment does permit nationals of the Soviet Union, Vietnam, Laos, or Cambodia to adjust their status if they had been paroled into the United States after being denied refugee status.

To date, INS in Moscow continues both to process qualified refugee applicants under the reduced evidentiary standards set out in the Lautenberg Amendment and also to parole into the United States a high percentage of Lautenberg category members who are denied refugee status.

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[1] Letter from Edwin Meese, Attorney General, to then Lt. General Colin Powell, Assistant to the President for National Security Affairs (Aug. 4, 1988) (on file with the INS, Office of the General Counsel).

[2] Sections 599D and E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. No. 101-167, 103 Stat. 1195 (1989). An introductory note to the July 13, 1989, Senate Voting Record on the Lautenberg Amendment explains:

> Proponents stated that this amendment is necessary to correct the actions of Attorney General Meese, who, in 1988, changed the criteria under which Soviet Jews and Vietnamese . . . could qualify as refugees. In the past, these two groups of people have been assumed to have a well-founded fear of persecution and, therefore, have automatically qualified as refugees. As a result of the Attorney General's actions in March 1988, the denial rate for Soviet Jews rose from seven percent to a high of 38 percent. . . . Many of the refugees from the Soviet Union and Vietnam, who have been turned down, are displaced and uprooted. They have given up their country, homes, and families because they thought they could rely on the U.S. government's long-standing promise of resettlement.

Senate Voting Record No. 134, Bill No. S.1160 (H.R. 1487), Amendment No. 367. Temp. Cong. Rec. S-8394 (July 20, 1989).

Parole decisions are made on a case-by-case basis in accordance with section 212(d)(5)(A) of the Act.

C. Evolution of INA Section 212(d)(5)

The Attorney General's parole authority has changed little since 1952, when it was codified into section 212(d)(5) of the INA. Though subsequent Congresses often debated the proper scope of the Attorney General's parole power,[3] section 212(d)(5) has been amended only three times in the past fifty years. As originally enacted, section 212(d)(5) of the Act provided:

> (5) The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5) (1952); Act of June 27, 1952, 66 Stat. 163.

The Refugee Act of 1980: As part of the comprehensive restructuring of refugee admission procedures achieved in the Refugee Act of 1980,[4] the 96th Congress split section 212(d)(5) into subparagraphs (A) and (B), adding the underlined text as follows:

> (A) The Attorney General may, except as provided in subparagraph (B), in his discretion parole into the United States. . . .
>
> (B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

1980 Refugee Act § 202(f). This language was designed to funnel all refugee admissions under the numerical cap to be established annually by the President after consultations with Congress,

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[3] See, e.g., Arthur Helton, *Immigration Parole Power: Toward Flexible Responses to Migration Emergencies*, 71 INTERPRETER RELEASES 1637 (Dec. 12, 1994); Deborah E. Anker & Michael H. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980*, 19 SAN DIEGO L. REV. 9 (1981); Elizabeth J. Harper, IMMIGRATION LAWS OF THE UNITED STATES 503-14 (3d ed. 1975).

[4] Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 108, *codified as* 8 U.S.C. §§ 1157-1159 (1980) (hereinafter 1980 Refugee Act).

and thus to discourage the admission of additional refugees under the Attorney General's parole power.[5]

The Immigration Act of 1990: In 1990, the 101st Congress added a minor limitation to section 212(d)(5)(A): "The [AG] may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole. . ." (emphasis added).[6] This amendment curtails the Attorney General's power to parole an alien crewmember who is present in the United States during a labor dispute that leads to a strike or lockout. See also INA § 214(f)(2)(A). Until this point, no Congress had modified the substantive criteria that guide the Attorney General's exercise of the parole authority.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA): In 1996, as part of its overhaul of the INA, the 104th Congress narrowed the Attorney General's parole authority by striking "for emergent reasons or for reasons deemed strictly in the public interest" and inserting "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." IIRIRA § 602(a).[7]

D. Construing INA Section 212(d)(5)(A), as Amended by IIRIRA Section 602

The question presented is whether, under the amended statutory criteria, INS may continue to parole into the United States persons denied refugee status.

Plain Meaning: The preferred method of statutory construction is to carry out the plain meaning of the text of a statute. Perry v. Commerce Loan Co., 383 U.S. 392, 400, reh'g denied, 384 U.S. 934 (1966), *cited in* Matter of H-N-, Int. Dec. 3414 (BIA 1999). The 104th Congress replaced "emergent" reasons with "urgent humanitarian" reasons, and "strictly in the public interest" with "significant public benefit." IIRIRA § 602(a). The differences between these phrases are perceptible, but the text alone is insufficient to determine whether Congress intended, by this amendment, to end the practice of paroling those denied refugee status from the Former Soviet Union.

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[5] For analysis of this amendment to section 212(d)(5) of the Act and of the 1980 Refugee Act in general, see Anker & Posner, *supra* note 3.

[6] Reference to section 214(f) added by section 202(b) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. 101-649, 104 Stat. 4978.

[7] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996). At the same time, Congress also inserted a provision requiring the Attorney General to submit an annual report describing the number and category of aliens paroled into the United States, including information such as the country of origin, duration of parole, current status of such parolees. IIRIRA § 602(b).

Section 602 of IIRIRA, which amends INA section 212(d)(5), is entitled "Limitation on Use of Parole."[8] Titles have a communicative function. They may be considered to clarify uncertainty in the text but cannot limit the text's plain meaning. 2A Sutherland, *Statutes and Statutory Construction* (6th ed., Norman Singer ed.) § 47.03. The title "Limitation on Use of Parole" confirms what the text suggests, but does not resolve by *how much* Congress intended to curtail the Attorney General's parole authority.

Legislative History: The legislative history of IIRIRA section 602 is similarly vague. Describing the import of proposed language that would ultimately be adopted in the final version of IIRIRA section 602, a Senate Report states only that the amendment "[t]ightens The [sic] Attorney General's parole authority. . . ." S. Rep. No. 249, 104th Cong., 2d Sess. 21 (1996). Nor does the final Conference Report for IIRIRA explain to what extent parole should be "tightened." H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 245 (1996).

While the legislative history does not clarify to what extent Congress sought to limit the parole authority, it does indicate that the 104th Congress rejected language that would have circumscribed the Attorney General's authority to parole individuals who were denied refugee status. The adopted Senate language replaced an earlier House proposal, section 524 of H.R. 2202, that enumerated four exclusive reasons for which the Attorney General could parole an individual into the United States: medical emergency; organ donation; to visit a dying relative; and to assist U.S. law enforcement efforts (or to protect an individual who so assisted). In addition, section 524 provided:

> (D) LIMITATION ON THE USE OF PAROLE AUTHORITY- The Attorney General may not use the parole authority under this paragraph to permit to come to the United States aliens who have applied for and have been found to be ineligible for refugee status or any alien to whom the provisions of this paragraph do not apply.

The 104th Congress specifically considered, but rejected, the House's proposal to limit the practice of paroling into the United States those denied refugee status. "[W]here the language under question was rejected by the legislature and thus not contained in the statute it provides an indication that the legislature did not want the issue considered." 2A Sutherland, *supra*, § 48.04.

Re-Authorization of the Lautenberg Amendment: Within the Omnibus Consolidated Appropriations Act of 1997, Congress both amended the Attorney General's parole authority (Division C) and re-authorized the Lautenberg Amendment for an additional year (Division A). *Compare* Pub. L. 104-208, Div. C, Title VI § 602(a), 110 Stat. 3009-689 (Sept. 30, 1996), *with* Pub. L. 104-208, Div. A, Title I § 101(c) [Title V, § 575(2)], 110 Stat. 3009-168 (Sept. 30, 1996). As discussed above, the Lautenberg Amendment affords adjustment of status to those who are paroled into the United States after being denied refugee status. Not only did the 104th Congress specifically reject proposed limits to the Attorney General's authority to parole denied

[8] This title is not codified into the INA.

refugee applicants, it tacitly approved of the practice by renewing an existing provision that permitted these parolees to adjust their status to that of lawful permanent residents. Subsequent Congresses have re-authorized the Lautenberg Amendment four (4) times since IIRIRA.[9]

Case-by-case basis of parole decisions: For individuals found to be ineligible to be classified as a refugees, parole decisions must comply with the case-by-case requirement of amended section 212(d)(5)(A) of the Act and may not be made on a "blanket" basis. Designating, whether by regulation or policy, a class whose members generally would be considered appropriate candidates for parole does not conflict with a "case-by-case" decision requirement, since the adjudicator must individually determine whether a person is a member of the class and whether there are any reasons not to exercise the parole authority in the particular case.

Under current practice, every refugee applicant is interviewed by an immigration officer for possible classification as a refugee. If the applicant is found not to be eligible for refugee status, the officer considers the merits of the case for an offer of parole. So long as individual consideration is given to parole decisions, the Service's determination - that it is generally in the public interest to parole denied refugee applicants from Moscow who belong to groups specified in the Lautenberg Amendment - does not violate the case-by-case requirement.

IV. Conclusion:

While section 602 of IIRIRA generally tightens the criteria by which parole decisions are made, it is the opinion of the General Counsel that section 212(d)(5)(A), as amended, does not curtail the Attorney General's legal authority to parole into the United State individuals from the Former Soviet Union who are denied refugee status.

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[9] Pub. L. 105-118, Title V, § 574(2), Nov. 26, 1997, 111 Stat. 2432; Pub. L. 105-277, Div. A, § 101(f) [Title VII, § 705(2)], Oct. 21, 1998, 112 Stat. 2681-389; Pub. L. 106-113, Div. B, § 1000(a)(4) [Title II, § 214(2)], Nov. 29, 1999, 113 Stat. 1535, 1501A-240; Pub. L. 106-554, enacting by reference Title II, § 212(2) of H.R. 5656, Dec. 21, 2000, 14 Stat. 2763A-25.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., Plaintiffs, *v.* KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al., Defendants.	Civil Action No.: 1:25-cv-10495-IT

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION AND STAY OF DHS'S *EN MASSE* TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Plaintiffs respectfully move for a preliminary injunction under Rule 65 and a stay under 5 U.S.C. § 705 of the Secretary of Homeland Security's attempt to cut short via Federal Register Notice every valid period of parole granted through the Cuban, Haitian, Nicaraguan, and Venezuelan (CHNV) parole processes—a blanket exercise of the parole authority directly affecting hundreds of thousands of people *en masse*, including eight individual Plaintiffs[1]—as of April 24, 2025. *See* Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025) (Ex. 51), Doc. No. 71-1.[2] As explained below, the Secretary's action is unprecedented, inhumane, and unlawful for multiple independent reasons, including because it: violates the statute's case-by-case requirement, 8 U.S.C. § 1182(d)(5)(A), and the regulatory (and constitutional) requirement of written notice in these circumstances, 8 C.F.R. § 212.5(e); and is premised on an erroneous interpretation of the expedited removal statute, 8 U.S.C. § 1225(b), which does not permit subjecting CHNV parolees to expedited removal even if they have been here less than two years, negating the Secretary's sole excuse for not "permitting CHNV participants' parole to remain in effect until the natural expiration of the parole, as DHS has in the past done," 90 Fed. Reg. at 13619-20 ("Any lengthening of the wind-down period will increase

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[1] *See* Alejandro Doe Decl., Doc. No. 24-1 (Plaintiff whose parole period will be cut short by approximately 461 days); Carlos Doe. Decl., Doc. No. 24-4 (same); Miguel Doe Decl., Doc. No. 64-4 (same); Lucia Doe Decl., Doc. No. 64-3 (442 days); Ana Doe Decl., Doc. No. 24-2 (305 days); Armando Doe. Decl., Doc. No. 24-3 (same); Daniel Doe Decl., Doc. No. 64-5 (283 days); Andrea Doe Decl., Doc. No. 27-1 (39 days); *see also* Gabriela Doe Decl., Doc. No. 64-6 (U.S. citizen cousin and sponsor of four of the individual Plaintiffs whose parole has been cut short); Norma Lorena Dus Decl., Doc. No. 71-2 (sponsor and sister of Plaintiff Lucia Doe); Haitian Bridge Alliance ("HBA") Decl., Doc. No. 71-3 (describing the effects of the mass termination of CHNV parole on Plaintiff Haitian Bridge Alliance).

[2] Plaintiffs challenge the Federal Register Notice as a whole, *see* Second Am. Compl., Doc. No. 68 ¶¶ 308-21, 331-41, 349-63, but only seek preliminary relief of its attempt to terminate prematurely the existing grants of parole.

the likelihood that additional CHNV parolees are no longer subject to expedited removal."). If the Secretary's action is allowed to take effect, hundreds of thousands of law-abiding and hardworking noncitizens across the country will be rendered removable and legally unemployable, and all on the same day in late April, inflicting irreparable injury on a breathtaking scale.

BACKGROUND

Plaintiffs assume the Court's familiarity with the proceedings to date and will endeavor not to repeat their prior brief and exhibits related thereto, which are incorporated by reference.[3] Suffice it to say for present purposes that, without any public announcement or acknowledgement, DHS has: (1) indefinitely suspended the CHNV parole processes (among others) no later than January 23, 2025, based solely on the Secretary's erroneous legal conclusion that they were unlawful, *see* Higgins email dated Jan. 23, 2025, Doc. No. 41-2; Huffman Mem. dated Jan. 20, 2025, Doc. No. 41-1; and (2) indefinitely suspended adjudicating CHNV (and other) parolees' requests for other immigration benefits, including those authorizing employment and/or additional periods of lawful presence, on an unknown date but sometime before trying to justify that action in mid-February, *see* Davidson Mem. dated Feb. 14, 2025, Doc. No. 41-3. On March 24, the Court heard argument on Plaintiffs' request for an emergency preliminary injunction and stay of the two indefinite suspensions to at least require DHS to restart processing of parole applications already conditionally approved and of other pending immigration benefit requests (including for re-parole) of parolees already in the United States. A further hearing on that motion is scheduled for April 7, 2025. Doc. No. 58.

[3] *See* Pls.' Mem. in Supp. of Emerg. Mot. for Prelim. Inj. & Stay, Doc. No. 25; Exhibits 1-50, Doc. Nos. 24-1 through 24-50.

DHS's formal notification that the Secretary had decided to end the CHNV parole processes and prematurely terminate all validly issued grants of parole and related employment authorization related employment authorization was officially published last week. Doc. No. 71-1 (hereinafter, "March 25 FRN" or the "Notice"); *see also* Pls.' Notice dated Mar. 21, 2025, Doc. No. 45 (submitting pre-publication version). The Notice acknowledges that DHS created the CHNV programs based on the prior Secretary's judgment that they would both "provide a significant public benefit for the United States and address the urgent humanitarian reasons underlying the high levels of migration from those countries," 90 Fed. Reg. at 13612; and that President Trump had specifically ordered they nonetheless be terminated, *id.* at 13611; but elsewhere says that the Secretary "is terminating the CHNV parole programs" "in her discretion," *id*. at 13612. The March 25 FRN does not acknowledge that DHS had already indefinitely suspended the CHNV processes and the adjudication of immigration benefits for CHNV parolees.[4]

As to DHS's prior conclusion that the CHNV processes had provided a "significant public benefit," the March 25 FRN acknowledged some (but not all) of DHS's prior reasoning, stating that it now believes that they "are not necessary to reduce levels of illegal immigration, did not sufficiently mitigate the domestic effects of illegal immigration, are not serving their intended purposes, and are inconsistent with th[is] Administration's foreign policy goals." 90 Fed. Reg. at 13612. In contrast, the March 25 FRN says DHS now disagrees about its prior conclusion that the CHNV processes were independently justified by the "urgent humanitarian reasons" prong of 8 U.S.C. § 1182(d)(5)(A), based on its current interpretation of the parole statute. *See* 90 Fed. Reg. at 13612 ("Regarding previous arguments or determinations that these programs were consistent

[4] Unlike the other parole processes at issue in this case (but not this motion), re-parole was not available through the CHNV processes. *See* 90 Fed. Reg. at 13614 n.24.

with the requirement of 'urgent humanitarian reasons' for granting parole, DHS believes that consideration of any urgent humanitarian reasons for granting parole is best addressed *on a case-by-case basis consistent with the statute*, and taking into consideration each alien's specific circumstances." (emphasis added)); *see also* Doc. No. 41-1 (setting out that interpretation).

Beyond prospectively terminating the CHNV processes, the March 25 FRN described how DHS would handle several issues as to particular populations of applicants and recipients inherently impacted by the Secretary's termination decision. The Notice states that "there have been approximately 2,970,000 Forms I-134 and I-134A filed with USCIS since October, 2022."[5] 90 Fed. Reg. at 13617 (footnote omitted); *id.* n.58. Of those, USCIS has "confirmed" eligibility in approximately 22 percent of the applications (642,410) and has determined that another 6 percent (181,820) failed to demonstrate eligibility (which the FRN calls "non-confirmed"), with the remaining 2.14 million (some 72 percent) still pending review. *Id.* at 13617 n.58 & accompanying text. The March 25 FRN states that applications pending review will be "issue[d] a notice of non-confirmation." *Id.* at 13618. For applications "confirmed," but where the beneficiary has not yet traveled to the United States, DHS will "rescind the confirmation" and "issue updated notices of non-confirmation." *Id.* at 13618.

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[5] As the Notice explains, USCIS used Form I-134 for applications to the Venezuela-only CHNV precursor (sometimes referred to as "P4V") announced in October 2022 but switched to using Form I-134A when the CHNV processes were established in January 2023. 90 Fed. Reg. at 13617 n.57; *see also* Sec. Am. Compl. ¶ 96. The March 2025 FRN fails to mention that Form I-134A was *also* used for Family Reunification Parole (FRP) processes established after CHNV or that both forms were also used for the Uniting for Ukraine (U4U) parole process established before CHNV, in April 2022; those omissions make DHS's proffered statistics regarding the CHNV processes less reliable but its intentions regarding U4U and FRP—already singled out in the February 14 Davidson memorandum—even clearer. *See* 90 Fed. Reg. at 13618 ("DHS intends to issue a notice of non-confirmation for <u>all</u> remaining pending Forms I–134A. DHS will also rescind the confirmation of <u>all</u> Form I–134A that were previously confirmed and issue updated notices of non-confirmation for any potential beneficiaries who have not yet traveled to a [port of entry] POE to seek parole." (emphases added)).

The March 25 FRN addresses three further distinct groups. First, for the undisclosed number of "confirmed" applications where the beneficiary has taken the additional step of applying for "advance travel authorization" (ATA)—the rough parole equivalent of a visa authorizing a noncitizen to come to a U.S. port of entry to seek admission, except parole does not count as an admission—the Notice states "DHS intends to cancel all pending applications for [ATA]." *Id.* at 13618.

Second, the March 25 FRN strongly suggests that, for an unknown number of "confirmed" applications in which the beneficiary had received an approved ATA (which are valid for 90 days), DHS cancelled those ATAs some weeks ago. *See id.* at 13618 (asserting that there "are no currently approved ATAs" for CHNV parolees); *id* at 13618 n.67 & accompanying text (notwithstanding that prior assertion, stating that DHS "considered the alternative of allowing any approved ATAs to remain in place until they were used or expired by their terms," but "would not pursue this route" "[e]ven if there were currently approved ATAs"); *id.* at 13618 n.66 (noting that the assertion of "no currently approved ATAs" was based on Office of Homeland Security Statistics ("OHSS") "analysis of advance travel authorization data . . . valid as of February 27, 2025," but without explaining why DHS chose that date).[6]

Third, the March 25 FRN states that "as one aspect of the termination of the CHNV parole programs," any grants of parole to the "approximately 532,000 inadmissible" [sic] CHNV parolees that "ha[ve] not already expired on April 24, 2025 will terminate on that date." *Id.* at 13618. The Notice states that "the Secretary has determined that the purposes" of those grants of parole "have

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[6] *Compare with* 90 Fed. Reg. at 13612 n.6 (providing data from OHSS analysis of the identical source for a different purpose, but using that data "valid as of January 22, 2025"); *and id.* at 13617 n.58 (noting that statistics regarding the numbers of Forms I-134/I-134A filed, confirmed, non-confirmed, and pending review are based on "OHSS analysis of . . . data as of January 22, 2025").

been served because" the CHNV programs are unnecessary for border security, have had too much of a "domestic impact," and are "inconsistent with this Administration's foreign policy goals." *Id.* at 13619 n.70.

DHS acknowledged in the March 25 FRN that, to terminate an individual's parole on the Notice's stated basis, its regulations require "written notice to the [parolee]," *id.* at 13620 (quoting 8 C.F.R. § 212.5(e)(2)(i) (emphasis omitted)), but the Notice claims DHS "has determined that publication of this notice in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance." *Id.* ("Federal Register Notice as Constructive Notice"). The Notice also states that "after termination of the parole," any associated employment authorization will be "revoke[d]" pursuant to regulation, *id.* at 13619 (citing 8 C.F.R. § 274a.14(b)), but relies on the same constructive notice to satisfy the DHS regulatory requirement to provide "written notice of intent to revoke the employment authorization" while ignoring that DHS regulations afford an individual "a period of fifteen days from the date of service of the notice within which to submit countervailing evidence." 8 C.F.R. § 274a.14(b)(2).

DHS said it considered two alternatives to cutting short the period of parole and employment authorization of CHNV parolees: "a longer than 30-day wind-down period" and simply "permitting CHNV participants' parole to remain in effect until the natural expiration of the parole, as DHS has in the past done with some parole terminations." 90 Fed. Reg. at 13619-20 (citation omitted). DHS explained that it rejected both alternatives for the same reason: its "strong interest in preserving the ability to initiate expedited removal proceedings to the maximum extent possible." *Id.* at 13620. According to the March 25 FRN, DHS concluded that it must truncate parole because "[e]xpedited removal is available only when an alien has not been continuously

present in the United States for at least . . . two years," *id.* at 13619 (citing 8 U.S.C. § 1225(b)(1)(iii)(II)), "[a]ny lengthening of the wind-down period will increase the likelihood" that CHNV parolees will "accrue more than two years of continuous presence in the United States," which "would essentially foreclose DHS's ability" to remove them via expedited removal, *id.* at 13620 (citing the same expedited removal provision).[7]

Finally, the March 25 FRN confirms that DHS intends to "remove promptly" CHNV parolees lacking authorization to remain in the United States, *id.* at 13618, advising those soon to be in that situation that they "must depart the United States before their parole termination date." *Id.* at 13618-19; *id.* at 13611 (same). As noted above, the Notice cuts short valid grants of parole of eight Plaintiffs, five of whom were sponsored by two other Plaintiffs, *see supra* n.1, and more than five hundred thousand other people who are similarly situated.

LEGAL STANDARD

Plaintiffs' request for a preliminary injunction and their request for a stay under 5 U.S.C. § 705 are both governed by the familiar four-factor *Winter* test. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011); *Mass. Fair Hous. Ctr. v. U.S. Dep't of Hous. & Urb. Dev.*, 496 F. Supp. 3d 600, 609 (D. Mass. 2020).

ARGUMENT

I. PLAINTIFFS HAVE STANDING, THEIR CLAIMS ARE JUSTICIABLE, AND DEFENDANTS' ACTION IS REVIEWABLE

This Court has jurisdiction to consider Plaintiffs' claims because Plaintiffs have standing and fall within the zone of interests of the INA; the Plaintiffs challenge final agency action that is

[7] In places, the March 25 FRN erroneously cites to INA section 235 and section 1235 of Title 8 of the U.S. Code, rather than INA § 225 and 8 U.S.C. § 1225. *See* 90 Fed. Reg. at 13619-20.

not committed to agency discretion; and 8 U.S.C. § 1252(a)(2)(B)(ii) does not preclude judicial review of Plaintiffs' claims.

Jurisdictional standing. It is beyond dispute that the March 25 FRN inflicts harm on Plaintiffs Armando Doe, Alejandro Doe, Ana Doe, Carlos Doe, Andrea Doe, Lucia Doe, Miguel Doe, and Daniel Doe; as well as the beneficiaries sponsored by Plaintiffs Sandra McAnany, Kyle Varner, Wilhen Pierre Victor, Gabriela Doe, and Norma Lorena Dus; and HBA, which has provided legal and humanitarian services for thousands of CHNV parole beneficiaries. The March 25 FRN terminates the CHNV parole processes and prematurely cuts short the grants of parole and work authorization of hundreds of thousands of CHNV parole beneficiaries. These harms, which are concrete, imminent, and directly traceable to the March 25 FRN more than adequately establish Plaintiffs' standing to challenge the FRN. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

Prudential standing. It is likewise beyond serious dispute that the CHNV sponsor Plaintiffs (Sandra McAnany, Kyle Varner, Wilhen Pierre Victor, Gabriela Doe, and Norma Lorena Dus), as well as organizational plaintiff HBA, assert interests that fall within the zone of interests protected by the INA. The zone of interests prudential analysis only forecloses a lawsuit "when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 225 (2012) (internal punctuation and citation omitted). The interests of sponsor Plaintiffs and HBA in welcoming and supporting parole beneficiaries to this country are core to the operation of the CHNV parole processes and easily

meet this test, which is "not meant to be especially demanding" in light of "Congress's evident intent when enacting the APA to make agency action presumptively reviewable." *Id.*[8]

Statutory jurisdiction. Contrary to Defendants' earlier suggestion, Doc. No. 42 at 10, the jurisdiction-stripping provision in 8 U.S.C. § 1252(a)(2)(B)(ii) has no application in this case, because Plaintiffs are challenging overarching policy, not individual decisions. *Roe v. Mayorkas*, No. 22-cv-10808-ADB, 2023 WL 3466327, at *8-9 (D. Mass. May 12, 2023) (collecting cases holding that claims "challenging changes in policy"—including policies concerning the discretionary grant of parole—are "reviewable under the APA."); *see also LaMarche v. Mayorkas*, 691 F. Supp. 3d 274, 277-78 (D. Mass. 2023); *cf. DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17-19 (2020) (holding that the Secretary's decision to end DACA was reviewable under the APA, even though deferred action is discretionary). For the same reason, Defendants' previous reliance on *Patel v. Garland*, 596 U.S. 328, 338 (2022), Doc. No. 42 at 10, is misplaced, as it concerned review of a particular discretionary decision.

Final agency action not committed to agency discretion. The March 25 FRN is subject to judicial review under the APA. As its plain language states, the March 25 FRN terminates all individual grants of CHNV parole and work authorization as of April 24, 2025. These actions plainly reflect the consummation of agency decision-making and have immediate and concrete legal consequences for Plaintiffs, making them reviewable. *See* 5 U.S.C. § 704; *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). And while individual parole decisions are discretionary, the Supreme Court has explicitly said that DHS's parole policies are subject to APA review. *Biden v. Texas*, 597

[8] Defendants claim that the sponsor Plaintiffs and HBA are "not the object of a challenged regulatory action" or the parole statute, Doc. No. 42 at 19, but courts "do not require any indication of congressional purpose to benefit the would-be-plaintiffs." *Match-E-Be-Nash-She-Wish*, 567 U.S. at 225 (internal quotation marks omitted).

U.S. 785, 806-07 (2022) (citing 8 U.S.C. § 1182(d)(5)(A)); *accord LaMarche v. Mayorkas*, 691 F. Supp. 3d at 277-78; *Roe*, 2023 WL 3466327, at *8-9.

II. PLAINTIFFS ARE LIKELY TO SUCCEED IN PROVING THAT THE MARCH 25 FRN'S *EN MASSE* TRUNCATION OF ALL VALID GRANTS OF CHNV PAROLE WAS UNLAWFUL

Plaintiffs are likely to succeed on several claims as to the March 25 FRN, all of them apparent on the face of the Notice and each of them independently justifying class-wide preliminary relief as to the Notice's treatment of remaining valid grants of CHNV parole. Specifically, the March 25 FRN is contrary to statute in three distinct ways and contrary to DHS's separate regulations regarding the termination of parole and of employment authorization, both of which require individualized "written notice" to the parolee.

To be clear: Plaintiffs' priority is obtaining class-wide relief as expeditiously as possible, and to grant that relief, the Court need only decide that Plaintiffs are likely to succeed on any one of the following bases and need not decide the others.

1. First, the March 25 FRN's explanation that DHS decided against "permitting CHNV participants' parole to remain in effect until the natural expiration of the parole" or a longer wind-down period—because doing so would "essentially foreclose" DHS's ability to deport them via expedited removal by facilitating their continued presence in the United States beyond the two-year limit for those shortcut procedures, *see* 90 Fed. Reg. at 13619-20 (discussing 8 U.S.C. § 1225(b)(1)(iii)(II))—is based on an obvious legal error. Contrary to the Notice's representations, 8 U.S.C. § 1225(b)(1)(iii)(II) does not permit subjecting the CHNV parolees to expedited removal *no matter how long they have been in the United States.* By its own terms, that provision only authorizes using expedited removal as to a noncitizen "who has not been admitted *or paroled* into

the United States." 8 U.S.C. § 1225(b)(1)(iii)(II) (emphasis added). By definition, the CHNV parolees "ha[ve] been . . . paroled into the United States."[9] *Id.*

"It is well established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Bollat Vasquez v. Mayorkas*, 520 F. Supp. 3d 94, 108 (D. Mass. 2021) (citation omitted). Given that the Secretary's decision to cut short all existing grants of parole via the CHNV processes was based on an erroneous understanding of the expedited removal statute—and nothing else, 90 Fed. Reg. at 13619-20 —Plaintiffs are likely to succeed in proving that decision unlawful.

2. The Secretary's decision to truncate all existing grants of CHNV parole as of April 24 was also contrary to the statutory requirement that the parole authority be exercised "only on a case-by-case basis." 8 U.S.C. § 1182(d)(5)(A); *accord Biden v. Texas*, 597 U.S. at 806-07. The Notice recites the statutory "case-by-case" requirement in its Background section, 90 Fed. Reg. at 13611-12, but does not apply or acknowledge it when later stating that Secretary Noem has concluded *en masse* that "the purposes" of every single grant of parole via all four CHNV processes now "have been served." *Id*. at 13619 n.70. Similarly, even though the Background section admonishes that parole determinations should "tak[e] into account each alien's unique circumstances," *id*. at 13612, the Secretary did not do so; instead, she ignored all differentiating considerations, including the amount of time remaining on each person's parole period (be it a day

[9] CHNV parolees also cannot be subjected to the other basis for expedited removal, which (among other limitations) can only be applied to "an alien. . . who is arriving in the United States," 8 U.S.C. 1225(b)(1)(i), because CHNV parolees have already arrived in the United States and are now living here. *See Bollat Vasquez v. Wolf*, 460 F. Supp. 3d 99, 111 (D. Mass. 2020) ("Under the statutory language, if [noncitizen] applicants [for admission] are apprehended while crossing the border (whether or not at a check point), they are 'arriving' applicants under the statute, and if apprehended at some point thereafter, they are not 'arriving,' but rather 'alien[s] present in the United States who [have] not been admitted.'" (quoting 8 U.S.C. § 1225(a)(1)) (last two alterations in original)).

or twenty-two months), whether they have any pending applications for a different immigration benefit, or any other individualized other circumstances (be it social, economic, medical, legal, or anything else).

Defendants have previously argued that the statute "only imposes requirements on *granting* parole" and "imposes no limits . . . on *denying*" or terminating parole, Doc. No. 42 at 12 (emphases in original), but the Secretary's decision to change the expiration date of all valid grants of CHNV parole to April 24, 2025 was neither a denial nor a termination *per se*, but rather an *en masse* alteration of the conditions under which all those individuals were paroled, contrary to the statute. *See* 8 U.S.C. § 1182(d)(5)(A) ("The [Secretary] may . . . in h[er] discretion parole into the United States temporarily *under such conditions as [s]he may prescribe only on a case-by-case basis* . . . any alien applying for admission to the United States" (emphasis added)). Plaintiffs are thus likely to succeed in proving that the Secretary violated the parole statute's case-by-case requirement.

3. Plaintiffs are also likely to succeed in proving that the Secretary's broader decision to terminate the CHNV parole processes was based on an erroneous legal interpretation of the parole statute—specifically, the interpretation in Acting Secretary Huffman's January 20 memorandum, Doc. No. 41-1, the legal errors of which are discussed at length in Plaintiffs' prior motion for preliminary injunction, Doc. No. 25 at 14-19, In sum, the March 25 FRN acknowledged that DHS had previously concluded that the CHNV processes were independently supported by both grounds on which parole is statutorily authorized (for "urgent humanitarian reasons or significant public benefit"). *See* 90 Fed. Reg. at 13612. In explaining why the Secretary no longer believed the CHNV processes to be justified by the statutory criteria, however, the Notice said that DHS's change of heart regarding the "urgent humanitarian reasons" for CHNV parole rested on its novel interpretation of the parole statute, which tracks the reasoning of (but does not cite) the January 20

Huffman memorandum. *See id.* ("Regarding previous arguments or determinations that these programs were consistent with the requirement of 'urgent humanitarian reasons' for granting parole, DHS believes that consideration of any urgent humanitarian reasons for granting parole is best addressed *on a case-by-case basis consistent with the statute*, and taking into consideration each alien's specific circumstances." (emphasis added)).

As Plaintiffs have previously explained, the Huffman memorandum's interpretation of the parole statute is erroneous. *See* Pls.' Mem. in Supp. of [First] Prelim. Inj., Doc. No. 25 at 14-19. The March 25 FRN's application of that erroneous interpretation to conclude that the CHNV parole processes are not supported by urgent humanitarian reasons is thus unlawful as well, and regardless of what the Notice says about the Secretary's conclusion that those processes do not provide a significant public benefit.

4. In addition to the distinct ways that the March 25 FRN is not in accordance with statutory law, it is also contrary to the regulatory authority that parole should be terminated upon "written notice," which DHS claimed to be exercising. *See* 90 Fed. Reg. at 13618 n.68 (quoting 8 C.F.R. § 212.5(e)(2)(i)); *id.* at 13620 (same). The Notice asserted that "publication of this notice in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance," *id.* at 13620, but it cited in support only one inapplicable statute and two inapposite cases. The cited statute provides in relevant part that the "filing of a document" that is "required or authorized to be published" in the Federal Register by 44 U.S.C. § 1505 "is sufficient to give notice of the contents of the document" "except in cases where notice by publication is insufficient in law." 44 U.S.C. § 1507. Even assuming that the March 25 FRN was published pursuant to a requirement or authorization in 44 U.S.C. § 1505—which is far from obvious—the parole regulation's requirement of written notice to terminate

parole means that "notice by publication is insufficient in law," and so 44 U.S.C. § 1507 is inapplicable by its own terms. The two cases the Notice cited in support, meanwhile, just say the same thing as § 1507,[10] making them equally irrelevant to DHS's contention that publication in the Federal Register is "constructive notice" that "satisfies the requirement that DHS provide written notice upon the termination of parole." 90 Fed. Reg. at 13620 (citing 8 C.F.R. § 212.5(e)(2)(i)). DHS may of course change its regulation, but it cannot ignore its rules of process while they remain on the books, as it did here.[11] *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954).

DHS also said it was exercising its regulatory authority "to revoke parole-based employment authorization" under 8 C.F.R. § 274a.14(b), and it similarly disregarded the employment authorization regulation's requirements. *See* 90 Fed. Reg. at 13619 ("DHS has determined that, after termination of the parole, the condition upon which the employment authorization was granted no longer exists and thus DHS intends to revoke parole-based employment authorization consistent with those revocation on notice procedures" (citing 8 C.F.R. § 274a.14(b)). Under the employment authorization regulation, DHS cannot revoke any parolee's employment authorization without first "serv[ing] written notice of intent to revoke the employment authorization," "cit[ing] the reasons indicating that revocation is warranted," and

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[10] *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947) ("Congress has provided that the appearance of rules and regulations in the Federal Register gives legal notice of their contents." (citing 49 Stat. 502, a precursor to 44 U.S.C. § 1507)); *Friends of Sierra R.R., Inc. v. I.C.C.*, 881 F.2d 663, 667–68 (9th Cir. 1989) ("Publication in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance." (citing 44 U.S.C. § 1507 and *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. at 384-85)).

[11] The March 25 FRN also said that DHS will provide "notice to each parolee through their USCIS online account," baldly asserting that it, too, "constitute[s] 'written notice to the alien' under 8 C.F.R. § 212.5(e)(2)(i)," 90 Fed. Reg. at 13620, but there is seemingly no requirement that the CHNV parolees check those accounts or even to maintain access to them.

affording the noncitizen "a period of fifteen days from the date of service of the notice within which to submit countervailing evidence." 8 C.F.R. § 274a.14(b)(2). *Id.* In the March 25 FRN, DHS purported to terminate *en masse* work authorizations without serving written notice of intent to revoke, citing reasons why revocation was appropriate, or affording an opportunity to submit countervailing evidence. Importantly, the work authorization regulation says the agency decision following that process "shall be final and no appeal shall lie from the decision to revoke the authorization," *id.*, further underscoring the importance of DHS adhering to its specific procedural protections before exercising its discretion to revoke individuals' means of providing for themselves. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) ("Contrary to the INS's position, we do not think it is significant that adjustment of status [the immigration benefit at issue] is a discretionary form of relief. A right to seek relief is analytically separate and distinct from a right to the relief itself. Consequently, an alien is not precluded from having a vested right in a form of relief merely because the relief itself is ultimately at the discretion of the Executive Branch.") (citing, *inter alia*, *Accardi*, 347 U.S. at 268).

III. PRELIMINARY RELIEF IS NECESSARY TO STOP IMPENDING IRREPARABLE INJURY THAT IS CERTAIN TO OCCUR

Plaintiffs face imminent and irreparable harm if the March 25 FRN is not enjoined before April 24, 2025, when "[t]he temporary parole period of [individuals] in the United States under the CHNV parole programs and whose parole has not already expired by [that date] will terminate." 90 Fed. Reg. at 13611. On April 24, Plaintiffs Armando Doe, Alejandro Doe, Ana Doe, Carlos Doe, Andrea Doe, Lucia Doe, Miguel Doe, and Daniel Doe, as well as beneficiaries sponsored by Plaintiffs Sandra McAnany, Kyle Varner, Wilhen Pierre Victor, Gabriela Doe, and Norma Lorena Dus, and thousands of CHNV beneficiaries served by HBA, will lose their lawful status; lose their work authorization and their ability to work here legally, *see* 90 Fed. Reg. at

13619; and be immediately at risk for removal,[12] *see id.* at 13618, which for many of these individuals will almost certainly result in family separation, a return to persecution and potentially death, and/or the inability to pursue the safety and security of alternate legal status here in the United States. Damages cannot adequately address these kinds of injuries.

Loss of lawful status. If allowed to remain in effect through April 24, 2025, the March 25 FRN will prematurely cut short the grants of parole of Plaintiffs Armando Doe, Alejandro Doe, Ana Doe, Carlos Doe, Andrea Doe, Lucia Doe, Miguel Doe, and Daniel Doe; the sponsored beneficiaries of Plaintiffs Sandra McAnany, Kyle Varner, Wilhen Pierre Victor, Gabriela Doe, and Norma Lorena Dus; and hundreds of thousands of similarly situated individuals. *See* n.1, *supra*. For some Plaintiffs, like Alejandro Doe, Carlos Doe, Lucia Doe, and Miguel Doe, this represents a loss of over a year of lawful status and the ability to live and work legally in the United States. *Id*. What's more, because Defendants have indefinitely suspended the processing of all applications for immigration benefits filed by or on behalf of CHNV parolees, Plaintiffs and other sponsored CHNV beneficiaries will be without lawful status in the United States starting April 24, 2025. For some of these parole beneficiaries, moreover, losing their lawful status means that they will begin accruing unlawful presence, which has serious negative immigration consequences that can include being barred from the United States. *See* 8 U.S.C. § 1182(a)(9)(B).

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[12] Although the March 25 FRN asserts that "DHS intends to prioritize for removal" only those CHNV parole beneficiaries without any pending applications for alternate legal status in the United States, 90 Fed. Reg. 13619, that assertion is unenforceable and, more importantly, fundamentally at odds with Executive Order No. 14159 direction to the Secretary and the Attorney General to "prioritize the prosecution of criminal offenses related to the . . . continued unauthorized presence of aliens in the United States," 90 Fed. Reg 8443, 8444 (Jan. 20, 2025); and with the March 25 FRN itself, which justifies cutting short *all* CHNV parole beneficiaries' grants of parole—including of those individuals with pending requests for other relief—to "effectuate their prompt removal." 90 Fed. Reg. 13619.

Loss of work authorization. The premature termination of CHNV parole for Plaintiffs and other sponsored CHNV beneficiaries also means the premature termination of work authorization and the ability to provide for oneself and one's family. Losing work authorization has life-altering negative consequences, from forcing Alejandro Doe and his family "to break apartment leases we have entered into, rendering us homeless," Doc. No. 24-1 ¶ 15; to Armando Doe no longer being able to send money to pay for his parents' medical appointments and living expenses, Doc. No. 24-3 ¶ 25, to Lucia Doe depleting her savings and becoming a greater financial burden on her siblings, Doc. No. 64-3 ¶14. All CHNV parole beneficiaries have been forced to confront the likelihood that they will "lose everything we have worked so hard to achieve" during their time here in the United States. Doc. No. 24-1 ¶ 15. "Because of this fear," Alejandro Doe and his family "have been sharing [] bank account passwords with one another in case anything were to happen." *Id.; see also* 71-3 ¶ 12.

Consequences of removal. For many CHNV parolees, including Plaintiffs Armando Doe, Alejandro Doe, Ana Doe, Carlos Doe, and Andrea Doe, removal to their home countries will almost certainly result in a return to persecution and even death. *See, e.g.*, Doc. Nos. 24-1 ¶¶ 6-8; 24-2 ¶ 17; 24-3 ¶ 11; 24-4 ¶¶5, 18; 27-1 ¶¶ 3-4; 71-3 ¶ 2. Moreover, Plaintiffs Armando Doe, Alejandro Doe, Ana Doe, Carlos Doe, Andrea Doe, Lucia Doe, and Miguel Doe, as well as the family member beneficiaries of Plaintiffs Wilhen Pierre Victor, face abrupt separation from close family members here in the United States if any one of them is apprehended and removed without their family. *See* Doc. Nos. 24-1 ¶¶ 3, 15; 24-2 ¶¶ 3, 11; 24-3 ¶¶ 3, 23; 24-4 ¶ 2; 26-11 ¶¶ 3, 15; 26-19 ¶¶ 12-13; 64-4 ¶ 3; 64-3 ¶ 3; 71-2 ¶¶ 7, 13; *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (per curiam) (recognizing that "important [irreparable harm] factors include separation from family members" (cleaned up)).

Each of these harms represents a shock and a betrayal to parole beneficiaries who followed the rules to be able to come to the United States through a lawful pathway to find opportunity, build a life here, and contribute to their families and communities. *See, e.g.*, Doc. No. 24-1 ¶ 15 ("After all my family's sacrifice and efforts to follow the law . . . having our parole cancelled, losing work authorization, and being subject to deportation feels like a betrayal. It would be devastating."). Each of these harms, independently and collectively, amounts to "a substantial injury that is not accurately measurable or adequately compensable by money damages." *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000).

IV. THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST WEIGH HEAVILY IN FAVOR OF PRELIMINARY EQUITABLE RELIEF

The balance of equities and the public interest, which merge here, likewise support Plaintiffs' request for a preliminary equitable relief. *See Winter*, 555 U.S. at 20; *Nken v. Holder*, 556 U.S. 418, 435 (2009). In contrast to the concrete and irreparable injury facing Plaintiffs and hundreds of thousands of similarly situated individuals, Defendants have presented only "an abstract assertion about harm to executive authority over immigration matters." *Pacito v. Trump*, __ F. Supp. 3d __, No. 2:25-cv-255-JNW, 2025 WL 655075, at * 24 (W.D. Wash. Feb. 28, 2025); *see, e.g.*, Doc. No. 42 at 28. While the President has some discretion in identifying and pursuing his own immigration policy goals, "[t]he public interest is not served by maintaining executive actions that conflict with federal law." *Pacito*, 2025 WL 655075, at * 24. Moreover, the States' Amicus Brief highlights the net *positive* impact of humanitarian parole pathways such as the CHNV parole processes, noting that parole beneficiaries "particularly benefit the national, state, and local economies" by "contributing positively to our workforces and growing our economies, especially in businesses around the country facing persistent labor shortages." Amicus Curiae Br. of N.Y., et al., Doc. No. 50 at 11-12.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue a preliminary injunction and stay of the Secretary's *en masse* truncation of the remaining valid periods of parole granted through the CHNV processes, and to waive Rule 65(c)'s security requirement pursuant to its discretion to do so in "suits to enforce important federal rights or public interests." *Crowley v. Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers*, 679 F.2d 978, 999-1000 (1st Cir. 1982) (internal quotation marks omitted), *rev'd on other grounds*, 467 U.S. 526 (1984).

Dated: March 27, 2025

Respectfully submitted,

/s/ John A. Freedman

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CERTIFICATE OF SERVICE

I, John A. Freedman, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: March 27, 2025

/s/ John A. Freedman
John A. Freedman

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SVITLANA DOE, et al., Plaintiffs, v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, et al., Defendants.	Civil Action No. 1:25-cv-10495-IT

BEFORE THE HONORABLE INDIRA TALWANI, DISTRICT JUDGE

HEARING

Thursday, April 10, 2025
3:06 p.m.

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts

Robert W. Paschal, RMR, CRR
Official Court Reporter
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P R O C E E D I N G S

(In open court at 3:06 p.m.)

THE DEPUTY CLERK: This is Civil Action Number 25-10495, Doe, et al. v. Noem, et al. Would counsel please identify themselves for the record.

MR. COX: Good afternoon, Your Honor. Justin Cox for the plaintiffs.

THE COURT: Good afternoon.

And you may all be seated.

MS. FLORES-PERILLA: Good afternoon, Your Honor. Laura Flores-Perilla for the plaintiffs.

THE COURT: Good afternoon.

MR. FREEDMAN: Good afternoon, Your Honor. John Freedman for the plaintiffs.

THE COURT: Good afternoon.

MS. TUMLIN: Good afternoon, Your Honor. Karen Tumlin for the plaintiffs.

THE COURT: Good afternoon.

MS. SUNG: Good afternoon, Your Honor. Esther Sung for the plaintiffs.

THE COURT: Good afternoon.

MS. LI: Good afternoon. Hillary Li for the plaintiffs.

THE COURT: Good afternoon.

MS. JANG: Good afternoon. Tiffany Jang for the

plaintiffs.

THE COURT: Good afternoon.

MS. HUGHES: Good afternoon, Your Honor. Anwen Hughes for the plaintiffs.

THE COURT: Good afternoon.

MR. WARD: Good afternoon, Your Honor. Brian Ward for the defendants.

THE COURT: Good afternoon.

The pile on my desk is growing, but this is the last of the hearings I've scheduled on these emergency motions. And I wanted to start out with where I am anticipating going on this federal register notice, which I think each side will find something to like and something to dislike, and then give you an opportunity to explain to me why you think I'm wrong.

I don't believe I can grant the request that the plaintiffs are asking for to continue the CHNV program for allowing applications of people who are not already here. And I do believe I have the authority to stay the federal register notice as to the shortening of the parole period for the people who are already here.

So that's where I am. And, obviously, you -- each side has a lot you may disagree with or agree with in that, but I thought I'd start there, and we can go from there.

So, plaintiffs, it's your motion.

MR. COX: Thank you, Your Honor.

So to begin, I just wanted to clarify that our -- our present preliminary injunction motion regarding the federal register notice is just focused on the shortening piece right now. And so we -- we understand -- understand where the Court is on this.

And, you know, we do intend to proceed past the stage of litigation, and we'd like to get the administrative record as soon as possible and continue to final judgment. But that -- we understand where the Court is, and I think that is -- that is the relief that we're principally seeking today with regards to the preliminary injunction motion.

THE COURT: Then let me turn it to the defendants. The -- the relief that I grant here obviously has to be circumscribed by the discretion that is afforded to the Secretary under the statute and the provisions about my jurisdiction and standing.

But the nub of the problem here is that the Secretary, in cutting short the parole periods afforded to these individuals, has to have a reasoned decision, can't just do it, in my view, simply saying, "Today I'm doing it," as they do with the Ukraine email notice.

And the reasons put forth in the federal register I don't think follow. I understand I don't substitute my judgment, but I do think that it's based on an incorrect

reading of the law.

So what I would like to focus on to some degree -- and, obviously, I'll let you hit the other things you want to -- but I would like to focus on the understanding of expedited removal set forth in the notice, because what I understand you to be saying is that you can't -- you have made the decision not to allow people the length -- the remaining time on their applications or even more than the 30 days because of a concern that staying longer would give them an opportunity to have -- requests for their status, et cetera, beyond what's available in expedited removal, and that in order to proceed with expedited removal, you want to avoid any chance that people have been here for two years.

So the premise is that, as soon as you terminate people from their parole, they're subject to expedited removal. That's the nub here, and I want to have you address that.

MR. WARD: Yes, Your Honor.

If I could just address a threshold question before we get to that about the rationale for terminating parole, I just would note that, under these parole processes themselves, the original federal registered notices that went out a few years ago make very clear that this -- the parole processes themselves can be terminated in the Secretary's discretion, and grants of parole under those processes can be

terminated under the Secretary's discretion.

THE COURT: And at this point, for the purposes of this motion, I'm not disagreeing with you as to terminating the program writ large. And I'm not disagreeing with you that any individual here who in -- on an individual determination is determined by the Secretary that they should no longer be entitled to parole, that that would be within the Secretary's discretion.

But that's not what the Secretary has done. What the federal register notice does is categorically say all of these periods of time are shorter.

But -- and I'll come back. I'm sure you want to spend a lot of time on jurisdiction and so forth, and I've spent a fair bit of time thinking about that. But I would really like to give you the opportunity to address this nub, because this is what I find compelling: the notion that people who we said, "Come, follow the rules" -- they're being -- whether it's being paroled in or admitted in, it's the same statutes that you're relying on -- that once the parole -- once your position is that if they are here beyond the period of --

You know, let's say someone comes on a tourist visa and stays an extra period of time, a few years, a year, a student visa, et cetera. Your position seems to be that, regardless of how they entered the country, expedited removal

is available so long as they haven't been here for two years.

MR. WARD: Yes, Your Honor.

So the -- expedited removal has been used to various extents over the years, and the current administration has expanded its use for individuals up to two years.

THE COURT: Right. But it has -- the statute doesn't say anybody not in lawful status who has been here for less than two years is subject to expedited removal. It says anybody -- essentially, anyone who didn't enter the country by being admitted or paroled, a person who is not paroled or admitted into the country -- that's the tense and that's the verb -- and can't prove they've been here for more than two years is subject to this.

And so I guess what you're saying here is that the reason behind not allowing the time to run of their initial parole is so that you can apply a provision that I think you don't have a likelihood of showing that you have the correct interpretation of.

And so what you're doing is saying, "We want to shorten this time so we can get people into expedited removal because we've extended our use of expedited removal. We want to shorten it, get them into expedited removal so that they don't have an opportunity to challenge that removal."

And I'm saying I think you don't have a likelihood

of having that construction be correct.

MR. WARD: So a couple responses to that. So the agency reads the statute as the provision that says "has been admitted or paroled," based on its use of that tense, "has been admitted or paroled," that that requires a present -- being able to show that you are presently in that status; so that if you are no longer paroled, so if your parole is terminated, you are no longer someone who has been paroled, and so you can be subject to that and --

THE COURT: And is that a different view than when, you know, in the executive order and a number of places, the administration says that anyone who came in in these programs is here -- is inadmissible?

I mean, are you -- basically, what I hear you saying is, on the one hand, while they're here and they're paroled here, you seem to not be doing expedited removal. At the same time, you're saying but they've been here illegally anyway; it's illegal. And now you're saying that the -- as soon as you can get them out of status, you can cancel their parole, they then are subject to expedited removal.

MR. WARD: Yes, Your Honor. I think those are distinct things because someone can be both inadmissible and be paroled into the United States. So I don't know if those are --

THE COURT: Have any of these people been

determined -- and of these 500,000 people, 450,000 people, have any one of them been determined to be inadmissible?

MR. WARD: I haven't looked into that, Your Honor. I don't know the answer to that question. But what I would say is that parole is not regarded -- the statute is clear that parole is not regarded as an admission to the United States.

THE COURT: But it's -- it's that you've neither been admitted nor rejected. It's an -- the terms are an applicant for admission. So the people who are here, paroled here, are not -- have not yet been determined to be inadmissible, correct?

MR. WARD: I don't know the answer to that, Your Honor.

THE COURT: It's a critical question, sir.

MR. WARD: Well, so I think if they were -- they would be determined to be inadmissible if they were placed in expedited removal pleadings, and that's when that would occur.

THE COURT: So you're arrested, and then what happens?

MR. WARD: Well, it depends -- it depends on the particular circumstances. Obviously, the agency has discretion to use expedited removal or not use expedited removal.

I want -- I want to address the statutory provision, if I could, just one more point on that, and note that this statutory provision specifically says an individual who has not been admitted or paroled. It doesn't say an individual who -- it doesn't say was admitted or paroled. It doesn't use a tense that refers to how someone came in. It refers to whether someone has parole or an admission. And --

THE COURT: And I guess I would disagree with that. So tell me -- I'm going to pull the statute out in front of me, but tell me why you think -- because I think that you're reading the language that's in there; you're ignoring the exact words that are in there, but let me get it in front of me.

MR. WARD: Yes, Your Honor. So I believe it says "has been admitted or paroled."

THE COURT: Correct.

MR. WARD: And so the agency views that as requiring a present -- presently still having parole.

THE COURT: Why?

MR. WARD: We know that in some other circumstances, Congress -- take, for example, the statute that relates to adjustment of status, 8 USC 1255(a). There, in another provision of the INA, Congress referred to certain individuals who, if they put them in categories based on whether they were someone who was admitted or paroled, now

that's something that the agency views as addressing the circumstances under which someone entered the United States.

They could have used that same language in this provision, and they didn't. They say someone who has been admitted or paroled. So the agency views that as requiring a present -- presently being able to say your parole continues.

THE COURT: And is it the position that that is the same whether it's "admitted" or "paroled"? Because it's the same verb form.

MR. WARD: So I don't know with respect to "admitted."

THE COURT: Well, so --

MR. WARD: It's not a category that I'm aware of them placing people in expedited removal for.

THE COURT: But it would be the natural consequence here. If what you're saying is that this expedited removal -- and I haven't gone back to the legislative history, but my sort of understanding, just as a general matter, was that what you're talking -- what -- the concern there in saying people who haven't been admitted or paroled is you are talking about people who are crossing the border without any permission. That's the group you're focused on.

And you're saying people who are crossing the border without permission should be pushed out of the country without recourse. And then we say, well, but we've

actually -- that seems a little harsh. If you've been here two years, we're going to give you sort of a different set.

But the focus of that is the people who are breaking the rules and coming across the border without the permission of our government. And then the people who do come here with the permission, either they're admitted into the country or they're paroled into the country. In either of those circumstances, that's not what this statute is about.

MR. WARD: Well, again, I think, based on how they define other statutory provisions, "admission" and "parole" are distinct in several important ways.

And parole, as the statute defines it, is something that's not regarded as an admission; and 1182(d)(5)(A), the parole statute, is clear that when parole ends, you return to the status that you were in before you were granted parole, and you're treated as any other applicant for admission would be at that time.

So once parole ends, you're in a different category. I'm not aware of similar statutory provisions governing an admission that do the same thing.

THE COURT: Well, but this is the same -- this is one statutory -- I don't see how you can say that this statutory provision, you're going to read the verb one way with "parole" and the other way with "admission." I mean,

it's the same verb. It's not a question -- even when Congress uses the same verb in two different places. It's one place.

MR. WARD: Again, I think the distinction is how Congress defined and limited "parole" based on other statutory provisions.

THE COURT: Which would give a reason why they might want to write this differently. I hear that. But they didn't write it differently. They wrote it the same as "admission."

MR. WARD: Again, Your Honor, we would disagree and say that by incorporating and applying this to individuals who have been paroled and by defining parole as something that, when it ends, the individual returns to the status they were in before they received that parole -- and, also, again, pointing to other statutory provisions in the INA where Congress said -- they know how to write a statute that says someone who was paroled into the United States is in a different category.

They didn't use that verb tense here, and so I think that's an important distinction that we have to -- we have to respect and treat Congress as making those different word choices --

THE COURT: Okay.

MR. WARD: -- for a particular reason.

Can I --

THE COURT: At the end of the day, this is a question that's a purely legal question as to whether this reasoning is a correct read of the law or is not a correct read of the law. But it is the reason that you are relying on in saying that people shouldn't be allowed their course of the parole that's still there, is to say we want to make sure we get ahead of that and don't allow them to claim any rights.

MR. WARD: It's one of the reasons. So the FRN also notice, first of all --

THE COURT: Actually, before we leave this, one more question on the expedited parole, and then I'll come back.

MR. WARD: Yes.

THE COURT: If a person is standing at the border, as you said, with no rights, if you're -- if that's the way I should look at it, then what difference does it make? How would they be accruing additional time regardless of whether they're here, paroled here for two years or six years? Right?

If -- at the point you say their parole is over and they now have the rights of someone who is standing at the border, why do you need to do this rush now and create a situation where everybody is -- can be all of a sudden

rounded up? Why not let them finish their parole?

It would make no change. I'm not saying it's a policy matter, but a legal matter. By your argument, it makes no change. They're still going to be faced with expedited removal because they're still standing on the border, as you would say.

MR. WARD: I would disagree with that, Your Honor. So I think the INA generally treats physical presence in the United States different than status. And so the parole statute places you back in the status and the circumstances that you were prior to being granted parole, but I don't know that we could read or have read the expedited removal statute to apply to people regardless of how long they've been here when their parole ends by treating their time in the United States to go back to zero.

That's at least not an argument the agency has made in this case, or I'm not aware of them making that necessarily in other cases.

THE COURT: And do you have any -- I don't remember seeing them, but are there any cases that you've cited regarding expedited removal that match your view of it rather than the view I have here of it?

MR. WARD: I don't know that there are a lot of -- again, expedited removal is something that has been used to various extents and to various amounts of time over time.

And so it has only been for short amounts of time in the past and only very recently that the agency or the executive has extended its authority to remove, to place people in expedited removal on this subprovision 3 up to two years in the United States.

At other times, the agency has further restricted how much time an individual can be in the United States, and they will still apply that. That's subject to other litigation that's ongoing right now in DC. So there are not a lot of cases --

THE COURT: There are no cases.

MR. WARD: Huh?

THE COURT: There are no cases doing this, with this reading of this?

MR. WARD: I'm not sure it's a factual circumstance that has arisen one way or another. That's correct, Your Honor.

THE COURT: Because we haven't been rounding people up and arresting them and trying to do it this way.

I mean, this is my puzzle here, and it's -- again, I'm not the one who makes the policy. All I've got to do is see if you're following the Administrative Procedure Act, and that's it. And what's -- and I think I said this at the first hearing, what's so confusing to me about this is what we're doing is we're taking people who are legally here, who

have been following the rules, and I -- I understand. I'm not saying, from where I see, that they have too good an argument for saying you can -- can't stop the program. I think that's probably a political debate, as to whether you stop the program or not.

I think they have a pretty good argument that the program wasn't unlawful, but that's a different question as to whether you want to do something going forward or not.

But here, when you're having people who are following the rules -- that's what's happening. We have people who are following the rules. And what you're saying is, "You've been following the rules; and so instead of following your reliance interests here and staying for the amount of time that we told you you could come here for, we want to put you in, essentially, a Hobson's choice. You either -- your parole gets ended and you either go back to the country that you fled" -- and I have right here only their side of the picture, but their side of the picture of the plaintiffs is they were faced with these difficult positions.

So either they voluntarily go back there or they stay here, in an illegal status, at which point they lose all opportunity to try to adjust their status properly because they're here illegally then.

And I don't understand the reason why you -- it's a

tough enough question that's going to come up at the end of their two years, which, at this point, is not -- you know, it's less than two years for everybody. But to say, no, that's not enough for people who have been following the law; but, instead, we want to change the -- we want to make them illegal now. That's what I don't understand. We want to make them either flee the country, even though they followed the procedure to come here, or stay here at the risk of losing everything.

MR. WARD: So a couple responses on that.

First, I think a lot of this depends on the authority to grant parole and to rescind parole, which is placed by statute in the Secretary's discretion, and which these processes say is in the Secretary's discretion. Each of the processes, the federal register notices announcing each of these processes, said that the Secretary could -- has the authority to rescind parole grants and has the authority to rescind the program at any time.

Second, I'd note that this federal register notice that is ending the CHNV processes notes that individuals who have filed some other application for asylum, for TPS, for adjustment of status, won't be prioritized for removal.

THE COURT: What does that mean?

MR. WARD: The Secretary -- huh?

THE COURT: What does it mean that they're not

prioritized?

MR. WARD: It says that the agency won't prioritize those individuals as being ones that are priorities for removal.

THE COURT: But if they happen to be somewhere, there's a -- you know, a car accident, and everybody has to give their ID when they get -- see who was there as a victim in the car accident or they show up at the hospital because their kid's sick and their status is unlawful, what does that mean that they're not prioritized?

MR. WARD: I don't know what it would mean in those particular circumstances, Your Honor. I can't answer that.

I would note, though, also, that --

THE COURT: I mean, with all due respect, I'm here trying to make sure people are behaving lawfully. And what you're saying is I should take into account that maybe they'll fall into unlawful status, but we're not going to necessarily prosecute them too quickly. That's not a principled position that I should be following, is it?

MR. WARD: Well, I think the principle behind that position is that if -- the parole grants were discretionary. They were based on a determination that that parole served some purpose. The Secretary has now determined that those parole grants no longer serve that purpose. If --

THE COURT: But how can they decide that? I

understand your complaint about categorical decisions. But here -- so a categorical decision was made to have a program, but each of these individuals made a showing that they should be permitted to come here.

You're not allowing them to make an -- you're saying, well, they can also apply for this or that; but in the meantime, they're going to be subject to expedited removal. So you're not permitting -- you are not -- you're not -- the agency is not revoking their parole on an individual basis. They're not exercising their discretion --

I mean, there are two things. One is exercising their discretion to say, "We don't want this program anymore." That's -- I understand the plaintiffs don't like my shrugging at that, but that's going to be a much harder one.

But the other thing is to say we're going to exercise our discretion and categorically get rid of everybody who we gave permission to come here on an individual basis?

MR. WARD: So, again, our reading of the statute is that the determination that parole is no longer serving its purpose is not something that needs to be made on a case-by-case basis. And we've cited at least one case, finding that you can't engraft the case by case or other requirements for granting parole, on taking parole away.

There's not a lot of case law on this, I suspect because most -- most courts that have heard a challenge to a parole denial or revocation find that that's a discretionary determination --

THE COURT: Well --

MR. WARD: -- that's not reviewable at threshold.

THE COURT: Has there been a categorical revocation of parole before?

MR. WARD: So it depends on what you consider a categorical parole program; but, yes, there are some parole programs that have come into place and then gone away.

THE COURT: No. You didn't hear me. Has there been a categorical revocation of somebody's parole grant?

MR. WARD: That, I would have to check, Your Honor. I know that there have been categorical parole programs that have been created and then taken away.

THE COURT: We're not having an argument about that today.

MR. WARD: Yes, Your Honor. I don't -- my point is I don't know what happened in those cases. I'm not aware of the parole terms being short in the same way. So I haven't looked into this thoroughly, so I can't rule it out, but I'm not aware of any examples of that.

But what I would say is that, as I've said earlier in this week, is that these parole grants were never intended

to guarantee or there was no guarantee in them that individuals who came under them would be able to apply for some other benefit and have that benefit adjudicated before the parole term was up.

There was always an issue and always a possibility that individuals might apply for asylum, for example, and not be able to have that adjudicated before their parole term was up.

And with the CHNV parole processes in particular, with these ones, there's -- I don't believe there's any dispute that there was not a re-parole process under this program where individuals could seek to extend. They could still seek -- seek an individual consideration for parole under the I-131 process, and that's still available to these individuals.

If they applied for another benefit and they lose their parole, the agency has said that they won't be prioritized for removal. I don't have more details about what in particular that looks like in practice, but they could seek another grant of parole.

They also, as we have discussed, if they are placed into removal proceedings before an immigration judge, could re-raise a lot of these claims. If they're in expedited --

THE COURT: But don't -- I mean, please, if they're placed in a removal proceeding before an immigration judge,

what does that mean when, at the same time, you're saying the reason we're cutting it short is so we don't have to put them in front of an immigration judge?

MR. WARD: So that's with respect to individuals who haven't -- so the FRN says that that's with respect to individuals who haven't applied for -- some other basis to remain in the United States on a permanent basis, like asylum.

And what the agency wants to do in that circumstance is that if an individual is here on a discretionary grant of parole, the agency has determined that that parole is no longer serving its purpose, and they haven't applied for any other basis to remain in the United States, they want to reserve their ability to use whatever tools are at their disposal to remove those individuals from the United States, and terminating parole before it reaches the two-year point allows them to do that.

Now, the expedited removal explanation is not the only explanation for rescinding the parole grants. The Secretary also set out that part of the rationale is not having individuals continue to be here on parole terms when the Secretary has determined that those parole terms no longer serve the significant benefits that they were intended for or no longer align with the executive's current foreign policy and concerns about those individuals accruing other

nonfederal benefits during their time in the United States.

So even if the Court had -- is skeptical of the expedited removal explanation, there are other explanations in the FRN for justifying limiting the existing parole terms.

THE COURT: Do you want to address the other ones?

MR. COX: Your Honor, yeah, if I can address just a couple of quick things that have come up.

So as -- we tend to agree with Your Honor that the clearest grounds here is the pure legal error that was made regarding expedited removal. And, you know, as much as defendants want to talk about discretion, there's simply no discretion to violate the law. There's no discretion to apply it, an erroneous understanding of the law, to the plaintiffs and members of the proposed class.

And we certainly agree that if you're going to say that parole -- that someone can be put through expedited removal after revoking their parole, then the same thing has to apply to those who have been admitted. Those have to be read in pari materia, and it clearly would override the congressional judgment, as Your Honor was saying, that individuals who came here lawfully with permission are not going to be put through this shortcut, you know, virtually process-free removal, expedited removal process.

And the third thing I would mention is just the incredibly breathtaking authority that the defendants'

interpretation would aggrandize to the executive. It could basically put parolees -- there's no limits on how long they could put parolees through it, in their view -- well, the two --

THE COURT: I'm not sure I understand what you're just saying there.

MR. COX: So, basically, if all they have to do is revoke the permission in order to put someone through expedited removal, then the protection that Congress gave for folks who came with permission is meaningless. It's, basically --

THE COURT: Right. And it's the same -- again, particularly if we have the same thing for visa holders.

MR. COX: Exactly. That's right.

THE COURT: And I don't see how you can read the statute differently.

MR. COX: I agree, Your Honor.

On the -- Your Honor's question about why not -- the question about parolees who have been here for a very long time, like, more than two years, why can't you put them through expedited removal after revoking the parole and treat them as, you know, at the border, that actually is DHS's position. If you look at page 12, note 4, they say as much, which, of course, under -- further undermines the FRN's justification, if they're right.

THE COURT: Well, he's saying there's two separate things. He's saying the one thing is where are you geographically located? That's your two years under this statute. And the other is, what's your status? Is their position.

MR. COX: Right. Well, they -- they have -- we -- we happen to have another lawsuit, and it's filed in District of DC, challenging a January 23rd memo that says that parolees in the interior of the United States, no matter how long they have been here, if you revoke their parole, you can put them through expedited removal as arriving aliens.

And so that -- and in reality, they can't be put through expedited removal in either case, at least the individuals who have been paroled into the -- into the country and have resided here for some time.

The -- on the prioritization point, it's meaningless. The DHS used to have enforcement priorities, formal enforcement priorities. This administration did away with them. It's catch-as-catch-can. It's completely unenforceable. It's meaningless. It's loll paper, essentially.

And, yes, Your Honor is correct that this is completely unprecedented. There's never been a mass revocation of parole of this nature. The record -- you know, 24-38 -- 24- -- excuse me -- 24-38 and 24-39 both discuss the

long history of categorical parole programs. And they -- they mention how they -- they were wound down.

And in no instance, to our knowledge, in the 70 years and more than 125 uses, categorical uses of the parole of authority, has the executive ever tried to pull the rug out from under folks in this manner.

And, also, just to reinforce Your Honor's point, there's no case law that supports the defendants' view of the statute, even the *Turner* case, the -- from -- what is that? -- the Eleventh Circuit, 2025 case, talks about the present perfect tense.

And they quote it as saying it can refer to state that continues into the present, but there's an ellipses right in the middle of that there, and that ellipses is replacing some very important words.

What *Turner* actually said is that the present perfect tense can refer to a time in the indefinite past or to a past action or a state that continues into the present. And the question is which of the meanings applies in the particular context? Which makes sense from a statutory construction point of view.

And particularly when paired with the -- with the admission piece in the expedited removal statute, it simply doesn't make sense to read the statute the way that the government is. And then -- so that's what I wanted to say

about expedited removal. We --

THE COURT: What about their argument that the Secretary's views that the --

MR. COX: Ah, yes.

THE COURT: -- purposes of the program, in the first place, are done; so, therefore, not only should you end the program, but also the people who were admitted pursuant to it need to leave?

MR. COX: I don't believe that's what the FRN says, Your Honor. The FRN says that they are truncating, cutting short, all of the grants of parole so that they can put folks through expedited removal.

THE COURT: Well, no, they say -- that's not it. They say that it is -- that truncating the time is justified by the conclusion that, quote, "Neither humanitarian reasons nor public benefit warrants the continued presence of aliens paroled under the CHNV program, and the purposes of such programs there have been served -- therefore, have been served."

So that's their -- they are making that argument; and I guess the question is, what's your answer to that?

MR. COX: Well, I think the first answer is that the Secretary didn't actually address the urgent humanitarian reasons.

THE COURT: I can't get into those details.

MR. COX: As a procedural matter, the Secretary -- not -- I'm not saying substantively. I'm saying if -- the Secretary never explains why the urgent humanitarian reasons are no longer being served by the program, the -- other than the one sentence that we quoted in our brief that says that they think the urgent humanitarian reasons are better served by applying the statute or applying the authority consistent with the statute on a case-by-case basis.

Which means either they have a different view of the law, or they're saying -- which is what we think. We think they're saying -- they're pulling through the Huffman interpretation of the statute; because, otherwise, it doesn't make sense, because that's what they were doing before. They were applying the statute on a case-by-case basis.

And so either it's a circular statement that means nothing --

THE COURT: I'm not following you. They're saying -- I mean, if they're saying that they don't think that this humanitarian need is there anymore --

MR. COX: Uh-huh.

THE COURT: -- I certainly don't get to substitute my judgment for that. So --

MR. COX: That --

THE COURT: -- if that's their finding, why is that not something I have to look at and say, well, that is there,

and does that justify terminating these?

MR. COX: So I -- this is our third argument in our -- in our brief. The FRN acknowledges that these programs were set up under both prongs of the statute: significant public benefit, urgent humanitarian reasons.

The entire federal register notice talks about how the Secretary doesn't believe that this -- that it -- the programs are any longer providing a significant public benefit. Virtually all of the federal register notices that.

The only thing that it says about urgent humanitarian reasons is this sentence at 90 Fed. Reg 13612: "Regarding previous arguments or determinations that these programs were consistent with the requirement of urgent humanitarian reasons for granting parole, DHS believes that consideration of any urgent humanitarian reasons for granting parole is best addressed on a case-by-case basis consistent with the statute and taking into consideration each alien's specific circumstances."

So that's what they were doing before. DHS said in the FRNs that this is precisely what they were doing. They were taking into consideration the urgent humanitarian reasons on a case-by-case basis.

So they're repeating the justification for creating the program as a justification for terminating the program. And it's -- the only -- the only way it can make sense is if

they have a different understanding of what those words mean now than they did then. And they point to the statute. They say that it's best addressed on a case-by-case basis consistent with the statute.

If that doesn't mean that they have a different view of the statute now than they did before, then it's -- it doesn't mean anything because that's what they said they were doing before.

And so we think it's clear that they're pulling through the same legal error that necessarily embeds the wrongful erroneous interpretation of the statute as precluding categorical parole programs.

THE COURT: Well, they're not saying they're -- or if they are, I missed it -- that categorical parole programs are unlawful.

MR. COX: They do say that they think the urgent humanitarian reasons are best addressed in a way that's consistent with the statute.

THE COURT: Okay. That doesn't mean the other way is inconsistent.

MR. COX: But then it's not an explanation of why they made a decision. If they're saying -- because that's what they said before. The only way it can explain anything is if they have a different view of the statute now.

And so they -- right. And defendants point to

13612 through 17 in their brief. They cite six pages of the FRN and say they exhaustively discussed the reasons for terminating the program, but that's just significant public benefit, and we're not asking -- you know, that --

THE COURT: Well, I'm focused today not on the question of terminating the program or not.

MR. COX: Right.

THE COURT: I'm focused today on the question of -- assuming -- for today, assuming you're terminating the program, why did the people who were here and told they could be here for this amount of time, why not give them 60 days, 90 days, the rest of their time period? That's my question.

MR. COX: Right. Absolutely. That's -- and if they --

THE COURT: But that's not addressed by any of this one way or another, on either side. Whether the program should go or shouldn't go doesn't address the question of whether the individuals here should be returned.

MR. COX: 100 percent agree, Your Honor. They're completely separate questions, what you do moving forward and what you do with folks who are currently differently positioned than folks who are outside of the country.

And we just don't think that they, as a procedural matter, explained the urgent humanitarian prong of the statute. Their disagreement with it or their reversal of

opinion, they don't have an explanation that makes sense, unless there's that embedded legal interpretation that's different than the past.

The other -- and the other -- you know, of course, we only have to succeed on one of the four arguments that we made in our motion. And the case-by-case -- the failure to consider the conditions of parole or to treat folks on a case-by-case basis is certainly more than sufficient as well to justify a preliminary injunction or a stay.

The government argues that the case-by-case requirement doesn't apply to terminations, but that's not really what this was. This was -- unless you conceive of it as a mass termination and then a mass new grant of parole for 30 days. It didn't -- it just changed the amount of time they had. It wasn't a termination per se.

And so that's why the case-by-case requirement is also being violated here, because they took everyone's parole, and they just cut it down. So that would also be sufficient to -- to justify preliminary relief.

THE COURT: Okay. I have a question for the government here.

We've been talking about the federal register notice, and I put in a different pile the Higgins email. But you said that if a person has applied for these other statuses while they're here lawfully, paroled here, and then

their parole ends on April 24th, there'll be -- they won't be prioritized for removal.

But doesn't the Higgins email say that none of those applications will be considered?

MR. WARD: For -- so there is a pause on those applications for certain parole processes, not for all of them.

THE COURT: And including the -- including --

MR. WARD: The CHNV processes are included in that, yes.

THE COURT: So --

MR. WARD: So they have been subject to a pause. That pause is not supposed to be indefinite. And the agency has said that, if they have one pending, it doesn't -- doesn't limit it if it's been paused, that they will not be prioritized for removal.

So presumably, at some point, they will have the opportunity to have that asylum application adjudicated. But, again --

THE COURT: How?

MR. WARD: -- as we noted, the backlog of cases means that it sometimes can take three years or longer for --

THE COURT: And you're not suggesting that they should be leaving here without parole, without work authorization during those three years, are you?

MR. WARD: Well, again, the -- the parole grants were never -- there was never any guarantee with the parole grants that they would extend to allow that to be adjudicated. So it was always an issue.

THE COURT: But --

MR. WARD: But if they have -- if they have some individual basis -- and I believe this is what the language in the FRN about the humanitarian reason -- if they have some individual basis where they can apply for the I-131 process and say, "I have some ongoing humanitarian reason or --

THE COURT: So --

MR. WARD: -- my parole would continue to serve some other significant public benefit," they can apply for that and extend their parole beyond what they even could have gotten in the CHNV process.

THE COURT: But those applications aren't being -- well, those applications aren't being considered for people in this program.

MR. WARD: Again, there's been a pause, but I don't know that that pause has affected anyone in this case, because given --

THE COURT: But they might be arrested. I mean, just as a practical matter, if I were not to stay -- because you want me not to stay this -- if I were not to stay this, then on April 25th, any of the 450,000 people who are here

lawfully right now under the parole authority would no longer be here lawfully. And any of them could be picked up for expedited removal.

And once they're picked up for expedited removal, this deferred priority doesn't matter because they've been arrested now. So even if you weren't going to worry about going and raiding their worksite or something of that sort, now they have been arrested. They're detained, and you're treating them as expedited, so all of this goes away.

I mean, I guess what I would -- what I'm a little troubled by is if you think that that's -- or if your client thinks, at the end of the day, that's the system that we're under, I need to sort of think, okay, that's the system we're under. Is that okay or is that not okay? But you're kind of saying to me, "No, no, don't worry. They'll get their asylum considered over here. It won't be so bad there. Your neighbors won't be pulled away over there."

But what you're really saying is that, if I don't do something today, on April 24th, 450,000 people are subject to an arrest.

MR. WARD: So, again, the FRN says that they're not prioritized for removal. Practically, I don't believe the agency has the resources or the ability to place that many people in expedited removal anyway.

THE COURT: But they seem to be finding as an

important thing, of all the important things to do -- and I could be as hostile to unlawful immigration as anybody on this question.

The idea that what you're prioritizing is not the people who are coming over the border, but the people who followed the rules; and so the question is are you -- you know, is this simply because this was a Biden program? Because if what you're trying to do is stop illegal immigration, these are the people who made the decision not to come here illegally, but to come here legally, and now you're saying, well, so it's a priority for us.

And, again, your client gets to choose their priorities. But you're saying that if I don't stay this shortening of the parole process, it might not be that important, but it was important enough for you to stop their parole process.

I mean, how can -- how can that be any assurance to anyone?

MR. WARD: Well, again, even with expedited removal, if someone has not applied for -- again, it says it doesn't prioritize individuals who have applied for another benefit. But let's say someone has not applied for another benefit but has an asylum claim they can raise, even if --

THE COURT: They get a credible fear interview. They don't get in front of a judge.

MR. WARD: If they satisfy a credible fear interview, they get placed in removal proceedings before an immigration judge. So the credible fear interview is just a screening process to determine whether they could raise an asylum claim. And then if they can, then they get a notice to appear before an immigration judge, and they get to go through proceedings like someone who wasn't in an expedited removal.

Expedited removal is only for individuals who can't state a credible fear or have some other claim, and that's what the FRN tracks as well. It says for individuals who haven't applied for some other basis or some other status in the United States, we want to reserve the ability to be able to use this if we need to for people that have not applied for something that would allow them some more permanent status.

THE COURT: So immigration law is very complicated, and I don't spend a lot of my time doing it. But let's just be clear here.

You're applying for anything else that you've applied for. You get picked up, and you go for your expedited removal proceeding. You get a credible fear interview. That's it. The fact that you have other applications pending doesn't give you anything. It's just a question -- when you get there, with a translator who maybe

does or doesn't speak your language very well, whether that interview results in someone thinking that you do or don't have a credible fear. That's it.

MR. WARD: That -- if you don't make it past the credible fear process, yes. But you get the credible fear interview, and you get the opportunity to get into immigration court.

THE COURT: But you keep talking to me about these other applications that they've put in. Those other applications are meaningless as of April 25th unless somebody decides that they are going to get through a credible fear interview. That's where we are.

MR. WARD: I -- again, I would disagree with that, Your Honor.

THE COURT: Why?

MR. WARD: If -- not for everyone in -- that they are raising in this class. So, again, they're not priorities. Not everyone is going to be placed in expedited removal proceedings. Practically, that's impossible.

Any individual that satisfies a credible fear interview and gets before an immigration judge or is placed in other proceedings or is not placed in proceedings at all because they're not prioritized for removal once their parole ends will have an opportunity to continue to pursue those other applications either in immigration court or before they

get into immigration court.

And they all have the opportunity; if they have some, again, significant public benefit or urgent humanitarian reason that would justify parole, they can apply for an additional term of parole to allow for that.

THE COURT: So if someone has an asylum application or other applications like that, or the parole application, which isn't being operated, acted on, and we get past April 24th and I don't stay this, are they able to assert any rights under those programs if they're now here on -- illegally without having -- I mean, isn't the whole point, for example, when people claim asylum, that they need to -- you know, as soon as they cross the border, they go and they claim it?

Basically, what you're saying is we're taking people who are in legal status right now and we're saying, "Don't worry too much. We won't prioritize you, and you can maybe make these arguments. Oh, but by the way, you're now going to be here illegally," right? Isn't that sort of what you're saying?

MR. WARD: So, again, they can apply through parole if they have some other basis; but, yes, if their parole term ends and they're out of status, then they --

THE COURT: And they can apply for parole, which you have paused -- and on April 24th, their parole -- they

may have -- they may have applied, but it's not being adjudicated. So that gives them nothing.

MR. WARD: Not -- no. Again, individual parole applications are being adjudicated outside of this process.

THE COURT: For people who have come here under these programs? Because I thought --

MR. WARD: Yes.

THE COURT: -- the way the Higgins email is worded is anyone who is here under the program can't apply for any of these. Between Higgins and Davidson, they can't apply for anything.

MR. WARD: No, Your Honor. That's not correct. Give me just a moment.

So the Higgins email says at the bottom, "This instruction does not include requests for advance parole, noncategorical for I-131" --

THE COURT: So -- so hold on a second. Advance parole applies to these people or not?

MR. WARD: It depends on their particular circumstances. It could -- as the class is defined, it could apply to some individuals.

THE COURT: I thought advance parole was, for example, maybe you had TPS ben- -- you have some other benefits and you want to leave the country. I thought advance parole was to allow you to come back.

MR. WARD: I believe that's mostly what it is issued for.

THE COURT: Well, mostly; that's what it's about, right?

MR. WARD: I believe so, Your Honor.

THE COURT: So advance parole is not any help.

What's the next one?

MR. WARD: Noncategorical Form I-131, humanitarian parole requests. So that's just an individual request. You're not -- there was a specific form that was set up for these categorical processes. It's the I-134. There always exists the I-131 process.

And that's an application not based on a particular program. You're not saying, "I'm trying to satisfy the requirements of the CHNV processes." You're just saying that, "I, as an individual, can satisfy the requirements of the statute, and I want to apply" --

THE COURT: Does the government have the resources to review those applications for these 450,000 people before April 24th?

MR. WARD: I don't know the answer to that, Your Honor. I don't know how many have applied. I don't know --

THE COURT: Well, let's say they all go home today, and they say, "I'm applying because this is what -- the

government said that my status is going to end on April 24th." Does the government have the resources to review those?

MR. WARD: I don't know the answer to that, Your Honor. Again, these are determinations that are often made on a -- very quickly. The agency often makes parole determinations for individuals who arrive at a port of entry or at the border on the spot without any advance warning. And so they --

THE COURT: As opposed to these people, who all were first vetted before they had that individual on-the-spot evaluation.

MR. WARD: Yes, Your Honor.

THE COURT: And --

MR. WARD: But --

THE COURT: -- yet you're suggesting that's less good than what normally happens?

MR. WARD: Well, again, this goes back to the Secretary's determination that these parole processes were put in place in order to do several things, including that increased vetting, but also through some negotiations with the country of Mexico and through an effort to ensure that individuals either came through this additional process that they put in place for parole applications for individuals from these countries, or if they didn't, that they could be

removed to Mexico.

THE COURT: Okay. So they made a deal, and they said, "We'll make a deal with you. Don't come to the front border."

"Mexico, take people who do come to the border. Follow it in these steps. We'll make a deal with you, and we'll give you parole. But then once they come here, rather than going through the border, we're going to take it away again."

MR. WARD: Well, that last part wasn't in part of that deal, but --

THE COURT: I know. It wasn't part of the deal. There was a deal, and now that deal has been undercut.

MR. WARD: Well, again, so what the Secretary has determined is that that process, one, did not fully serve those goals, that it was designed to reduce the number of individuals coming and seeking parole from these four countries because these were four countries where, once individuals arrive in the United States, the United States had difficulty removing them to their home countries.

THE COURT: No, it wasn't designed to reduce the numbers coming here and seeking parole. It was designed to reduce illegal, unlawful crossing of the borders.

MR. WARD: As well, Your Honor.

THE COURT: As well?

MR. WARD: Yes, Your Honor. So it was designed, in part, because these are countries where the United States could not remove their nationals in sufficient numbers once they arrived in the United States.

THE COURT: But it wasn't about saying to those people saying, "We don't want you seeking parole at your border." It was saying, "We don't want you coming to our border."

MR. WARD: I believe it was both of those things, is to reduce the strain of individuals coming to the border.

The current Secretary has determined that the reduction in the overall numbers from those countries was not sufficient to justify the programs and that, also, the current administration wants to pursue other options, other foreign policy objectives to deal with the strain on the border and individuals from these four countries.

So that's the determination that's been made, that the processes don't serve the significant public benefits that were laid out in the original federal register notices.

And then, again, with respect to humanitarian -- urgent humanitarian needs, the FRN leaves open the possibility that these individuals could file individual parole applications.

I note also that this is -- it's reflected in the Higgins email. It's also reflected in the Scott declaration.

This is at 41-4, paragraph 8, where we also note that these individuals have an opportunity, if they think they can satisfy the requirements of the statute, to seek an individual parole grant under the I-131 process.

MR. COX: Can I talk about that just for a minute, Your Honor?

So there are a few reasons why the I-131 process is completely insufficient. First, I'll note it's not clear what work this theoretical availability is doing for defendants. It doesn't make their actions any more lawful.

THE COURT: No, it makes a Court think, "Oh, I don't have to worry about this problem."

MR. COX: Right. Exactly, Your Honor. That is -- I believe it's the intended purpose. But for a few reasons, it's insufficient as a practical matter.

So, for one, those individuals, their parole applications, will, of course, not get the benefit of the guidance under which their previous parole applications were granted.

THE COURT: That part, that's not in front of me today.

MR. COX: I understand. But there's a material -- my point is that they are materially quite different and -- because that guidance is very valuable. The Deb Rogers declaration at 24-42 talks about why that guidance is so

valuable.

The second thing is that they have to pay an additional filing fee of either $580 or $630, depending on whether they file on paper or electronically. They're not going to get that back when their application is ignored.

And then the third thing is that the administration has severely limited the individuals -- the officials who are authorized to grant parole. And they have also required that each individual grant of parole be justified up the chain of command.

I have a memo here if you'd like to see an example of it. It's from January 20th. It's referred to -- the subject of it is "Ending Catch and Release," and it says that "Each parole granted will be reported to the acting commissioner and the chief of staff of CBP and will include an individualized justification of the urgent humanitarian reasons or significant public benefit."

If you would like that, I have brought copies for opposing counsel and for Your Honor, if you'd like to see it. But the point is that, as a practical matter, it's not available.

The other couple points I wanted to make is that we're talking about the credible fear interview process. We've litigated that. The biggest problem is that there's no judicial review of the decision as to whether or not someone

has a credible fear, and so they could deny 100 percent, and no Article III judge can ever review those decisions.

The -- and I think your point about the -- Your Honor's point about the Higgins email is very well taken. The combined effect of defendants' actions are particularly pernicious. They -- as we mentioned at the first hearing, they are manufacturing removability.

They're preventing people who are here lawfully from enjoying the periods that they have and from having their pending applications that they could give them additional periods of lawful presence, they're not getting adjudicated.

And that's an additional reason why -- why the actions are unlawful, because they don't -- they never explain or even acknowledge that they're coming after this group of people from all directions.

And then the final point I wanted to make, Your Honor, is that the -- the CHNV program, as Your Honor may be aware, was a big talking point during Donald Trump's presidential campaign. He promised to end it on day one. And his executive order -- one of the executive orders he wrote directed it to be ended.

And the reason the FRN doesn't make a lot of sense is because DHS was required to backfill the justification. And so they had been -- they received instructions from the

President to end this, and they had to come up with reasons to do it. And as is often the case when you decide what you want to do and then try to decide on the reasons, it doesn't often make sense.

THE COURT: The problem for thinking about it that way is that's not the judicial review that's permitted under the APA. I don't get to say, "Ha, there must be some ulterior motive." I look at the document. I look at the face of the document, and it's a reasoned decision, or it's not a reasoned decision. But I don't -- I don't think there's case law that says the decision was already made; therefore, the reasons that they've now given are no good.

MR. COX: I -- I believe -- right. I was -- the *Department of Commerce v. New York* case, actually, from -- the census case from just a few years ago actually stands for the proposition that, although -- it may not independently make it unlawful, but the Court does not have to blind itself to the reality of the situation and understand it can take that information in order to understand what the agency actually did do.

THE COURT: So I don't -- and I guess I would say this, which is I don't -- I don't think that it is my job to get into the larger policy question. I think my question here is a legal question.

That said, to the extent -- and this is part of

where I started, I think, on our first hearing, to the extent that I think that the characterization of things doesn't match the law versus the policy, I do think that's fair game.

So to the extent, for example, that these 450,000 people are referred to as illegal aliens when they're the ones who followed the rules as opposed to the ones who broke the rules, I think that's a distinction I can take into account; and that, to the extent that this group of people is penalized for following the instructions that were given by a prior administration, the question of which administration gave them the instructions isn't important.

What's important is they followed the instructions. They followed the rules that they were given, and I think that's the part of this I can take into account.

I don't think the larger point of -- whether this is a good program or a bad program, I think that's really not in front of me.

MR. COX: I -- no disagreement there, Your Honor. We certainly agree with that.

In case -- I just wanted to mention, in case Your Honor did have questions today about our class certification motion, Mr. Freedman is prepared to address that. Ms. Flores-Perilla is prepared to discuss irreparable injury and the public interest.

THE COURT: I think I would like a moment on the

class cert, which is really to address the questions of -- I do think that there's a sufficient basis to at least provisionally certify a class action here. But I don't -- I'm not sure that the proposed subclasses are sort of tracking what the particular issues are here.

It does seem to me that although the individuals who are here under the CHNV program have many of the same issues as some of the other plaintiffs, they do have a discrete set of issues because of this federal register notice. And so it does seem to me that that is one appropriate subclass.

With regard to the supporter subclasses, I think there's a little bit more of a difficulty on my part on getting past the -- as I see it -- getting past the standing issues and -- well, getting past the standing issues for some of the supporters. And it seems to me that that is a more difficult question as to whether there's a remedy there; and that seems to me, therefore, less obvious to certify as a class.

MR. COX: May I address the standing questions --

THE COURT: Sure.

MR. COX: -- briefly? So we believe that the -- that sponsors have standing because the government has effectively wasted their time and resources.

THE COURT: Well, the problem is there's too many

Supreme Court cases that suggest that you need to be a little bit more directly impacted to have standing.

MR. COX: Well, another distinction I think that's important here, Your Honor, is that the sponsors were actually the applicants in this program. The beneficiaries were not the applicants.

THE COURT: Okay.

MR. COX: The sponsors were.

THE COURT: But so now we're not taking any more applications. What's the injury to them?

MR. COX: Well, certainly those who have pending applications would have some injury because the government -- they have expended resources that the government is now going to waste. There's certainly an injury. I understand it's not the same --

THE COURT: It's not an injury remedied by the relief sought here.

MR. COX: Well, if the relief sought is to restart the programs and to adjudicate the pending applications, that would certainly be -- that would certainly redress their injuries.

The other two additional bases of standing here are that several of them are sponsoring their family members, and so they would certainly have standing if their family member's parole is shortened. That's Norma Dus, our

declarations at 71-2; Gabriela Doe, 64-6; and Wilhen Pierre Victor, at 24-11.

Those are all US citizens, all sponsoring their family members who are here, and the -- the beneficiaries are all individuals whose periods of parole are shortened. And so you have family separation as a prospect.

And then we have our sponsors, Kyle Varner and Sandra McAnany. So they have sponsored individuals that they didn't necessarily know out of their moral and religious convictions.

And now the government is using the fact that they did the meticulous calculations to figure out, "Okay. How many people can I sponsor and stay above the poverty line," which was the requirements in this process, "I" -- because they feel like this is something they wanted to do for their fellow humans.

The government's now using -- calling them serial sponsors and saying that they're indicators of fraud, and somehow that's a justification for ending the program.

We understand that the beneficiaries clearly have the most grievous injuries here.

THE COURT: So I think we've started this in on the class question.

MR. COX: Yes. I just wanted to address the standing.

THE COURT: And on the overall programs, that's -- that, obviously, is still on the plate; but I'm, at this point, most urgently concerned about the April 24th date.

MR. COX: Understood. And --

THE COURT: But as to -- as to the potential classes, it seems to me we have a discrete group of the beneficiaries, the parolees under this program that's being canceled now. We have a discrete group of people. I will -- I will acknowledge that there is a discrete group that is the people who have family member beneficiaries, et cetera.

You then have your sort of outside supporters. I don't see right now getting to the question of class certification as to that group. Maybe they have standing to make some arguments. Maybe they don't. But I don't really see that they're a class of people who share their same -- I don't see where that goes.

MR. COX: Okay. I --

THE COURT: I don't know if there's something more that you wanted to give me on those subclasses, potentially.

MR. FREEDMAN: I -- no, Your Honor. I agree that, in terms of priorities, certainly focusing on the -- what we're referring to as the "rescission subclasses," is definitely our top priority.

We agree that family reunification, in particular, we have a number of class representatives whose family

members were approved and have now been held up because of this process. That is also a priority.

We agree that nonfamily members do stand -- do stand differently situated, and if Your Honor is not prepared to look at injunctive relief for them now, we are prepared to address that further down the road.

THE COURT: Okay. I had one -- one last question about the pause.

MR. WARD: Yes, Your Honor.

THE COURT: How does the pause and the April 24th date match? I mean, on the one hand, to say it's a pause, it's a short period of time, on the other hand, we say it's a 30-day -- with the notice, it was 30 days. We're now down to two weeks. But how do you -- the pause isn't going to be over before we get to the April 24th date, are we?

MR. WARD: The -- which pause, Your Honor?

THE COURT: Either of them, the adjudication of anything.

MR. WARD: So I don't know the answer to that. It could be. I don't have -- I don't have information to share with you about it, a particular end date.

THE COURT: But if I'm thinking about how long a pause is -- because you're using the word "pause." If I think about a pause to be equal or longer than the amount of notice that the agency is using here to terminate the

benefits, it makes it seem sort of clear that "pause" -- it's not good to talk pause as a very short period of time and to talk about the 30 days' notice as adequate notice when their --

MR. WARD: So, again, it depends on -- how long the pause is depends on the factors of the individual program and the things that the agency is evaluating. So with respect to --

THE COURT: Well, but they've all been paused now for more than 60 days.

MR. WARD: Well, so not with respect to the CHNV process, for which the agency has completed -- in terms of the parole pause, the pause on the adjudicating parole applications, because the agency has completed the review it discussed in the Huffman declaration. The conclusion of that review decided to end the program entirely.

THE COURT: Sure. We have the federal register instead, so fair enough as to that.

On the other benefits, though, the Davidson memo, those are all paused for longer than -- well, for longer than 60 days at this point, correct?

MR. WARD: Yes, Your Honor. But, again, that doesn't apply to all the processes. But I believe it is -- has been almost -- that -- that memorandum was issued on February 14th, so we're approaching 60 days, I believe, or

perhaps just past it.

THE COURT: Okay. I promised you last time I'd have something out quickly. I am that much more urgently getting something out quickly.

I am -- unless something changes as I read my material through one last time, I am going to issue an order staying the revocation of parole under the federal register notice and of the -- of people's individual parole at this time. That is my current -- current order.

MR. COX: May we speak just briefly about the potential relief beyond the stay, Your Honor, such as corrective notice to the members of the proposed class and have a reporting requirement, if that would be -- in order --

Essentially, we think we need a canary in that coal mine; because, otherwise, we just have no visibility, and defendants have thus far used the lack of public visibility to their advantage. And so we just want to be able to know if -- if applications, for example, are being adjudicated.

THE COURT: So let's be really blunt here about how these things are proceeding. We have decisions around the country because there's been urgent orders placed everywhere, which has turned everything upside down.

I can exercise my authority as best I can. If I push the edges -- it doesn't matter whether I push the edges or I'm squarely within my authority; the government will

appeal whatever order I put in.

And it seems to me that a stay of their action stands on different grounds than telling them to do something and that I don't see their arguments against an injunction, quote, to have the same weight as an argument as to a stay, that they have an administrative order that's supposed to have -- is going to revoke people's parole effective on April 24th. In advance of that, I am staying the order.

I hear what you're saying about wanting to get word out to people. You have a lot of lawyers sitting there. You can figure out how to do a press release once the order is issued. I wouldn't jump your gun.

But I'm not going to order them to do that. I am trying to stay in my lane and address the problem that has been created here. And I don't want to throw out the baby with the bath water because I'm awarding more than I have jurisdiction to do.

MR. COX: I understand, Your Honor.

We would hope to proceed to discovery soon, and perhaps we could address it at that point if there are any issues.

Thank you, Your Honor.

MR. WARD: Just one final point, Your Honor, is to renew my request that if the Court decides to grant any relief, that the Court consider staying that relief.

The solicitor general is going to want to consider whether or not to seek an emergency appeal. And if the Court determines for whatever reason that a stay is not appropriate, if the Court could note that, then we can -- the solicitor general can make whatever determination he makes, and we can proceed or not; otherwise, we would need to proceed with briefing or a request for stay before this Court.

THE COURT: The difficulty here is that I have something that's happening on April 24th. I am working as quickly as I can. You are all working as quickly as you can with your efforts.

I hear your request for a stay. I am certain, if this goes up to the First Circuit, they're going to want to be able to -- everyone wants to be able to consider things in a reasoned manner.

The problem is that you've put a hard date on it. And that April 24th date means that these issues have to be addressed expeditiously.

I understand that there is a request for a stay. I will make a final determination as I go through, but I don't see how I can safely protect the potential injury here if I let the April 24th date come and go.

MR. WARD: Thank you for considering the request, Your Honor.

THE COURT: And staying the order would do that.

MR. COX: Your Honor, if I could just add our thanks on behalf of the plaintiffs in the proposed class for the Court's considerable amount of time over the last month. Several members are here today, including our -- the executive director of Haitian Bridge Alliance and other representatives from the organization. And we just want to say thank you for your time, Your Honor.

THE COURT: Well, my time would be better spent if I actually got the decision out, that you can all decide what to do with it. So I will put my effort into that.

We are in recess.

(Court in recess at 4:26 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Robert W. Paschal, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of April, 2025.

/s/ Robert W. Paschal

ROBERT W. PASCHAL, RMR, CRR
Official Court Reporter