

**United States District Court
Northern District of Texas
Dallas Division**

**The State of Texas, *et al.*,
*Plaintiffs,***

v.

**Joseph R. Biden, Jr., in his official
capacity as President of the United
States, et al.,
*Defendants.***

Civ. Action No. 3:22-cv-00780-M

POST-HEARING OBJECTIONS TO DEFENDANT-INTERVENORS' DEMONSTRATIVE

Plaintiff the State of Texas ("Texas") files these objections to certain portions of the PowerPoint demonstrative introduced by Defendant-Intervenors at the January 31, 2024, hearing on the Motion to Dismiss. Texas received a copy of this demonstrative on the morning of the hearing.

At the hearing, this Court authorized Texas to contest any slides that contained information other than evidence already before this Court. Accordingly, Texas objects to Defendant-Intervenors' submission as to the following slides:

Slides 35-36

To the extent that these slides have not already been excluded, Texas objects to Slides 35 and 36 pursuant to Federal Rule of Evidence 901 and 403 on the basis of lack of foundation and unfair prejudice. Fed. R. Evid. 901 (noting that, "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."); Fed. R. Evid. 403. Slides 35 to 36 contain extraneous information from the Texas Education Agency that was never admitted as evidence or judicially noticed, that was not before this Court, and that this Court specifically

rejected at oral argument. That extraneous information has not been verified, authenticated by any witness, or proven true in any way. Thus, there is not “evidence sufficient to support a finding that the [slides are] what the proponent claims [they are].” Fed. R. Evid. 901(a). Moreover, because this extraneous information was found out mere hours before the hearing, Texas had no opportunity to test the veracity of such evidence or even rebut it. That rises to the level of unfair prejudice under Rule 403. Hence, Texas objects to the inclusion of such extraneous materials that have not been offered into evidence.

Slide 32


Slide 32 incorrectly claims that “425 people [were] approved for parole,” whereas the Federal Defendants’ discovery responses say that “1,243 ... were ... recommended for parole.” ECF 125-5 at 114-115.


Texas objects to Slide 32, pursuant to Federal Rules of Evidence 106 and 403, on the basis that it is incomplete evidence and misleading. Fed. R. Evid. 106; Fed. R. Evid. 403.

Slide 32 gives a false impression of how the CAM Program functions. What the Federal Defendants’ discovery responses show is that, from March 10, 2021 to April 13, 2023, 1,843 persons applied to the CAM Program. Refugee status was granted to 566, leaving 1,277 applicants who were not granted refugee status. Of the 1,277 not granted refugee status, 1,243 were recommend for parole. ECF 125-5 at 114-115. “Recommended for parole” does not mean that an applicant was granted parole—it means that a program participant has been approved to travel to a port of entry (generally by airline travel to an airport) and once there, to request parole.

The CAM Program runs continuously, so there are applicants cycling through all stages of the process. At the time that the Federal Defendants produced their discovery responses, 426 CAM Program participants who had been recommended for parole had actually completed their approved travel into the United States, and only one was denied parole. As of the April 13, 2023, cutoff date for the Federal Defendants’ discovery responses, 818 participants had been

recommended for parole but had not yet been able to travel to the United States. All of those 818 participants had the right to travel to a port of entry and apply for parole as well. The following charts from the Federal Defendants' discovery responses summarizes this information (available at ECF 125-5 at 114-115):

CAM Phase 1 and Phase 2 I-590 Decision Breakdown Report run on April 13, 2023				
 U.S. Citizenship and Immigration Services				
Decision	Approved	Denied		Grand Total
Decision SubType	Approved	Denied Refugee & Recommended for Parole	Denied Refugee & Parole	
Phase 1	510	1,064	25	1,599
Phase 2	56	179	9	244
Grand Total	566	1,243	34	1,843

CAM Phase 1 and Phase 2 Denied for Parole Report run on April 13, 2023		
 U.S. Citizenship and Immigration Services		
Number of CAM Denied Parole	Total	1

Therefore, the number of 425 is incorrect and misleading; in fact, 425 people were *granted* parole, and the rest of the 1243 were categorically approved to travel to the port of entry and *request* parole. Fed. R. Evid. 106 (recognizing that “[i]f a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part — or any other statement — that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.”); Fed. R. Evid. 403 (noting that a “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”). Therefore, Texas objects and seeks exclusion of Slide 32.

CONCLUSION

For the foregoing reasons, Plaintiff, the State of Texas respectfully objects and prays that the objections be sustained.

Date: February 2, 2024

GENE P. HAMILTON
Virginia Bar No. 80434
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

JAMES ROGERS
Utah Bar No. 18783
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
480-570-4988
james.rogers@aflegal.org

Respectfully submitted,

KEN PAXTON
Attorney General
BRENT WEBSTER
First Assistant Attorney General
GRANT DORFMAN
Deputy First Assistant Attorney General
RALPH MOLINA
Deputy Attorney General for Legal Strategy
RYAN D. WALTERS
CHIEF, SPECIAL LITIGATION DIVISION
Texas Bar No. 24105085

/s/ Susanna Dokupil
Susanna Dokupil
ATTORNEY-IN-CHARGE
Special Counsel
Texas Bar No. 24034419

ETHAN SZUMANSKI
Special Counsel
Texas Bar No. 24123966

Office of the Attorney General of Texas
PO Box 12548 (MC 009)
Austin, TX 78711-2548
Phone: (512) 936-2714
Fax: (512) 457-4410
Ryan.Walters@oag.texas.gov
Ethan.szumanski@oag.texas.gov
Susanna.dokupil@oag.texas.gov

COUNSEL FOR PLAINTIFF STATE OF TEXAS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on February 2, 2024, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/ Susanna Dokupil
SUSANNA DOKUPIL