No. 24A1079

IN THE SUPREME COURT OF THE UNITED STATES

Kristi Noem, Secretary of Homeland Security, et al.,

Applicants,

v.

Svitlana Doe, et al.,

Respondents.

BRIEF OF THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS ("AFL-CIO") AND AFFILIATED UNIONS SEIU, UFCW, UAW, UNITE HERE, IUPAT, IUE-CWA, AND BAC AS *AMICI CURIAE* IN OPPOSITION TO APPLICATION FOR STAY

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INTEREST OF *AMICI CURIAE*[1]

The **American Federation of Labor & Congress of Industrial Organizations ("AFL-CIO")** is a federation of 63 national and international labor organizations with a total membership of over 15 million working men and women who are employed in every sector of this country. All seven other *amici* are labor organizations affiliated with the AFL-CIO.

The **Service Employees International Union ("SEIU")** is a labor organization of approximately two million diverse members who work in the healthcare industry, state and local government, and in property service industries, such as janitors, security officers, airport workers, retail, distribution, laundry, and fast food workers, and adjunct professors, throughout the United States, Canada, and Puerto Rico. SEIU's members include foreign-born U.S. citizens, lawful permanent residents, and immigrants authorized to work in the United States. SEIU estimates that hundreds of its members—primarily though not exclusively in its airport service contractor sector—are CHNV parolees.

The **United Food and Commercial Workers International Union ("UFCW")** is a private sector union that represents over 1.2 million people across the United States, Canada and Puerto Rico. In the United States and Puerto Rico, UFCW represents over 900,000 workers. A significant number of UFCW members work in the meatpacking and food processing industries in the United States.

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Moreover, a great portion of UFCW members employed in these industries are individuals who have received status through the CHNV parole program. Revoking their parole will not only adversely affect parolees, but also the people they work alongside, the companies that rely on their valuable labor and the communities that rely on the vitality of these companies.

The **International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW")** is one of the largest and most diverse unions in North America, with members in virtually every sector of the economy. UAW-represented workplaces range from multinational corporations, small manufacturers and state and local governments to colleges and universities, hospitals and private non-profit organizations. UAW has more than 400,000 active members and more than 580,000 retired members in the United States, Canada and Puerto Rico. UAW represents a significant number of CNHV parolees in the manufacturing sector who would be impacted by the abrupt termination of the program.

UNITE HERE is an international labor union that primarily represents workers in the hotels, casino gaming and food service industries, and has approximately 270,000 members in the United States. Service jobs in the hospitality industry attract new immigrants as they arrive and seek work opportunities in United States, and as a result, UNITE HERE's membership includes many immigrants who are temporarily authorized to work in the United

States, including through CHNV parole. Those members and the employees who work with them will be impacted by the termination of the CHNV parole program.

The **International Union of Painters and Allied Trades ("IUPAT")** proudly represents 140,000 workers in the finishing trades across the United States and Canada. IUPAT members work in dozens of trades, primarily industrial painters, commercial and decorative painters, drywall finishers, glaziers and glass workers, sign and display workers, trade show workers, floor covering installers, and many more successful careers in the construction industry and beyond. These trades are attractive to immigrants seeking to establish productive work lives in the United States. The ranks of IUPAT's membership include many individuals from Cuba, Haiti, Nicaragua, and Venezuela who are authorized to work in this country because of CHNV parole. IUPAT's signatory contractor partners and their brothers and sisters in the union rely on the skills these members bring to their jobsites. Their sudden absence due to withdrawn work authorization could impact the progress of multiple construction projects across the country.

The **International Union of Electrical Workers-Communications Workers of America ("IUE-CWA")** is the Industrial Division of the Communications Workers of America ("CWA"). The Union represents 40,000 workers across the country in a wide range of manufacturing industries. IUE-CWA represents employees at least two factories in the Midwest where significant number of members are CHNV parolees. The Administration's efforts to abruptly

terminate CHNV parole has been highly disruptive to the workforce in these locations and to IUE-CWA members' lives.

The **International Union of Bricklayers and Allied Craftworkers ("BAC")** represents 70,000 workers in the masonry trades across the United States and Canada. These skilled craftworkers include bricklayers, stone and marble masons, cement masons, plasterers, tilesetters, terrazzo and mosaic workers, and pointers/cleaners/caulkers. BAC's membership includes many individuals from Cuba, Haiti, Nicaragua, and Venezuela who are authorized to work in this country because of CHNV parole. The signatory contractors who employ BAC members rely on the skills that these individuals bring to their jobsites to help build their communities. Their sudden absence due to withdrawn work authorization could have an immediate impact on the progress of multiple construction projects across the country.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici are labor unions representing workers across a wide spectrum of industries, including the automotive, manufacturing, airport service contracting, construction, meatpacking, and hospitality sectors. Our members are American citizens and non-citizens. The National Labor Relations Act ("NLRA") mandates that unions comply with a duty of fair representation and provide equitable, zealous, and non-discriminatory advocacy for all of their members, regardless of their immigration status. *See Vaca v. Sipes*, 386 U.S. 171, 177–78 (1967); *Sure-Tan,*

Inc. v. NLRB, 467 U.S. 883, 891–92 (1984) (NLRA provides rights to all employees regardless of immigration status).

Amici's members hold a wide variety of immigration statuses that provide work authorization. They are lawful permanent residents and non-immigrant visa holders, temporary protected status ("TPS") beneficiaries and asylees. And thousands of them are parolees from Cuba, Haiti, Nicaragua, and Venezuela ("CHNV parolees") whose right to work is tied to their parole status. These parolees entered the country lawfully by invitation of a U.S. sponsor, are lawfully present in this country, are lawfully authorized to work at the facilities where *amici* represent workers, and lawfully went through the I-9 verification process provided for in the Immigration Reform and Control Act ("IRCA") and its implementing regulations. They are also among the workers to whom unions owe this duty of fair representation.

Each CHNV parolee was permitted to enter the country and remain here for a period of two years. During their time in this country, they have worked shoulder-to-shoulder with their U.S.-citizen co-workers in industries critical to our Nation's economic and national security.

On March 25, 2025, all this changed. Rather than wait for each parolee's two-year term to end, the U.S. Department of Homeland Security ("DHS") issued a notice abruptly terminating the CHNV program, rescinding all existing grants of CHNV parole with a 30-day wind-down period, and initiating processes to revoke work authorization from hundreds of thousands of CHNV parolees. DHS,

"Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans," 90 Fed. Reg. 13611 (Mar. 25, 2025) (hereinafter, the "Federal Register Notice" or "FRN"). *Amici* believe that, if allowed to take effect, this would be by far the largest single-day revocation of work authorization in our Nation's history—one that DHS initiated with effectively no notice to employers or the U.S. workers who would be impacted by the disruptive effect of the FRN.

Amici submit this brief to highlight the unprecedented disruption that such an immediate, blanket revocation of CHNV parole status would wreak on the U.S. workforce. For instance, as discussed in more detail below, *amici* UAW and IUE-CWA report that the sudden loss of hundreds or thousands of CHNV parolee workers would exacerbate labor shortages, forcing employers to both cut shifts that can no longer be staffed and force overtime work for many U.S. workers. Indeed, at least one manufacturing facility would have lost nearly *twenty percent* of its workforce absent the district court's stay order. In addition, *amicus* SEIU reports that the summary dismissal of CHNV parolees in essential airport service roles—including airport security personnel, wheelchair operators, cabin cleaners, and baggage handlers—would lead to disruptions in airport operations, harming the interests of U.S. workers and passengers alike. Staying the district court's order in this case would bring about these and many more disruptions across many industries and facilities around the country.

The disruption that would be wrought by allowing the FRN to take effect in full impacts two questions before this Court. First, regardless of the merits of the

CHNV program in its conception, DHS's failure to consider the dramatic impact of summarily rescinding hundreds of thousands of work permits on a single day with virtually no notice on American workers, employers, and unions renders its abrupt and wholesale rescission arbitrary and capricious. Thus, respondents are likely to succeed on the merits of their claims under the Administrative Procedure Act ("APA"). Second, the immense strain the FRN will place on unions and employers alike means that the balance of the equities and the public interest—two key factors to consider in determining whether a stay is justified, *Nken v. Holder*, 556 U.S. 418, 435–36 (2009)—tilt sharply against the government.

Amici thus urge the Court to deny the government's emergency application for a stay.

ARGUMENT

I. The Abrupt Rescission of CHNV Parole and Parolees' Work Authorization Would Generate Chaos in American Workplaces, Impact Production and Harm American Workers.

Amici are uniquely positioned to assess the impact of DHS's FRN on the workplace. Between March 25, when the FRN was issued without notice-and-comment from affected stakeholders, and April 14, when the mass rescission of CHNV parole was stayed by the district court, *amici* endured three weeks of chaos and confusion among the workers they represent and the employers with whom they bargain. *Amici*'s CHNV parolee members—even those who were eligible for or had applied for another immigration benefit— feared abrupt job loss and destitution. And *amici*'s other members—U.S. citizens, lawful permanent residents, or non-citizens with non-CHNV-related work authorization—prepared for punishing

work conditions including excessive mandatory overtime on the one hand, and, on the other, the potential for layoffs if employers were no longer able to meet consumer demand as a result of a sudden reduction in staffing.

This phenomenon was particularly pronounced in the manufacturing sector, where labor shortages continue to be rampant. For instance, UAW represents approximately 800 workers at a tier-one automotive parts facility; this facility supplies auto assembly plants that employ thousands of manufacturing workers throughout the Midwest. After the FRN issued, the employer advised that at least 150 of these members were CHNV parolees who would have to be summarily terminated based on the FRN within 30 days' time. In other words, the parts facility stood to lose *nearly 20% of its workers* in less than a month.

CHNV parolees at this facility perform skilled, physically-demanding work in an area of the country that is experiencing a workforce shortage. Turnover among U.S. workers in this region was high, and CHNV parolees provided the employer with a stable, reliable workforce. Had the district court not intervened to stay the FRN in relevant part, U.S. workers would have had to perform more work for longer hours, thus generating an increased health and safety risk. And still, the facility as a whole would struggle to cover gaps across departments and shifts. As a result of overwork, quality of the product manufactured in this facility would suffer, potentially endangering existing and future contracts with auto manufacturers.

IUE-CWA's experience is similar. IUE-CWA represents approximately 6,000 employees at a large manufacturing facility that produces home appliances in the

Midwest. After the FRN was issued, the employer advised that approximately 200 IUE-CWA-represented employees were CHNV parolees and would be terminated following the FRN's 30-day wind-down period.

Even prior to DHS's decision to abruptly terminate CHNV parole, IUE-CWA reports that this facility had approximately 150 unfilled positions, and that the employer had eliminated a shift due to lack of labor. And despite the district court's stay order, the employer announced that it was imposing mandatory overtime on all workers, requiring them to work 9 hours per day, until further notice, in order to meet its production needs. The precipitous loss of 200 additional employees would only exacerbate this situation.[2] Ultimately, only the district court's stay order is keeping these manufacturing workers on the jobs—and preserving the jobs and working conditions of these two unions' other workers.

In pure numbers, however, it is likely that UFCW's meatpacking and food processing workers were set to suffer the greatest exposure as a result of DHS's abrupt parole-and-work-authorization termination decision. UFCW estimates that there are nearly *25,000* parolees working at the plants where it represents workers.[3] The sudden removal of this many workers from the workforce would

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[2] IUE-CWA reports a similar situation at another facility in the energy manufacturing sector where it represents approximately 1,000 employees, at least 40 of whom are CHNV parolees. In this facility, too, IUE-CWA reports that there are roughly 100 open positions and bargaining unit members have had to work, collectively, 192,000 hours of mandatory overtime in the past year. The sudden termination of 40 additional employees would only make this situation worse.

[3] UFCW is unable to determine, with exactitude, the number of individuals from Cuba, Haiti, Nicaragua, and Venezuela who are employed because they are CHNV

likely cause disruptions to production in these industries comparable to the disruptions experienced during the COVD-19 pandemic.

In addition to disruptions in production, other UFCW members working in these plants would suffer serious deterioration in their terms and conditions of employment. For example, in UFCW's experience, meatpacking and food processing employers in the mid-South region have had difficulty hiring workers to satisfy productivity demands. When these plants are short on manpower, employers slow down production to account for lower man-hours and schedule workers for less than 40 hours a week, resulting in decreased pay. Workers continue to face pressure to meet production goals, yet must do so with shorter work hours. Additionally, operating with a reduced workforce also means greater safety concerns for workers in an already dangerous industry. In the Mid-South region alone, UFCW estimates that roughly 2,000 workers in the poultry industry could be exposed to greater risk. Again, only the district court's stay order has avoided generating a crisis situation in this industry.

The harms experienced by *amici* were not limited to manufacturing and food processing. In addition to its members who work in healthcare, janitorial, and healthcare services, SEIU represents a wide array of employees employed by service contractors at our Nation's airports, including cabin cleaners, airport security

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parolees, and the number who may have received parole on some other basis, such as after being inspected by a U.S. Customs and Border Protection officer at a land port of entry during an appointment made using the CBP ONE application. At any rate, UFCW is confident that thousands of its parolee members are CHNV parolees.

officers, wheelchair attendants, and baggage handlers. These essential personnel monitor airports for potential threats, keep passengers safe, and ensure the timely operation of flights, during a time when air travel is under significant stress.

Following publication of the FRN, airport service contractors advised SEIU that approximately 300-500 of its workers in airports in the New York/New Jersey metropolitan area, 60-100 workers in airports in the Boston metropolitan area, and 50-100 workers in West Coast airports were likely CHNV parolees and at risk of termination.[4] Due to the confusion generated by the FRN, some employers took premature, unnecessary, and in some cases unlawful actions against CHNV parolees, seeking to terminate workers prior to the Employment Authorization Document ("EAD") revocation date in violation of SEIU's collective bargaining agreements. Other employers worked collaboratively with SEIU, emphasizing how much they valued CHNV parolees' critical services, and expressed concerns about being able to replace workers quickly. SEIU had to expend significant resources to engage both categories of employers in negotiations about leaves of absence and reinstatement rights, the details of the work authorization reverification process, and education and legal support for its workers about the meaning of the FRN. SEIU believes that, had the FRN not been stayed in relevant part, essential airport operations would likely have been disrupted, with other work-authorized employees straining to deal with a substantially increased workload.

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[4] In New York/New Jersey, this number represented between 3 and 5 percent of SEIU-represented airport service workers.

UNITE HERE faced a similar situation. In several Texas and Florida hotels whose employees are represented by UNITE HERE, CHNV parolees make up a substantial part of the "back-of-the-house" workers. Such positions are less desirable and employers routinely have difficulty hiring and retaining workers in those positions. It is common for back-of-the-house departments in hotels to be understaffed and for the workers to work mandatory overtime or excessive workloads. Regrettably, when faced with labor shortages, it is UNITE HERE's experience that employers in the hotel industry often turn to temporary labor agencies to supply workers so that the hotel can continue serving its guests. Such labor agencies, in addition to undermining the wages and working conditions for U.S. workers employed by the hotels by paying substandard wages and benefits, often violate immigration law by hiring undocumented workers.[5] Had the FRN not been stayed in relevant part, UNITE HERE would have been harmed both by a loss of members and by a potential decline in their terms and conditions of employment in hotels where it is the bargaining representative.

Finally, IUPAT's experience provides a window into the effects of the FRN on the construction sector. IUPAT estimates that several hundred CHNV parolees work for signatory contractors on important infrastructure projects, particularly in the Southeast US and Gulf Coast region, where they perform skilled work as

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[5] Steve Eder, Danielle Ivory & Marcela Valdes, *The Hidden Truth Linking the Broken Border to Your Online Shopping Cart*, N.Y. Times (Nov. 17, 2024), https://www.nytimes.com/2024/11/17/us/immigration-undocumented-migrants-jobs.html?referringSource=audio-landing-page.

commercial and industrial painters, drywall finishers, and glaziers. These contractors secured work based on their ability to timely complete projects; yet the sudden loss of significant numbers of workers would lead to project delays. Even if a project may continue, it places additional strain upon the remaining workforce, manifesting in longer hours and working conditions that may be less safe. IUPAT understands that the situation faced by other building trades unions is similar.

Amici's experiences provide a ground-level view of how the FRN has affected American unions, workers, and employers. These specific examples are neither unique nor comprehensive; indeed, they are corroborated by publicly-available data on the workforce integration of CHNV parolees in critical industries, including in those experiencing domestic labor shortages. Reflecting the experience of UAW and IUE-CWA, estimates suggest that 40,000 CHNV parolees work in manufacturing, while 30,000 work in leisure and hospitality, the industry in which UNITE HERE represents workers. Another 30,000 are employed in construction, 30,000 in health services, 20,000 in business services, and 10,000 in education.[6]

II. The Disruption the Blanket Rescission of CHNV Parole Would Cause to U.S. Workers and Employers Weighs Against a Stay in Two Ways

If DHS wanted to end the CHNV parole program, it had a straightforward way to do so consistent with employers' and employees' expectations: It could have simply declined to renew any grant of parole after the two-year term ended. This

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[6] Fwd.Us, "Industries with critical labor shortages added hundreds of thousands of workers through immigration parole," (March 26, 2025), https://www.fwd.us/news/immigration-labor-shortages.

would have accomplished DHS's desired goal of ending parole while allowing employers and employees time to prepare as the CHNV parolees gradually left the workforce unless they were able to establish an independent basis for work authorization. Instead of terminating the program in that logical, non-disruptive way, DHS eliminated the CHNV parole program in its entirety and overnight. The disruption that decision causes, as highlighted above, weighs strongly against a stay for two reasons: (1) it supports the district court's decision that the FRN was arbitrary and capricious; and (2) it undermines the government's arguments on both the public interest and balance of hardships under *Nken*.

A. The Blanket Rescission of CHNV Was Arbitrary and Capricious Because It Failed to Consider the Economic Disruption Caused by DHS's Actions.

It is hornbook law that an agency action is arbitrary and capricious under the APA when it "entirely failed to consider an important aspect of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*"). The district court—and respondents, in opposing the government's emergency application here—have ably explained that the wholesale rescission of parole with a 30-day wind-down period is arbitrary and capricious because (1) it failed to rebut any of the significant humanitarian reasons that justified the CHNV program in the first place; and (2) rested on the legal fallacy that parolees could be subject to expedited removal despite their legal entry into the country. App. 31a-35a.

Amici agree. Today, just as in 2022-2023 when the various CHNV programs were announced, Haiti is a failed state with a national government that has lost

territorial control to violent gangs, while Cuba, Venezuela, and Nicaragua are governed by one-party authoritarian regimes with lamentable human rights records. As the District Court correctly noted, the FRN "gave no rationale for its conclusion that such humanitarian concerns no longer justified the existing parole programs" and "no reasons for categorically revoking parole despite the humanitarian concerns previously articulated." App. 35a. This, alone, is reason enough to deny the government's emergency application.

Amici, however, emphasize another portion of the FRN that clearly failed to consider an important aspect of the problem—the reliance of unions, employers, and the American workforce on CHNV parolees' work authorization. As this Court has explained, when a "prior policy has engendered serious reliance interests that must be taken into account . . . [i]t would be arbitrary and capricious to ignore such matters." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). Instead, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id.* at 516; *see also Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 224 (2016) (when "serious reliance interests [are] at stake, [and agency's] conclusory statements do not suffice to explain its decision").

The FRN purports to have considered the regulatory alternative of "permitting CHNV participants' parole to remain in effect until the natural expiration of the parole," acknowledging that this was DHS's practice in the past. 90 Fed. Reg. at 13620 (citing 82 Fed. Reg. 38926 (Aug. 16, 2017) (wind-down of

parole program for Central American minors during first Trump Administration which allowed existing parolees to maintain status until its natural expiration). It also claims to have considered "the alternative of a longer than 30-day wind-down period." *Id.* But the FRN gives no rational explanation for not following a similar path here. The sole reason given for rejecting these alternatives is the alleged difficulty of subjecting CHNV parolees to expedited removal (which, as the district court correctly concluded, is based on the legally erroneous premise that CHNV parolees can be subject to expedited removal in the first place.) App. 31a-34a.

As far as employment issues are concerned, the FRN limits discussion of such reliance interests to one paragraph. It states, in full:

> 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 effect 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.

90 Fed. Reg. at 13619.

This conclusory statement is manifestly insufficient to constitute the "reasoned analysis for [a] change" in agency position required by law. *State Farm*, 463 U.S. at 42. The FRN does not indicate that DHS, or any other federal agency, has conducted any labor market study or survey to determine where CHNV parolees are employed or whether particular industries or geographies may suffer a

disproportionate impact from a sudden loss of significant parts of their workforce. It refers to no data or statistics relating to the effects that providing 30 days' notice would have on any sector of the workforce. Nor does it compare this to any other notice period (e.g. 6 months). It simply declares (apparently based on *no facts at all*) that even if an employer reasonably expected to continue to lawfully employ large numbers of CHNV parolees pursuant to their current employment authorization through *January 2027*, it would be minimally prejudiced by being required to terminate them all in *April 2025*.

This is obviously wrong: There is a massive difference between believing that an employee must be terminated in twenty months and being told that an employee must be terminated in thirty days. Thus, as explained at length in Section I, *supra*, the mass revocation of CHNV-related work authorization on a 30-day timeline imposes significant harms on unions, employers, and American workers alike. As UAW and IUE-CWA explain, summarily terminating hundreds of skilled workers at core manufacturing facilities will gravely harm U.S. workers who have already been forced to work mandatory overtime due to labor shortages, and potentially endanger contracts between suppliers and assembly plants. As UFCW shows, it would cause massive disruptions to the meatpacking and food-processing industries akin to those that occurred during an international pandemic. As SEIU demonstrates, such an action would likely interrupt the orderly functioning of our Nation's airport infrastructure. As IUPAT contends, it would cause construction contractors to have difficulty in timely completing key infrastructure projects. And as noted by UNITE

HERE, it will incentivize employers to meet their labor needs via temporary labor agencies, which undermines both American workers' labor standards and, perversely, encourages the employment of undocumented workers with no work authorization at all.

DHS's explanation that employer, union, and worker reliance interests were diminished because they "would have experienced the effect of such expiration" at the end of two years is demonstrably false. As an initial matter, as described above, it is far different for employers to know that a significant subset of employees would gradually lose work authorization during a period stretching until January 2027 than for employers to find out, with no notice, that a significant subset of employees would *all* lose work authorization *in thirty days*. Moreover, employers had every reason to think that, were the CHNV program allowed to naturally fade away, a meaningful number of CHNV parolees would have been able to maintain their work authorization through an alternate path. A stated goal of CHNV parole was to provide beneficiaries with a reasonable, orderly process by which they may be evaluated for and apply for other relief: "the two-year period [would] 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." DHS, "Implementation of a Parole Process for Venezuelans," 87 Fed. Reg. 63507, 63508 (Oct. 19, 2022); *see also* DHS, "Implementation of a Parole Process for Haitians," 88 Fed. Reg. 1243, 1244 (Jan. 9, 2023) (same). Therefore, many CHNV beneficiaries would likely have obtained a right to continuing employment

authorization beyond the initial two-year parole period by, for instance, timely filing a meritorious asylum application or being the beneficiary of another family- or work-based petition. *See, e.g.,* 8 C.F.R. § 274a.12(c)(8) (permitting asylum applicants to apply for work permits 150 days after filing their applications if they have not yet been adjudicated). Thus, though employers and unions had no *guarantee* of continuing work authorization beyond the initial two-year grant of parole, they had a reasonable expectation that a meaningful number of CHNV parolees would obtain an independent lawful basis for work authorization prior to the expiration of their parole.[7]

But *even if* DHS had reasonably justified its decision to precipitously end CHNV parolees' parole status—which, as described above, it has not—it has provided absolutely no rationale for also acting to revoke parolees' employment authorization. *Even if* DHS needed to end the CHNV program quickly in order to subject its beneficiaries to expedited removal—which, as the district court explained, it does not, because parolees are not eligible for expedited removal at all —nothing about this rationale justifies stripping parolees of their work authorization.[8] As the FRN itself acknowledges, parolees' work authorization terminates automatically *only* if the initially-granted parole expires, removal

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[7] Indeed, though the FRN does not provide statistics on this matter, it acknowledges that some number of CHNV parolees have, in fact, applied for other statuses and states that it does not intend to prioritize them for removal. 90 Fed. Reg. at 13619.

[8] The fact of maintaining work authorization would not prevent DHS from instituting removal proceedings, expedited or otherwise, against any CHNV parolee.

proceedings are instituted, or voluntary departure is granted. 8 C.F.R. § 274a.14(a). But none of these three conditions are at issue here. Instead, DHS has stated that it intends to exercise its *discretion* to revoke work authorization en masse, under a provision that provides it the ability to do so "when it appears that any condition upon which it was granted . . . no longer exists." *Id.* § 274a.14(b). This provision is not mandatory, and had it considered the interests of employers, unions, and the American labor market, nothing would have prevented DHS from continuing to provide CHNV parolees with work authorization unless and until it determined to take enforcement action against them. DHS's wholesale failure to consider this possibility is not a minor issue. Union members who are CHNV parolees reasonably relied on the government's assurances that they would have two years to apply for any immigration benefit for which they qualified. Securing counsel and preparing any immigration application takes time and effort, and for asylum, the most common benefit for which CHNV parolees would qualify, the INA requires a six-month waiting period between the time the application is filed and when the applicant may receive an EAD. *See* 8 U.S.C. § 1158(d)(2). Even if a parolee is able to prepare and file an asylum application on the same day that their parole is revoked—thus establishing a legal basis for their continuing presence in the United States—they will experience a gap in employment authorization of at least six months, a period of time which is tremendously disruptive to employers, unions, and other workers. DHS failed to consider that it might limit parole but allow work

authorization to continue forward to minimize disruptions to both parolees and third parties such as employers, unions, and other workers.

Thus, for this and the reasons articulated by plaintiffs and the district court, DHS's failure to consider employment- and labor market-related harms of its precipitous termination of the CHNV parolees' status and work authorization renders its determination arbitrary and capricious under the APA. The government cannot, therefore, demonstrate the likelihood on the merits necessary to justify an emergency stay of the district court's order.

B. The Balance of Hardships and the Public Interest Militate Strongly Against a Stay of the District Court's Order

The district court's prompt action avoided imminent grave harm to hundreds of thousands of CHNV parolees, who risked losing their immigration status and work authorization on legally specious grounds: to *amici* unions, who collectively represent over 15 million American workers, and who risked losing thousands of members and were forced to scramble to provide unexpected legal and community support; to employers, who were forced to reduce production and lose profits; and to other workers, who were forced to work mandatory overtime and saw declines in their terms and conditions of employment.

It is contrary to the public interest for manufacturing, meatpacking, and food processing facilities, which already suffer from a significant labor shortage, to be further hampered by sudden terminations of hundreds of skilled workers, forcing American workers into mandatory overtime at the expense of their health and safety. It is contrary to the public interest for hundreds of essential airport workers,

many of whom are engaged in security-related functions, to be summarily dismissed at a time in which certain of our airports are already experiencing significant delays and disruptions.[9] It is contrary to the public interest to have important infrastructure projects remain unfinished because contractors have been forced to lay off significant parts of their workforce. And it is contrary to the public interest for employers facing labor shortages in difficult-to-fill positions to turn to low-road subcontractors known for exploiting undocumented workers, thus undermining the working standards of those who are authorized to work.

Staying the district court's order would therefore "substantially injure the other parties interested in the proceeding," *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), and contravene the public interest, two key factors that indicate that a stay should be denied, *Nken*, 556 U.S. at 435.

CONCLUSION

The Court should deny the government's emergency application for a stay of the district court's order.

Dated: May 16, 2025

Respectfully submitted,

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[9] *See, e.g.,* Pete Muntean et al., "Inside the Multi-Day Meltdown at Newark Airport," CNN.com (May 6, 2025), https://edition.cnn.com/2025/05/06/us/inside-the-multi-day-meltdown-at-newark-airport.

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