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

OPPOSITION TO APPLICATION TO STAY

ANWEN HUGHES
HUMAN RIGHTS FIRST
121 W 36th Street, Pmb 520
New York, NY 10018
(212) 845-5244

JOHN A. FREEDMAN
LAURA S. SHORES
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000

JUSTIN B. COX
Counsel of Record
LAW OFFICE OF JUSTIN B. COX
JAC Cooperating Counsel
P.O. Box 1106
Hood River, OR 97031
(541) 716-1818
justin@jcoxconsulting.org

ESTHER H. SUNG
KAREN C. TUMLIN
HILLARY LI
LAURA FLORES-PERILLA
BRANDON GALLI-GRAVES
JUSTICE ACTION CENTER
P.O. Box 27280
Los Angeles, CA 90027
(323) 450-7272

RULE 29.6 STATEMENT

In accordance with United States Supreme Court Rule 29.6, Respondent Haitian Bridge Alliance ("HBA") states that it is a community-based nonprofit organization incorporated in California. HBA has no parent corporation, nor has it issued any stock owned by a publicly held company.

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT 4

A. The Statutory Parole Authority 4

B. CHNV Parole 5

C. Defendants' Actions 9

D. Proceedings Below 12

ARGUMENT 14

I. THE LIKELIHOOD OF IRREPARABLE HARM REQUIRES DENYING THE STAY APPLICATION 16

II. DEFENDANTS HAVE NOT MADE A STRONG SHOWING THAT THE CASE IS WORTHY OF CERTIORARI OR THAT IT IS LIKELY TO SUCCEED ON APPEAL 20

A. A grant of certiorari is unlikely and unwarranted. 20

B. Defendants fail to show a fair prospect of obtaining reversal. 23

1. The Secretary's cutting short of all existing grants of CHNV parole is subject to judicial review. 23

2. Defendants are unlikely to prevail on the merits of Plaintiffs' APA claims 27

3. The Secretary's *en masse* truncation of individualized grants of parole contravened the statutory case-by-case requirement. 32

4. The Secretary's truncation of all valid grants of CHNV parole was arbitrary and capricious. 35

III. THE DISTRICT COURT'S NARROW STAY ORDER WAS NOT AN ABUSE OF DISCRETION 38

CONCLUSION 38

INTRODUCTION

Had the district court not granted preliminary relief, the Plaintiff class of approximately half a million Cubans, Haitians, Nicaraguans, and Venezuelans lawfully in this country would have become undocumented, legally unemployable, and subject to mass expulsion on an expedited basis at midnight on April 24, 2025. After multiple hearings and rounds of briefing, the district court properly held that Plaintiffs are likely to succeed in proving that Secretary Noem's decision to trigger the first ever mass revocation of parole contravened express limits on her authority and was predicated on an erroneous legal conclusion. Given the massive irreparable harm to class members and their communities that would otherwise result, the district court exercised its statutory discretion under 5 U.S.C. § 705 to temporarily maintain the *status quo* by postponing that *en masse* revocation of parole, but it otherwise permitted the Secretary to proceed with ending the "CHNV" parole processes through which the class members arrived. Acting promptly, the First Circuit held that Defendants had not met their burden to justify staying the district court's order but invited them to request that their appeal be expedited. Instead, the Government demands this Court's permission—via the emergency docket—to execute the largest mass illegalization event in modern American history.

The Court should deny Defendants' Application, which badly mischaracterizes the scope and effect of the district court's order. Contrary to Defendants' repeated assertions, the district court's stay does not prohibit the Secretary from terminating or truncating class members' parole and employment authorizations, nor does it mandate any particular process for doing so; it just stays the Secretary's unprecedented attempt to do so via her March 25 Federal Register Notice. Likewise wholly unaffected is the Secretary's discretion

to remove class members—the Secretary has precisely the same authority and ability to do so now that she had before Plaintiffs filed suit; the stay order does not even make it more difficult. The district court's order also left undisturbed the Secretary's decision to end the CHNV parole processes, including the summary denial of some two million pending applications. In fact, the order does not prohibit or require the Secretary to do anything at all *except* to respect the district court's preliminary conclusion that her attempt to truncate parole *en masse* violated the Administrative Procedure Act because it was, among other things, based on her incorrect understanding of the law. To the extent Defendants have complaints, they are with the statutes Congress enacted and the rule of law itself, which do not justify the requested relief.

In contrast, granting the Application would cause an immense amount of needless human suffering. The class members all came to the United States with the permission of the federal government after each individually applied through a U.S. financial sponsor, passed security and other checks while still abroad, and received permission to fly to an airport here at no expense to the government to request parole. After being inspected and subjected to biometric and other additional vetting, an individual Customs and Border Protection (CBP) officer determined, on a case-by-case basis, that each individual merited a discretionary grant of parole, usually for a two-year period. Some class members have been here for nearly two years; others just arrived in January. Many class members are eligible under the INA for other, more durable forms of immigration relief, and have requested it, but the Trump Administration indefinitely suspended adjudicating their requests months ago. All of them followed the law and the rules of the U.S. government,

and they are here to reunite with family and/or to escape, even temporarily, the instability, dangers, and deprivations of their home countries. The Secretary is admittedly under no obligation to continue the CHNV parole process that brought class members here, but she nonetheless must respect required procedures and apply the law correctly before revoking their parole and upending their lives and causing mass disruption to their families, employers, and communities.

On that point—the Secretary's adherence to the law—the Application has relatively little to say. Instead, Defendants repeat *ad nauseam* the claim that the Biden Administration granted class members parole *en masse*, in violation of the statute's case-by-case requirement, and assert time and again that this somehow relieves the Secretary from accountability for her actions. Defendants have yet to present this argument to the lower courts, and so it was waived; but more importantly, not only did Secretary Noem omit any mention of this alleged justification in her Notice, she said the opposite, *conceding* that CHNV parole was case-by-case, and so the argument is precluded by the record and additionally cannot be considered under the *Chenery* doctrine. That Defendants focus on extra-record and irrelevant arguments not yet presented to the lower courts speaks volumes as to how far short they fall in carrying their heavy burden to justify the extraordinary relief they ask of this Court and the harm and chaos that granting it would unleash.

The Application should be denied.

STATEMENT

A. The Statutory Parole Authority

Since its enactment in 1952, the Immigration and Nationality Act (INA) has authorized the Executive to grant noncitizens "parole"—temporary permission for them to be in the United States and, per regulation, eligible for work authorization—for humanitarian reasons and/or because it benefits the public. Parole does not by itself lead to permanent status, but once here, parolees can apply for other forms of immigration relief for which Congress has made them eligible, including asylum, Temporary Protected Status, and adjustment of status based on employment or family ties.

Over the last seventy years, the Executive has frequently issued guidance on circumstances in which parole could be justified on humanitarian and/or public benefit grounds. This guidance comes in a variety of forms but generally identifies a group of noncitizens eligible to apply (or otherwise to be considered) for parole, with each applicant then assessed on a case-by-case basis by an adjudicator exercising the delegated parole authority.[1] *See, e.g.*, Pls. App. 420-427 (describing the creation of guidance for case-by-case review of military parole in place); *see also* Pls. App. 333 (providing examples of the use of programmatic parole). One example of such guidance is contained in DHS's parole regulation, 8 C.F.R. § 212.5, as the Government mentions. *See* Gov. Br. 20.

The first example of this programmatic (or "categorical") parole guidance was issued

---

[1] Similar guidance is commonly issued regarding other authorities, including by the current Trump Administration. *See* Gov. Br. at 20-21; Hamed Aleaziz & Michael Crowley, *Inside the Extraordinary Contradictions in Trump's Immigration Policies*, N.Y. Times (May 13, 2025), https://bit.ly/3SJbxV3 (describing guidance on applying the refugee definition to the racial discrimination claims of Afrikaners).

in 1956 when the Eisenhower Administration paroled into the United States, after case-by-case review, approximately 30,000 Hungarians fleeing a Soviet crackdown. In the decades since, every single Administration—including the first Trump Administration—has used the parole authority in this "categorical" way when other authorities were unavailable, insufficiently expeditious, or otherwise inadequate to address a sufficiently important interest. Pls. App. 320-324; *cf. Biden v. Texas*, 597 U.S. 785, 806 (2022) ("Every administration, including the Trump and Biden administrations, has utilized this [parole] authority to some extent."). While there is no official accounting, there have been more than 125 categorical parole processes, usually with multiple processes operating simultaneously, and addressing a broad array of public and humanitarian concerns. Pls. App. 320-324.

Over the years, certain members of Congress have at times expressed reservations regarding the Executive paroling large numbers of noncitizens without a clear path to permanent status. Pls. App. 331-332. When Congress has acted, however, it has repeatedly extended immigration and other benefits to parolees, adopted modest limits to the parole statute, and rejected attempts to define and tightly circumscribe the humanitarian and public benefit grounds on which parole could be granted. Pls. App. 320-324, 329-334.

B. CHNV Parole

Facing unprecedented migration-related challenges, the Department of Homeland Security (DHS) under the Biden Administration established several "categorical" parole processes to address a variety of concerns vital to the national interest, including foreign policy, migration management, border security, and humanitarian needs. The first such program was Operation Allies Welcome (OAW), created in the wake of the U.S. military's August 2021 withdrawal from Afghanistan and its hasty evacuation of approximately

125,000 people—mostly on military cargo jets—including Afghans whose lives were at risk due to their service to the United States. After individualized medical, security, and other screenings in third countries, approximately 76,000 Afghans were approved on a case-by-case basis for two-year grants of parole and were brought to the United States.[2]

Soon after Russia's invasion of Ukraine in February 2022, thousands of Ukrainians traveled to Mexico and presented themselves at U.S. ports of entry to request humanitarian protection, as is their right under international and U.S. law. Most of these Ukrainians—some 20,000 total—were paroled into the country.[3] In April 2022, DHS announced the Uniting for Ukraine (U4U) parole process through which Ukrainians who have a U.S.-based sponsor committed to providing for their financial support can apply to be considered on a case-by-case basis for parole. In addition to reducing the strain on border operations and discouraging the dangerous journey through Mexico to get there, the Ukrainian parole process further benefitted the U.S. Government by making it possible to conduct security checks on potential parolees before they traveled. *Implementation of the Uniting for Ukraine Parole Process*, 87 Fed. Reg. 25040, 25041 (Apr. 27, 2022). Of the seven million Ukrainians externally displaced by the ongoing war, about 200,000 of them were

---

[2] DHS, *Operation Allies Welcome: Afghan Parolee and Benefits Report* (May 8, 2023), https://bit.ly/4bFvh4L.

[3] From fiscal year 2022 to fiscal year 2023, the number of Ukrainians encountered by Border Patrol at the southern border dropped by more than ninety-nine percent. *See* David J. Bier, *Parole Sponsorship Is a Revolution in Immigration Policy*, CATO Institute (Sept. 18, 2023), https://bit.ly/44KJAnn.

individually approved on a case-by-case basis for humanitarian parole and are currently in the United States because of the U4U parole process.[4]

Following the success of U4U, in October 2022 DHS announced a similar process for Venezuelans after that country's displacement crisis led to a sharp uptick in asylum seekers presenting at the southern border. Pls. App. 251-261. In early 2023, DHS implemented similar processes (for similar reasons) for nationals of Cuba, Haiti, and Nicaragua.[5] Pls. App. 267-308. The CHNV parole processes were explicitly modeled on U4U and likewise required individuals seeking parole to apply through a sponsor lawfully present in the United States who committed to providing for them financially, to undergo individualized vetting, and to pay for their own travel. Unlike U4U, the CHNV processes were capped at a maximum of 30,000 total travel authorizations per month for the four countries combined, notwithstanding overwhelming demand. Pls. App. 263, 265, 279, 293, 306. After flying to an internal port of entry to request parole, individuals were inspected, underwent additional vetting (including biometric), with individual CBP officers making the ultimate decision, on a case-by-case basis, whether to grant parole.

The CHNV sponsorship model encouraged and incentivized paroling individuals when doing so would bring additional particularized benefits. CHNV sponsors around the country, including several Plaintiffs, were, for example, able to reunite with close family

---

[4] Julia Ainsley, *U.S. Has Admitted 271,000 Ukrainian Refugees Since Russian Invasion, Far Above Biden's Goal of 100,000*, NBC NEWS (Feb. 24, 2023, 11:15AM), https://bit.ly/3SJckoZ.

[5] Per CBP data, in fiscal year 2020, CBP encountered at the southwest border fewer than 18,000 nationals from Cuba, Haiti, Nicaragua, and Venezuela combined; that number increased to some 181,000 in 2021 and more than 600,000 in 2022 (comprising more than forty percent of all such encounters that year).

members. *See* Pls. App. 229-234 (Plaintiff Wilhen Pierre Victor sponsored her brother, whom she had not seen for over two decades). Sponsorship also allowed families to escape persecution and the threat of death. *See* Pls. App. 236-243 (Plaintiff Gabriela Doe sponsored her cousins, who fled persecution in Nicaragua); 176-180 (Plaintiff Andrea Doe, whose husband was a political prisoner in Nicaragua, came to the United States via the CHNV parole processes with her children to flee persecution); 204-206, 208 (Plaintiff Daniel Doe was paroled into the United States under the CHNV parole processes to flee danger and threat of gang violence in Haiti). For others, it was a way to live out their deeply held religious or moral convictions. *See* Pls. App. 212-218 (Plaintiff Sandra McAnany was motivated by her Christian beliefs to sponsor seventeen individuals); Pls. App. 220-227 (Plaintiff Kyle Varner was driven by his fierce moral convictions to sponsor dozens of individuals). The CHNV parole processes also alleviated pressure at the border.[6] Following individualized assessments, approximately 530,000 individuals—out of nearly three million applications filed—were permitted to travel through the CHNV processes.[7]

---

[6] *See* CBP, *CBP Releases December 2024 Monthly Update* (Jan. 14, 2025), https://bit.ly/43iUJt0 (reporting that encounters of CHNV nationals attempting to cross the border unlawfully were down ninety-one percent since the parole processes were created); *accord Texas v. Dep't of Homeland Sec.*, 722 F. Supp. 3d 688, 710 (S.D. Tex. 2024) (dismissing Texas's challenge to the CHNV parole processes after a two-day bench trial, holding that because the processes decreased the number of CHNV nationals in Texas—the source of the State's alleged injuries—it lacked standing). Texas moved to dismiss its appeal early this month.

[7] Due to departures and successful applications for asylum or other status adjustments, the number of individuals remaining in the United States with CHNV parole is likely significantly lower than 530,000, especially considering parole grants began in October 2022 and were for a duration not to exceed two years. However, the precise number is unclear.

Notwithstanding its successes, the CHNV parole processes became a hot-button political issue during the 2024 presidential campaign. As a candidate, President Trump promised to end the CHNV parole processes, repeatedly blaming CHNV parole for (*inter alia*) the alleged presence of pet-eating Haitians in Springfield, Ohio, including during the only presidential candidate debate held during the campaign.

C. Defendants' Actions

Within hours of being inaugurated, President Trump signed an executive order directing the Secretary to terminate "all categorical parole programs," specifically naming the CHNV processes. Exec. Order No. 14,615, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025). DHS immediately acted upon that directive via a memorandum issued that same day by Acting Secretary Huffman and, three days later, by imposing an across-the-board indefinite suspension of all adjudications for parole (or, where available, re-parole) through the OAW, U4U, CHNV, and other "categorical" parole processes. Pls. App. 129-130, 132.

On February 14, 2025, DHS issued the Davidson Memorandum; it ordered an indefinite suspension on processing applications for any other immigration benefit—including but not limited to asylum, TPS, adjustment of status, and employment authorization—filed by any parolee in the country by virtue of CHNV, U4U, or one of several family reunification parole processes.[8] Pls. App. 134-136.

Secretary Noem published a Federal Register Notice on March 25, 2025 announcing

---

[8] As a consequence of these indefinite suspensions—which DHS did not make public until after this suit was filed, D. Ct. Dkt. 66 at 34:22-35:10—thousands of Afghan, Ukrainian, Cuban, Haitian, Nicaraguan, and Venezuelan parolees, among others, are falling out of lawful status every month, notwithstanding their efforts and eligibility to stay on the right side of the law.

that she had decided to terminate the CHNV parole processes. DHS, *Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, 90 Fed. Reg. 13611-01 (Mar. 25, 2025). The Secretary acknowledged that DHS created the CHNV processes based on her predecessor'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," but explained that that did not provide sufficient public benefit to justify their continuation. 90 Fed. Reg. at 13612. Beyond prospectively terminating the CHNV processes, the Secretary announced that she was summarily denying the two million pending applications, rescinding all conditional approvals of applications and then denying those, and cancelling all travel authorizations previously issued to potential parolees. 90 Fed. Reg. at 13618. Defendants' emergency Application concerns none of those decisions.

Additionally, and most relevant here, the Secretary directed that "as one aspect of the termination of the CHNV parole programs," any grants of parole to CHNV parolees that "ha[ve] not already expired by April 24, 2025 will terminate on that date."[9] *Ibid.* The Secretary stated that she "has determined that the purposes" of those grants of parole "have been served because" they do not provide a significant public benefit. *Id.* at 13619 n.70. The Secretary cursorily referenced parolees' reliance interests, but said that they

---

[9] The Secretary acknowledged that, in these circumstances, DHS regulations require "written notice" to individuals to terminate their parole and "written notice" and an opportunity to be heard to revoke employment authorization, but asserted that she "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." 90 Fed. Reg. at 13620 ("Federal Register Notice as Constructive Notice").

were outweighed by the federal government's "strong interest" in deporting them through expedited removal, rather than normal removal proceedings under INA § 240. *Id.* at 13619 ("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" due to the two-year limit on expedited removal in 8 U.S.C. § 1225(b)(1)(iii)(II).

The Secretary said that she considered two alternatives to cutting short all existing periods 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). The Secretary gave only one reason for rejecting these alternatives: DHS's "strong interest in preserving the ability to initiate expedited removal proceedings to the maximum extent possible." *Id.* at 13620. "Expedited removal is available only when an alien has not been continuously present in the United States for at least . . . two years," the Secretary explained, *id.* at 13619 (citing 8 U.S.C. § 1225(b)(1)(iii)(II)), and therefore "[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 (also citing 8 U.S.C. § 1225(b)(1)(iii)(II)).

Lastly, the Secretary included a severability clause, explaining: "DHS would intend that the termination of the CHNV parole programs be implemented immediately, even if the termination of ATAs [advance travel authorizations] or existing grants of parole were

to be enjoined in whole or in part." *Id.* at 13622.

D. Proceedings Below

Plaintiffs[10] brought suit on February 28 and amended their complaint to address the Secretary's Notice a month later. Following multiple rounds of briefing and three hearings on Plaintiffs' requests for class certification and preliminary relief, the district court granted each in part on April 14. As to the former, the district court certified a class consisting of all individuals who received a grant of CHNV parole that was modified and cut short via the Notice, except those who already departed the United States or sued separately. Gov. App. 42a-44a.

As to Plaintiffs' motion for a stay under 5 U.S.C. § 705 and various forms of preliminary injunctive relief, the district court granted a stay under § 705 of Secretary Noem's *en masse* truncation of all valid grants of CHNV parole. Gov. App. 1a-41a. After rejecting the federal government's typical arguments regarding the reviewability of any exercise of discretion, the district court held that Plaintiffs were likely to prevail for multiple reasons. First, the Secretary's "sole basis for rejecting the alternative of allowing parole to expire naturally was based on a legal error" that ending parole would maximize DHS's ability to subject parolees to expedited removal. Gov. App. 33a. As the district court explained, the parolee Plaintiffs "are not subject to expedited removal even if they have been here less than two years," because by its terms, the statute the Secretary relied upon can be applied only to someone who "has *not* been admitted or paroled into the United

---

[10] Plaintiffs include eight individual CHNV parolees; six U.S. citizen CHNV sponsors, including four who sponsored family members for parole; and the nonprofit organization Haitian Bridge Alliance. Pls. App. 445 n.1.

States." Gov. App. 32a (quoting 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added)); *see generally* Gov. App. 31a-35a. Second, the Court held that Plaintiffs were likely to succeed on their claim that the Secretary's categorical truncation of all existing grants of CHNV parole was "contrary to the statutory requirement that parole be exercised only on a case-by-case basis," Gov. App. 36a (internal quotation marks omitted), emphasizing the mismatch between the individualized purpose of each parole grant and the Secretary's decision to change a key condition of parole (its expiration date) on a blanket basis, Gov. App. 37a.[11]

The district court also held that Plaintiffs had proven that irreparable harm was certainly impending, as the Secretary's decision would cause Plaintiffs' parole "to terminate in less than two weeks, at which time they will be forced to choose between [the] two injurious options" of leaving the country, forfeiting their claims to other immigration benefits, and returning to the dangers they left behind; or staying and risking arrest and detention and undermining their "chances of receiving other forms of immigration relief." Gov. App. 37a-38a. The district court concluded that the balance of equities and public interest supported relief, finding that it is not 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." Gov. App. 39a. The district court therefore granted relief,

---

[11] The district court additionally found that, although the Secretary explained why she concluded that the processes no longer provided sufficient public benefit, she gave "no rationale" and "offered no reasons" for ignoring "the humanitarian concerns previously articulated by DHS," which were an independent justification for the CHNV parole processes. Gov. App. 35a.

staying the Secretary's mass truncation of all existing grants of CHNV parole pending further review.[12] Gov. App. 40a; *see* 5 U.S.C. § 705.

A week later, the federal government moved the First Circuit for a stay of the district court's order pending appeal. Following expedited briefing, the First Circuit denied that motion on May 5, holding that the federal government had not met its burden to make at least a "strong showing that the Secretary will prevail" on appeal. Gov. App. 46a; *Nken v. Holder*, 556 U.S. 418, 434 (2009). The First Circuit directed "[a]ny party intending to seek expedited briefing of the merits of the appeal [to] file an appropriate motion as soon as practicable." Gov. App. 46a. To date, the federal government has not sought expedited briefing in the Court of Appeals.

ARGUMENT

The government bears a "heavy burden" to justify the "extraordinary" relief of a stay. *Whalen v. Roe*, 423 U.S. 1313, 1316 (1975) (Marshall, J., in chambers). It must show, at a minimum:

> (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010). This burden is "especially heavy" where—

---

[12] The district court also stayed notices sent to class members because DHS had recently told tens of thousands of people across the country—including many people on parole, but also to non-citizens with other forms of status and even natural born U.S. citizens—that it was "time to leave the United States" because their parole had been terminated, and that they should "not attempt to remain in the United States – the federal government will find you." D. Ct. Dkt. 83-1; *see also* D. Ct. Dkt. 95.

as here—the Government seeks emergency relief after both courts below have already "denied a motion for a stay." *Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers).

Here, a stay would result in the instant and mass termination of parole for Plaintiffs and approximately 500,000 similarly situated members of the certified class, all of whom followed the law and came into the United States legally. Many of these individuals would lose their lawful status and authorization to work legally in the United States. Moreover, Defendants' rationale is to subject these individuals to additional irreparable harm: it argues that termination is justified so that they can be removed from the United States on an expedited basis without normal deportation protections, including judicial review.

In contrast, Defendants have failed to identify any irreparable injury that would result in the absence of a stay. For this reason alone, the application for emergency stay relief should be denied.

In addition, the district court's decision is correct on the merits, and this Court is unlikely to grant certiorari because—contrary to Defendants' cursory contentions otherwise—no circuit split exists, and the district court's narrow order does not compel the Government to allow CHNV parole beneficiaries to remain in the United States; nor does it prohibit terminating class members' parole or removing them. The Government has not shown that emergency relief is warranted, especially when the court of appeals has not yet issued a decision on the merits and the Government has (thus far) declined its invitation to expedite appellate review.

I. THE LIKELIHOOD OF IRREPARABLE HARM REQUIRES DENYING THE STAY APPLICATION

A stay of the district court's order would immediately effectuate the *en masse* truncation of all parole grants for approximately 500,000 current CHNV parole beneficiaries in the United States, causing immediate irreparable harms not only to Plaintiffs and hundreds of thousands of similarly situated class members—all of whom followed the law and were individually approved to enter the United States on a case-by-case basis—but also causing unprecedented disruptions for these parolees' employers and communities. The Government's alleged injuries are purely abstract and do not compare to the scale and irreversible nature of the harms a stay would inflict on Plaintiffs, class members, and communities across the country from the sudden removal of approximately 500,000 people from the work force. All of this strongly weighs against this Court granting the government's stay application.

1. The harms inflicted by the stay the government requests would be swift and severe. Categorically terminating CHNV beneficiaries' parole would render those without another lawful status undocumented and, with the loss of work authorization, legally unemployable. *See, e.g.*, Pls. App. 163 ¶¶ 25-26; Pls. App. 141 ¶ 15. A stay would put many CHNV parole beneficiaries immediately at risk of deportation without normal due process protections, separating them from their family here in the United States. *See, e.g.*, Pls. App. 178-79 ¶¶ 12-13 (spousal family separation); Pls. App. 248-49 ¶¶ 11-13 (sibling family separation); *see also Trump v. Hawaii*, 585 U.S. 667, 750 (2018) (acknowledging "prolonged separation from family" is an irreparable harm). Moreover, class members would be subject to expedited deportation to the same despotic and unstable countries from which they fled,

where many will face serious risks of danger, persecution, and even death. *See, e.g.*, Pls. App. 169 ¶ 5; Pls. App. 172-73 ¶ 18; Pls. App. 178-79 ¶¶ 12-13. These harms, independently and collectively, are not only severe in their own right, but are also exacerbated because Plaintiffs' and other class members' pending applications for asylum and other separate immigration relief are indefinitely suspended by Defendants' Davidson Memorandum, thereby preventing them from being able to adjust to another more stable status. *See, e.g.*, Pls. App. 152-153 ¶¶ 18-19 (pending asylum application indefinitely suspended); Pls. App. 233 ¶ 17 (pending green card application indefinitely suspended).

2. Defendants minimize the harms that CHNV parole beneficiaries would suffer if their grants of parole were prematurely terminated. Below, the Government claimed these harms were not irreparable, *e.g.* D. Ct. Dkt. 89 at 17-18; now, it goes a step further and contends such harms are not even legally "cognizable" because parole was always temporary and revocable at any time, Gov. Br. 27. These arguments in any form not only remain disingenuous, but they also miss the mark in the balancing of equities.

The premature, immediate, and *en masse* truncation of parole grants that Defendants now seek is qualitatively different from allowing individual grants of parole to expire naturally by their own terms (which is how DHS has wound down parole programs in the past), or to be revoked on a case-by-case, individualized basis, as the statute requires. And while Defendants contend that an immediate and categorical termination of all CHNV grants of parole would inflict no harm because individuals may have alternate legal status or can apply for such status through the expedited removal process, this argument is a mirage. It conveniently elides the facts, as the district court found, that Defendants,

through the Davidson Memorandum, have *indefinitely suspended* the adjudication of immigration benefits for CHNV parole beneficiaries, thereby preventing them from acquiring any alternate legal status and artificially preserving their removability; and that most forms of relief are simply not available in expedited removal. Gov. App. 5a-6a, 19a, 32a, 38a n.32.

3. In contrast, Defendants assert only an abstract institutional injury—the same type of generic injuries the Government asserts to this Court every time any policy is enjoined—claiming that the district court's order thwarts the Government's policy goals and contravenes its interest in expeditiously removing CHNV parole beneficiaries. Gov. Br. 24-26. But when the federal government's policy conflicts with the law, it is the policy and not the law that must give way: To be clear, Defendants' quarrel is not with the district court's order, but with the INA itself, which expressly exempts from expedited removal proceedings individuals who have been "admitted or paroled into the United States." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Defendants' claims of "burden," Gov. Br. 7, 19, 26, arising from their inability to subject CHNV parole beneficiaries to expedited removal, are caused by what Congress has mandated in the INA, and not by the district court's order.

Moreover, even assuming that the federal executive suffers some abstract institutional injury to its broader policy goals when a federal court order prevents it from taking action unauthorized by the law, Defendants' Application is silent on how that injury would be exacerbated absent a stay. The district court's order does not require the federal government to allow "up to 532,000" CHNV parole beneficiaries to remain in the country indefinitely, and it does not "freez[e]" in place any policy goals of the prior administration

that the current administration now wishes to discard. *See* Gov. Br. 25. Quite the contrary: the federal government still has at its disposal its longstanding statutory power to remove from the United States any individual parole recipient whom it determines to be inadmissible. Nothing in the district court's order interferes with the Secretary's exercise of discretion, as authorized by 8 U.S.C. § 1182(d)(5)(A), to determine "when the purposes of such parole [of a noncitizen] shall . . . have been served," and thus to terminate that individual's grant of parole and subject them to removal proceedings. Nor does anything in the district court's order interfere with the agency's ability to initiate and pursue removal proceedings against any CHNV parole beneficiary by issuing a "charging document." 8 C.F.R. § 212.5(e)(2)(i); *see also* 8 C.F.R. § 1003.14(a) (describing how a charging document commences proceedings before an Immigration Judge)). The full array of the federal government's statutory removal powers remains available to the current administration.

In sum, Defendants' claims of irreparable injury in the absence of a stay are illusory, and they certainly do not support the grant of an emergency stay shortcutting the normal course of appellate review. Notably, Defendants have not accepted the First Circuit's invitation to seek expedition of its appeal; instead of pursuing a more expedited schedule for review below, Defendants have only sought emergency relief from this Court. *Cf. Dep't of Educ. v. Louisiana*, 603 U.S. 866, 868 (2024) (denying Government's motion for stay where "the Sixth Circuit has already expedited its consideration of the case and scheduled oral argument").

A stay of the district court's order would upend the lives of Plaintiffs and the hundreds of thousands of class members and cause widespread social and economic

disruption to employers and communities across the country in one fell swoop. The Government faces no remotely comparable injuries, and thus, the relative harms tilt decisively against a stay.

II. DEFENDANTS HAVE NOT MADE A STRONG SHOWING THAT THE CASE IS WORTHY OF CERTIORARI OR THAT IT IS LIKELY TO SUCCEED ON APPEAL

Even had Defendants satisfied the requisite showing of harm, they fail to carry their burden on the other stay factors.

A. A grant of certiorari is unlikely and unwarranted.

Defendants treat the question of cert-worthiness almost as an afterthought, relegating its discussion to a single paragraph on page twenty-three of its brief. Such cursory treatment reveals the baselessness of Defendants' assertion that this Court would "easily" grant certiorari in this case due to a purported circuit split. Gov. Br. 23. This argument does not withstand even the slightest scrutiny. The two cases Defendants cite for the supposed split, Gov. Br. 23, do not concern a mass revocation of humanitarian parole, but rather, the revocation of *individual* grants of *advance* parole. The Seventh Circuit held in *Samirah* that the revocation of an *individual* grant of advance parole is barred under 8 U.S.C. § 1252(a)(2)(B)(ii), *see Samirah v. O'Connell*, 335 F.3d 545 (7th Cir. 2003), and the Ninth Circuit in *Hassan* did not even reach that question, finding that the agency complied with its own regulations when revoking the *individual* plaintiff's grant of advance parole, such that the revocation was "lawfully authorized" and the district court did not have jurisdiction to review the revocation as *ultra vires*, *see Hassan v. Chertoff*, 593 F.3d 785, 790 (9th Cir. 2010) (per curiam).

The district court's opinion and the Court of Appeals' decision denying the stay are

wholly consistent with these cases, with the former expressly agreeing with Defendants that "Congress has placed individual parole determinations, and the decision of whether to revoke such individual grants of parole, within the Secretary's discretion," and that therefore such decisions are "precluded from review by Section 1252(a)(2)(B)(ii)." Gov. App. 20a.

As the lower courts correctly noted, however, this case does not involve an *individual* termination of a grant of parole, but instead the "categorical termination of the period of parole previously awarded to the parolees." Gov. App. 21a; *see also* Gov. App. 46a ("[T]he very lack of clarity cuts against a finding that the *en masse* termination is immune to judicial review."). The district court correctly held that review of such a categorical termination of parole was not foreclosed by 8 U.S.C. § 1252(a)(2)(B)(ii), and that such review was consistent not only with this Court's decision in *Kucana v. Holder*, 558 U.S. 233 (2010), but also multiple other cases following *Kucana* to hold that 8 U.S.C. § 1252(a)(2)(B)(ii) does not apply to "claims challenging the legality of policies and processes governing discretionary decisions under the INA." *Roe v. Mayorkas*, No. 22-cv-10808, 2023 WL 3466327, at *8 (D. Mass. May 12, 2023) (citation omitted); *see also* Gov. App. 22a (collecting cases).

Defendants address *none* of these cases in their brief. Nor do Defendants cite any other circuit decision addressing whether 8 U.S.C. § 1252(a)(2)(B)(ii) precludes review of an *en masse* truncation of parole—because none exists. Until now, the federal government has never attempted to effect the premature and categorical extinguishing of hundreds of thousands of grants of parole. Whether the Government did so lawfully in this first and only

instance presents a legal issue that is *sui generis*.

Defendants paint a circuit split where there is none. Cases concerning the revocation of *individual* grants of parole do not conflict with a holding that courts have jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to review "categorical truncation of Plaintiffs' previously awarded period of parole." Gov. App. 21a. No such circuit split exists to support a grant of *certiorari*.

The Court is further unlikely to grant *certiorari* due to additional practical issues. Not only is the legal issue presented here *sui generis*, it is also of fleeting relevance: all individual grants of CHNV parole were limited to no more than two years and all will expire on their own terms in less than twenty months—many of them sooner.[13] The Government's contention that the district court's order "permit[s] up to 532,000 [noncitizens] to remain in this country even if they lack a lawful basis to remain," Gov. Br. 23, is unfounded. As the district court noted, the court's order does not "extend the original grants of parole awarded by DHS" and would only require the Government "to make any decisions terminating grants of parole in an individual, case-by-case manner," as required by the INA and the agency's implementation regulations. Gov. App. 38a. Nothing in the district court's order requires the Government to extend or otherwise permit the presence of CHNV parole beneficiaries in the country indefinitely. Nor does the order prevent the federal government from terminating the parole of any individual CHNV parole beneficiary and initiating

---

[13] *See, e.g.*, Karina Elwood, *Fearing Deportation, a Beloved Music Teacher Gives a Final Lesson*, Wash. Post, May 2, 2025, https://wapo.st/3YEPD92 (telling the story of a Venezuelan CHNV parole beneficiary who during his 2-year period of parole became a music teacher at a public Virginia elementary school, and whose parole expired on its own terms in mid-April).

removal proceedings against them. And the Government can always seek relief from the district court if its order ever does cause harm that rises above speculation.

This case does not present factors warranting *certiorari*, and a stay pending appellate proceedings is not warranted.

B. Defendants fail to show a fair prospect of obtaining reversal.

On each of the merits issues, Defendants have not sustained their burden of establishing a "fair prospect that a majority of the Court will vote to reverse the judgment below," for the simple reason that Defendants are wrong on all the merits issues.

1. The Secretary's cutting short of all existing grants of CHNV parole is subject to judicial review.

The district court dutifully applied the controlling precedent and correctly held that 8 U.S.C. § 1252(a)(2)(B)(ii) does not deprive it of jurisdiction to consider Plaintiffs' claims, which do not challenge any decision made discretionary by the parole statute, and that there is law to apply to assess their merit. In arguing otherwise in their Application, Defendants ask the Court to insulate from all review the Secretary's legal conclusions—and her legal mistakes—regarding her own statutory authority. Defendants have not and cannot cite a single judicial opinion that has accepted anything like what it asks this Court to endorse on an emergency posture and without the benefit of even full briefing at the Court of Appeals or in this Court. This Court should decline that invitation.

a. The district court correctly held that 8 U.S.C. § 1252(a)(2)(B)(ii) does not strip it of jurisdiction.

The district court correctly rejected the argument that 8 U.S.C. § 1252(a)(2)(B)(ii) strips its jurisdiction to consider Plaintiffs' claims. In arguing otherwise, Defendants proffer an unbounded interpretation of what discretion is conferred by the parole statute

and what is thereby not subject to review under 8 U.S.C. § 1252(a)(2)(B)(ii). According to the Government, not only did Congress insulate from review each and every action related to the parole authority, it also immunized actions that are *not* authorized by the statute. Gov. Br. 14 (arguing first that the parole statute "does not forbid" the Secretary's "categorical parole terminations," but that, "even if it did, Section 1252(a)(2)(B)(ii) still precludes review"). But Defendants' position is contrary to the statutory text, precedent, and separation of powers principles.

"[I]n the immigration realm, properly identifying the mandatory or discretionary nature of a particular agency decision can be critical, precisely because that status has implications for whether the agency's decision can be challenged in court." *Bouarfa v. Mayorkas*, 604 U.S. 6, 10-11 (2024); *accord Kucana*, 558 U.S. at 252. By its plain text, the parole statute makes discretionary precisely two decisions: (1) whether to parole a noncitizen ("The Secretary . . . may . . . in his discretion parole into the United States . . . any alien applying for admission"[14]); and (2) "when the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A). Notably, Plaintiffs do not challenge the Secretary's decision to parole anyone, nor her opinion about when the purposes of anyone's parole have been served. Rather, as the district court recognized, Plaintiffs instead challenge the Secretary's failure to abide by the non-discretionary legal limits on her authority.[15] Gov.

---

[14] An applicant for admission is a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)." 8 U.S.C. § 1225(a)(1).

[15] In contrast, the two cases Defendants cite, *Samirah*, 335 F.3d at 549, and *Hassan*, 593 F.3d at 790, were challenges to individual revocations of advance parole. Moreover, *Hassan*

App. 21a. Section 1252(a)(2)(B)(ii) is thus inapplicable, as the district court correctly held. 8 U.S.C. § 1182(d)(5)(A).

Even if the text were less clear and thereby left doubt or ambiguity about the precise scope of what Congress made unreviewable, two further principles weigh heavily against the Government's position. One is the strong presumption favoring judicial review of executive determinations, which this Court has "consistently applied . . . to legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction." *Kucana*, 558 U.S. at 251; *accord Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020); Gov. App. 46a; Gov. App. 22a-23a. The Government lacks the "clear and convincing evidence of congressional intent" necessary to overcome that presumption. *Guerrero-Lasprilla*, 589 U.S. at 229 (internal quotation marks omitted). Another "paramount factor" at issue here is that, if the Court were to accept the Government's proffered statutory interpretation, "the Executive would have a free hand to shelter its own decisions" simply by "declaring those decisions 'discretionary'" exercises of the parole authority. *Kucana*, 558 U.S. at 252. "Such an extraordinary delegation of authority cannot be extracted from the statute Congress enacted." *Id.*; *accord Biden*, 597 U.S. at 806-07 (holding that, although generally discretionary, the parole authority "is not unbounded" and is subject to APA review).

Defendants offer little to support the conclusion that both lower courts erred by

---

held that the district court lacked jurisdiction to review the *ultra vires* claim only after holding on the merits that "[t]he revocation was lawfully authorized," *id.*; and the *Samirah* plaintiff was later permitted to enforce statutory and regulatory limits on parole notwithstanding § 1252(a)(2)(B)(ii), *Samirah v. Holder*, 627 F.3d 652, 660-61 (7th Cir. 2010) (Posner, J.).

considering whether the Secretary exceeded her legal authority and whether her legal conclusions were correct. Defendants assert that the district court erred in citing precedent holding that "claims challenging the legality of policies and processes governing discretionary decisions" are not covered by § 1252(a)(2)(B)(ii), Gov. App. 22a, because, in Defendants' view, here "there is no overarching policy or process . . . ." Gov. Br. 15; *but see* Gov. Br. 5 ("The district court has nullified one of the Administration's most consequential immigration policy decisions"). But what matters is not whether Plaintiffs challenge a policy or practice; instead, the question is whether the parole statute makes discretionary the decision they challenge. *See* Gov. App. 20a-22a. There is simply no basis to conclude that truncating parole on an *en masse* basis premised on a legal conclusion is subject to the jurisdictional bar.

b. The district court correctly held that the APA authorizes review.

Defendants argue that that APA review is unavailable here under both 5 U.S.C. § 701(a)(1) and (2). Gov. Br. 16-17. Both are plainly inapplicable. Gov. App. 25a-27a. Defendants' contention that the "agency action is committed to agency discretion by law," 5 U.S.C. § 701(a)(2), is duplicative of its argument that the district court lacked jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) and is wrong for the reasons discussed in the preceding section.[16]

Defendants' suggestion that review is precluded by 5 U.S.C. § 701(a)(1) because

[16] The government likewise repeats its faulty § 1252(a)(2)(B)(ii) argument to claim that the district court erred in relying on *DHS* v. *Regents of the University of California*, 591 U.S. 1 (2020), *see* Gov. Br. 17 (arguing that "unlike the program in *Regents*, the INA expressly commits parole determinations to the Secretary's discretion by law").

there is no law to apply, Gov. Br. 16-17, is weaker still. This exception is narrow, and its application is restricted 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." Gov. App. 25a (quoting *Dep't. of Com. v. New York*, 588 U.S. 752, 772 (2019)). As the district court held, that "rare circumstance" is not present here, Gov. App. 26a, as amply illustrated by the law the district court applied in assessing Plaintiffs' claims: two statutes, 8 U.S.C. §§ 1182(d)(5) and § 1225(b). *See also* Gov. App. 32a-33a.

Finally, while Defendants may be correct that "[t]here are no judicially manageable standards for courts to review the Secretary's own 'opinion,'" Gov. Br. 17, that contention has no relevance here, given that the district court's decision and Plaintiffs' request for preliminary relief are aimed at the Secretary's legal authority and her legal conclusions, not her opinions. *Cf. Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) ("[The APA] specifies that courts, not agencies, will decide 'all relevant questions of law' arising on review of agency action . . . and set aside any such action inconsistent with the law as they interpret it." (quoting 5 U.S.C. § 706)); *see also Biden*, 597 U.S. at 806-07 ("[U]nder the APA, DHS's exercise of discretion within that statutory [parole] framework must be reasonable and reasonably explained.") (citing *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)).

2. Defendants are unlikely to prevail on the merits of Plaintiffs' APA claims.

The district court correctly held that Plaintiffs are likely to succeed in proving that the Secretary's *en masse* truncation of all CHNV grants of parole is based on an erroneous interpretation of the expedited removal statute, 8 U.S.C. §§ 1225(b)(1)(A)(i),

1225(b)(1)(A)(iii)(II); contravenes the statutory requirement that the parole authority be exercised on a case-by-case basis, 8 U.S.C. § 1182(d)(5)(A); and was insufficiently reasoned and therefore arbitrary and capricious. Gov. App. 31a-37a. Each of these grounds independently justifies the district court's stay decision, and the Government cannot demonstrate that it is likely to prevail on appeal.

a. The Secretary's decision to cut short all existing periods of CHNV parole *en masse* was expressly and solely premised on an erroneous understanding of the expedited removal statute.

Secretary Noem explained that her understanding of the expedited removal statute was *the* reason for two of her conclusions: that the reliance interests of CHNV parolees in the United States "do not outweigh the U.S. Government's strong interest in promptly removing" them via expedited proceedings, 90 Fed. Reg. at 13619; and for her rejection of the only alternatives she considered—of either a longer wind-down period or simply "permitting CHNV participants' parole to remain in effect until the natural expiration of the parole, as DHS has in the past done," *id.* at 13619-20. Secretary Noem explained that because expedited removal "is available only" for use against the CHNV parolees while they have been "continuously present in the United States" for less than two years, "[a]ny lengthening of the wind-down period will increase the likelihood that additional CHNV parolees are no longer subject to expedited removal," meaning more of them would have to be removed via normal proceedings under § 240 of the INA, "a result DHS finds unacceptable." *Id.* at 13620.

The district court correctly held that Plaintiffs were likely to succeed in proving that the Secretary premised her decisions on a patently incorrect understanding of 8 U.S.C. §

1225(b)(1)(A)(iii)(II). Gov. App. 32a. Thereunder, and among its other limitations, DHS may subject a noncitizen to expedited removal only if that person "has *not* been admitted or *paroled* into the United States," 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphases added), "regardless of how long they have been in the United States." Gov. App 32a. In their Application, Defendants never quote or acknowledge this part of the statute; nor did the Secretary in her Notice ever explain whether (or why) she believes CHNV parolees "ha[ve] not been . . . paroled into the United States." From this omission, it can be fairly inferred that the Secretary simply overlooked this limit that Congress put on the extraordinary authority to deport noncitizens on an expedited basis without judicial review rather than through ordinary removal proceedings that are generally the "sole and exclusive procedure" for making removal determinations. 8 U.S.C. § 1229a(a)(3).

In the absence of any explanation in the Notice or evident awareness by the Secretary of this statutory limit, Defendants devote just one paragraph trying to defend the Secretary's legal conclusion regarding the expedited removal statute. Gov. Br. 21-22. Defendants' solitary argument about the text of the statute is *ipsa dixit*. *Ibid.* ("The statute's use of the present perfect tense ('has not been . . . paroled') is best read to reflect a 'state that continues into the present.'" (quoting *Turner v. U.S. Att'y Gen.*, 130 F.4th 1254, 1261-62 (11th Cir. 2025) (alteration in original)).[17] Implicit in Defendants' argument is the

[17] The government cites no case but *Turner* (which concerned a different statute) to support its semantical point, and it misleadingly quotes what *Turner* said on that issue. *Turner*, 130 F.4th at 1261 ("Accepting 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, the question becomes which of those meanings applies in this statutory context.") (citation omitted, alteration in original); *see also* Gov. App. 32a-33a.

contention that even though all members of the certified class have been paroled into the United States, DHS can subject them to expedited removal merely by ending their parole; thereafter, per Defendants' argument, that individual "has not been . . . paroled into the United States." *See, e.g.*, Pls. App. 474-482.

The district court was correct to reject Defendants' argument, which Defendants have conceded has no support in precedent.[18] Pls. App. 483. Nor does it have any basis in accepted canons of statutory construction. *See also, e.g.*, *Barrett v. United States,* 423 U.S. 212, 216 (1976) (interpreting the present perfect tense in a statute to "denot[e] an act that has been completed"). In addition to being contrary to the plain text and intent of Congress, Gov. App. 32a-33a, the government's interpretation, if accepted, would essentially strike out of the statute an explicit limit that Congress placed on the exceptional authority it gave the Executive to expeditiously remove some noncitizens without a hearing or access to judicial review. Under DHS's regulations, an individual's parole is terminated upon service of charging document. 8 C.F.R. § 212.5(e)(2)(i). Thus, according to the government, DHS

[18] Defendants' novel interpretation is also contradicted by DHS's own regulations, which make clear that "has not been admitted or paroled" refers to a past event that either did or did not occur, rather than a continuing status. *See, e.g.*, 8 C.F.R. § 235.3(b)(1)(ii) (expedited removal can be applied to "aliens who . . . have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry"); 8 C.F.R. § 235.3(b)(6) (requiring that a noncitizen be permitted to prove he "was . . . paroled into the United States following inspection at a port-of-entry" before being subjected to expedited removal). That the inquiry into whether a noncitizen has or "has not been admitted or paroled" refers to an event rather than a status is also consistent with this Court's observation in *Sanchez v. Mayorkas* that "[l]awful status and admission . . . are distinct concepts in immigration law," 593 U.S. 409, 415 (2021). "Parole" can be both a manner of entry and a status, but in the context of the full statutory expedited removal scheme and when paired with admission, the text focuses on manner of entry and not maintenance of a particular admission or parole status.

can obtain the authority to subject a parolee to expedited removal by the mere act of doing so. *See* Pls. App. 474-482.

The Court should reject Defendants' interpretation of the expedited removal statute that would nullify the "has not been admitted or paroled" language. *Cf. Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 128-29 (2018) ("the Court rejects an interpretation of the statute that would render an entire subparagraph meaningless. As this Court has noted time and time again, the Court is 'obliged to give effect, if possible, to every word Congress used.'") (citation omitted). Adherence to norms of statutory construction is important, particularly given how dramatically Defendants' reading would aggrandize Executive authority to subject noncitizens to expedited removal.[19] *Ibid.*

Defendants' final efforts to paper over the Secretary's mistake are even less persuasive. The Government's complaint, for example, that the district court's read of the statute "would require a former parolee's case to be dealt with differently from any other applicant [for admission]'s by categorically taking expedited removal off the table," Gov. Br. 22, is a complaint about the decision that Congress itself made. Importantly, Congress carefully prescribed which noncitizens could be exposed to expedited removal and did not simply say that such procedures could be applied to all applicants for admission. Moreover, Congress defined applicants for admission to include parolees, 8 U.S.C. § 1225(a)(1), and made parolees (but *not* other applicants for admission) ineligible for expedited removal in the next subsection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II). And Defendants' assertion that "even

---

[19] As the district court observed, under Defendants' proffered interpretation, DHS could also subject to expedited removal noncitizens who had been admitted on visas—contrary to the clear intent of Congress—if it merely revokes that visa first. Pls. App. 473-474.

if the Secretary had erred in that one rationale . . . [she] invoked several other independently sufficient reasons," Gov. Br. 22, ignores that the "other" reasons they cite concerned the decision to end the CHNV parole processes generally, and not her explanation for overriding reliance interests and for rejecting the only alternatives she considered to cutting off all existing grants of parole, 90 Fed. Reg. at 13619-20.[20]

3. The Secretary's *en masse* truncation of individualized grants of parole contravened the statutory case-by-case requirement.

The day before the Secretary published her Notice, the Form I-94 (Arrival-Departure Record) of each member of the certified class reflected the conditions on which that person had been individually paroled on a case-by-case basis. One important condition reflected therein is the amount of time remaining on that person's parole period, measured by an expiration date. For some class members, the expiration date was as early as March 25, 2025; for others, it was in January 2027. But on the day the Secretary published her Notice, that expiration date was changed to April 24, 2025, for all of them on a categorical basis.

As the district court correctly held, Plaintiffs are likely to succeed in proving that the Secretary's action contravened the statutory requirement that she exercise the parole authority "only on a case-by-case basis." 8 U.S.C. § 1182(d)(5)(A); *see also Biden*, 597 U.S. at 806 ("Importantly, the authority is not unbounded."). The Secretary acknowledged that the initial grants of parole under CHNV "were adjudicated on a case-by-case basis," 90 Fed.

---

[20] Indeed, the Secretary said that her decision to "terminat[e] the CHNV parole programs" should be treated as distinct, severable, and independent from her decision to "terminat[e] . . . existing grants of parole." 90 Fed. Reg. at 13621-22.

Reg. at 13611, but asserted on a blanket basis that "the purposes" for every single one of the approximately 500,000 individual parole grants via all four CHNV processes now "have been served," *id.* at 13619 n.70. The Secretary did not take into account any differentiating considerations, including the amount of time remaining on each person's parole period (be it a day or more than six hundred days), whether they have any pending applications for a different immigration benefit, or any other individualized circumstances (be they social, economic, medical, legal, or anything else). Gov. App. 45a ("It is also undisputed that the Secretary did indeed purport to [act] categorically.").

As below, Defendants contend that the statute only "requires case-by-case determinations for *granting* parole" and "contains no parallel language with respect to *terminating* parole." Gov. Br. 18 (emphases in original). Notably, the statute uses neither the word "grant" nor "terminate," making much of what the government argues untethered from the statutory text and thus not that helpful in ascertaining its meaning. Indeed, the Court need not even decide whether the Secretary must terminate parole on a case-by-case basis, because that is not what she did; instead, the Secretary changed, *en masse*, the conditions under which all those individuals had been 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 [noncitizen] appl[ying] for admission to the United States.") (emphasis added). Under the statute, changing the conditions of a grant of parole can only be performed on an individual basis. The Secretary's contravention of a clear limit on her legal authority is yet another independent reason to deny Defendants' Application.

Moreover, neither the plain text of the parole statute nor common sense supports Defendants' reading. As both the district court and the court of appeals observed, the statute consistently refers to both the grant *and* termination of parole on a singular and individual basis, rather than on a plural or categorical basis. Gov. App. 36a, 46a. The district court further found this to be consistent with the design of the CHNV parole processes, under which "grants of parole were to be made on a case-by-case basis." Gov. App. 36a (emphasizing the statute's language including "*such* parole of *such* alien," "*the* alien," "*he* was paroled," and "*his* case") (some emphases added).[21]

Defendants argue for the first time to this Court that this line of reasoning "proves too much," because many INA provisions and other statutes "use the singular rather than the plural" to apply to classes or groups. Gov. Br. 19-20 (citing The Dictionary Act, 1 U.S.C. § 1 ("In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . words importing the singular include and apply to several persons, parties, or things.")). But the Dictionary Act itself makes clear that context is key. *Ibid.* And unlike in the current case, the public-charge rule Defendants cite, 8 U.S.C. § 1182(a)(4)(A), includes no language approximating the express "case-by-case" requirement delineated in the parole statute. Under the very Dictionary Act definition Defendants cite, it would be illogical to fail to take that language into account in determining the scope of parole termination requirements.

---

[21] This reading is likewise consonant with the agency's implementing regulation, which also uses singular and individual terminology to specify that only when "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States, parole shall be terminated upon written notice to the [noncitizen]." 8 C.F.R. § 212.5(e)(2)(i).

As a final matter, Defendants repeatedly claim throughout their Application that because the Biden Administration did not *grant* parole on a case-by-case basis, Defendants should not be held at fault for failing to act on a case-by-case basis when it acted categorically. This argument was never made to the district court, and for good reason: in her Notice, the Secretary gave no such justification and, in fact, said the opposite. 90 Fed. Reg. at 13611 (describing how, under "these [CHNV] categorical parole programs, potentially eligible beneficiaries *were adjudicated on a case-by-case basis*") (emphasis added). Thus, in addition to being waived and directly contradicted by all record evidence, the *Chenery* doctrine precludes this Court from even considering Defendants' belated contention. *Biden*, 597 U.S. at 811 ("[T]he grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based.") (internal quotation marks omitted); *Regents*, 591 U.S. at 24 ("An agency must defend its actions based on the reasons it gave when it acted.").

In short, the Government has not made even a strong showing that it will succeed on appeal as to Plaintiffs' claim that the Secretary acted in contravention of the statutory limits on the parole authority.

4. The Secretary's truncation of all valid grants of CHNV parole was arbitrary and capricious.

The district court also correctly held that the truncation of individual grants of CHNV parole was arbitrary and capricious. Gov. App. 34a-35a. First, as discussed above, the district court correctly held that DHS's rejection of the clear alternative—allowing the grants to expire naturally, as the Secretary acknowledged DHS has historically done—was based exclusively on a legally erroneous reading of the expedited removal statute discussed

above. Gov. App. 31a-34a. DHS's stated reasoning therefore "lacked a rational basis," Gov. App. 34a, in clear violation of the APA. *See, e.g.*, *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998) ("Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational."); *accord Dep't of Com.*, 588 U.S. at 785; *see also Biden*, 597 U.S. at 806-07 ("DHS's exercise of [the parole authority] must be reasonable and reasonably explained.").

Additionally, the district court correctly rejected Defendants' separate attempt to justify its decisions by arguing that "neither urgent humanitarian reasons nor significant public benefit warrants the continued presence of [individuals] paroled under the CHNV programs and the purposes of such parole therefore have been served." Gov. App. 34a. The Secretary made that conclusory assertion in explaining why she chose to ignore the regulatory requirements that DHS provide written notice to parolees to revoke either their parole or their employment authorization, and to instead rely on "constructive notice." 90 Fed. Reg. at 13620. As the district court found, the Secretary did not address any of the urgent humanitarian concerns prompting the creation of the CHNV parole processes and did not explain why (or even whether) she believed those concerns no longer exist, either writ large or as to individual parolees. Gov. App. 35a.

Finally, the district court correctly held that the agency's justification for terminating existing grants of CHNV parole within 30 days was "inadequate," "[g]iven the significant reliance interests at stake." Gov. App. 35a. The members of the certified class are here because they followed rules and procedures laid out by the U.S. Government to obtain sponsorship, travel authorization, and a grant of parole once they arrived in the

country. *See* Gov. App. 2a-3a. Most of these individuals were granted two-year periods of parole, and they, their families, their employers, and their communities relied on the length of this grant to plan this chapter of their lives. *Ibid.*; *see also* Gov. App. 10a-16a (detailing the stories of the CHNV parolee Plaintiffs who came through CHNV parole). Since they have been in the United States, these parolees become integral parts of their local economies and communities. Ibid. The Notice is dismissive as to the reliance interests of employers and communities and fails to acknowledge the disruption and chaos that would ensue from the mass revocation of legal status for approximately 500,000 parolees. The Secretary would have abruptly stripped all of these individuals of lawful status and, for most, work authorization. Even those who have applied for separate immigration relief have no protection against removal, because DHS has indefinitely suspended adjudicating immigration benefit requests filed by CHNV parolees (as well as those filed by U4U and other parolees). Gov. App. 5a-6a. The significance of this harm and the reliance interests at stake cannot be overstated. Yet the Secretary gave these interests exceedingly short shrift, stating only that they were outweighed by the Government's "strong interest in promptly removing [them]." 90 Fed. Reg. at 13619.

This failure to adequately consider and address the widespread harm of premature revocation of grants of parole, particularly considering the concomitant termination of work authorization and the Government's indefinite suspension of processing of all applications for other immigration benefits, on its own makes the Government's parole terminations arbitrary and capricious. So does the Secretary's failure to consider the chaos and disruption that would ensue to these individuals' employers, families, and communities. The

district court's holding was correct.

III. THE DISTRICT COURT'S NARROW STAY ORDER WAS NOT AN ABUSE OF DISCRETION

The APA permits a reviewing court, "to the extent necessary to prevent irreparable injury . . . to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. The district court's order did exactly this—nothing more, nothing less. The stay Defendants now request would upend the status quo, immediately throwing close to half a million individuals out of lawful status and terminating their authorization to work legally in the United States. Defendants have not borne their "heavy burden" in justifying such "extraordinary" relief that would immediately and irreparably harm thousands of parole beneficiaries, their employers, their families, and their communities. *Whalen*, 423 U.S. at 1316.

CONCLUSION

The Court should deny the Application.

Respectfully submitted.

ANWEN HUGHES
HUMAN RIGHTS FIRST
121 W 36th Street, Pmb 520
New York, NY 10018
(212) 845-5244

JOHN A. FREEDMAN
LAURA S. SHORES
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000

H. TIFFANY JANG
ARNOLD & PORTER KAYE SCHOLER LLP
200 Clarendon Street, Fl. 53
Boston, MA 02116
(617) 351-8053

DANIEL B. ASIMOW
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Ctr., 10th Floor
San Francisco, CA 94111
(415) 471-3142

SARAH ELNAHAL
JAVIER ORTEGA ALVAREZ
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
(212) 836-8000

JUSTIN B. COX
Counsel of Record
LAW OFFICE OF JUSTIN B. COX
JAC Cooperating Counsel
P.O. Box 1106
Hood River, OR 97031
(541) 716-1818
justin@jcoxconsulting.org

ESTHER H. SUNG
KAREN C. TUMLIN
HILLARY LI
LAURA FLORES-PERILLA
BRANDON GALLI-GRAVES
JUSTICE ACTION CENTER
P.O. Box 27280
Los Angeles, CA 90027
(323) 450-7272

MAY 2025