EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

The STATE OF TEXAS, et. al.,

Plaintiffs,

vs.

JOSEPH R. BIDEN, JR.,

in his official capacity as
President of the United States, et al.,

Defendants,

CIVIL ACTION NO. 3:22–cv–00780

BRIEF OF AMICUS CURIAE DR. YAEL SCHACHER

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Dr. Yael Schacher is a historian of U.S. immigration law and policy with particular expertise on asylum, refugees, and humanitarian protection. Dr. Schacher currently works as Director for the Americas and Europe at Refugees International. Refugees International is a non-governmental organization in Washington D.C. founded in 1979 that advocates for rights, refuge, and humanitarian assistance for forcibly displaced people all over the world. At Refugees International, Dr. Schacher has written extensively about the history of the use of parole as a supplementary humanitarian pathway and about the past and current implementation of the Central American Minors Program.[1]

INTRODUCTION

Parole has for many decades been an important, flexible, and frequently used tool of successive administrations of both political parties to facilitate entry into the United States of groups of non-citizens.[2] The groups have typically been defined by nationality plus additional factors whose parole into the U.S. may be justified by humanitarian and/or public benefit reasons, with applications of individuals therein considered on a case-by-case basis. As is true with the Central American Minors ("CAM") Program, humanitarian or public benefit reasons for past

[1] Yael Schacher, "Supplementary Protection Pathways to the United States: Lessons from the Past for Today's Humanitarian Parole Policies," REFUGEES INT'L (Nov. 10, 2022), https://www.refugeesinternational.org/reports-briefs/supplementary-protection-pathways-to-the-united-states-lessons-from-the-past-for-todays-humanitarian-parole-policies/.
Yael Schacher and Rachel Schmidtke, "Mixed Blessing: Guatemalan Experiences under the New Central American Minors Program," REFUGEES INT'L (Mar. 15, 2023), https://www.refugeesinternational.org/reports-briefs/mixed-blessing-guatemalan-experiences-under-the-new-central-american-minors-program/.

[2] The extensive use of parole by the executive and its sanction by Congress is detailed in this accounting by David J. Bier of "126 Parole Orders over 7 Decades: A Historical Review of Immigration Parole Orders," CATO Inst. (July 17, 2023), https://www.cato.org/blog/126-parole-orders-over-7-decades-historical-review-immigration-parole-orders.

programs have included promoting family unification and deterring dangerous irregular migration. Parole programs of this kind and for these reasons continued after the parole provision in the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(d)(5)), was revised by Congress in 1980 and 1996. Though members of Congress and Congressional reports refer to certain specific uses of parole, Congress has repeatedly refused to limit it to particular uses in the text of the INA, including the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in which Congress instead chose to continue to give the executive broad authority over parole. And both before and after the passage of IIRIRA, Congress has frequently approved of the Executive's parole programs by extending immigration and other benefits to individuals who were or will be paroled through a program. This brief argues that the CAM Program (and enhancements to it) fall squarely within an historical tradition of the use of parole authority. Executive parole programs in this tradition have never been found unlawful by any federal court and, assuming the Court finds the Plaintiffs have standing and reaches the merits, the Plaintiffs' challenge should be dismissed.

I. The Use Of Parole Authority In The CAM Program Is Lawful

Section 212(d)(5) of the 1952 Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1182(d)(5), established that "the Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States." Congress did not define the terms "emergent" or "public interest" reasons and did not modify the wording of the parole provision for 28 years. Congress did, however, extend benefits to noncitizens who came in through multiple different parole programs, such as the ability to become lawful permanent residents (e.g., "green card" holders) who would eventually be eligible to naturalize.

For example, in late 1956 and early 1957, President Dwight D. Eisenhower directed his Attorney General to parole about 32,000 Hungarian nationals who had fled Soviet repression of the Hungarian Revolution. In 1958, Congress enacted legislation (Pub. L. No. 85-559, 72 Stat. 419) enabling Hungarian parolees to become lawful permanent residents. Parole of Cubans into the United States began in 1961, with almost 100,000 Cubans paroled into the United States in just a three-year period, from 1961 to 1963. In 1965, members of Congress expressed awareness of (and some concern about) large parole programs, but in amending the INA that year, Congress made no changes to the parole statute. And then, the following year, Congress enacted the Cuban Adjustment Act (CAA), which granted past and future Cuban parolees the ability to adjust status to lawful permanent residence.

A provision in the Refugee Act of 1980 (Pub. L. No. 96-212 § 203(f), 94 Stat. 108) stated that "The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee." But in the 1980s the executive continued to parole individuals who were members of particular groups (such as Cambodians at the Thai border) for humanitarian reasons or in the public interest and this practice was supported by Congress. Beginning in 1988, the Attorney General authorized the parole of people from Vietnam, Laos or Cambodia and the Soviet Union who had been *denied* refugee status. And then Congress, in 1989, passed a law (Pub. L. No. 101-167 § 599E, 103 Stat. 1263) providing that such parolees could adjust their status to lawful permanent resident after one year. (The same law specified that certain categories of people from the Soviet Union, Vietnam, Laos and Cambodia could be granted refugee status on a lower evidentiary burden. The latter is referred to as the "Lautenberg amendment.") As discussed further in the next

section, in the 1980s and 1990s parole programs for people from Vietnam and Cambodia ineligible for refugee status or immigration visas were specifically designed to promote family unification. Congress continued to affirm such use of parole after the passage of IIRIRA through legislation such as the Indochinese Parole Adjustment Act of 2000, which provided for the adjustment to permanent status of people paroled into the United States through the late 1990s. Indeed, when amending the language of the parole provision in IIRIRA, Congress rejected a proposal by the House Judiciary Committee that prohibited using parole for noncitizens "who have applied for and have been found to be ineligible for refugee status."

IIRIRA affirmed the use of parole for programs like CAM in other ways as well. Using parole for humanitarian reasons and to foster family unity was supported by the majority of Congress in the 1990s but there were some members, particularly from Florida, concerned that parole was being used to allow too many people into the United States. In a 1995 "members forum" convened by the House Judiciary Committee, only one of twenty-two participating Representatives concerned about immigration raised the issue of parole. Congressman Foley from Florida complained that the parole of 21,000 Cubans from the Guantanamo Naval Base placed "a strain on Florida and its State and local economies."[3] This parole program for Cubans was referred to in the 1996 report by the House Judiciary Committee as a reason to propose limiting the use of parole only to those with certain medical emergencies (i.e., the parolee donating an organ or

[3] Members' Forum on Immigration, Hearing Before the Subcomm. on Immigration and Claims of the Comm. of the Judiciary, House of Representatives, 104th Congress, 1st Session, (May 24, 1995), at 24, https://books.google.com/books?id=LhuLZ96aO90C&pg=PP1&lpg=PP1&dq=%E2%80%9CMembers+Forum+on+Immigration,%E2%80%9D+Hearing+Before+the+Subcommittee+on+Immigration+and+Claims+of+the+Committee+of+the+Judiciary,+House+of+Representatives,+104th+Congress,+1st+Session,+May+24,+1995,+24.&source=bl&ots=jkomjn1n8i&sig=ACfU3U2EfzcQxfYM73rA5zphzBMCij426w&hl=en&sa=X&ved=2ahUKEwiIyozA6YyCAxWOJ0QIHesrBuEQ6AF6BAhAEAM#v=onepage&q=strain&f=false.

visiting a dying relative) and where the parolee assisted the U.S. Government in a law enforcement activity or was to be criminally prosecuted. *See* H.R. Rep. No. 104-469, at 77-78 (1996). Though it is cited as proof of Congressional intent by the plaintiffs (at 49 in Amended Complaint), this House Judiciary Committee report's parole amendment proposal *did not become law*; the provisions defining and restricting when parole could be used were removed from the legislation even before the bill was considered by the full House. Instead, in passing IIRIRA, Congress replaced the "emergent reasons or for reasons deemed strictly in the public interest" language that had been in the parole criteria since 1952 with "urgent humanitarian reasons or significant public benefit." As before, Congress left those terms undefined and therefore up to interpretation by the executive; the shift in terms alone—from the more limiting "strictly" to the more discretionary "significant"—does not clearly define that authority. To address concerns that this might allow the executive to parole too many people, Section 603 of the IIRIRA requires that nearly all long-term parolees who have yet to become legal permanent residents be counted against annual numerical caps on family-sponsored immigration, thereby diminishing the available number of family-based visas from a particular country by the same number of its nationals who are long-term parolees in the United States. By doing this, Congress assured against what the plaintiffs wrongly assert (at 51 in the Supplemental Complaint) that CAM allows—the circumvention of Congressional caps set on immigration through the executive branch's use of parole. And, in Section 606 of IIRIRA, (Pub. L. No. 104-208, 110 Stat. 3009-695 (Congress reaffirmed (rather than repealed, as was considered and rejected by Congress) the Cuban Adjustment Act of 1966 that permits Cubans paroled into the United States the ability to become lawful permanent residents after one year. In doing so, it reaffirmed the use of parole to advance foreign policy since

it mandated that the CAA stay in place until the President determines that a democratically elected government in Cuba is in power.

IIRIRA also amended the parole statute to specify that parole must be granted "only on a case-by-case basis." Long before 1996, however, the Executive made case by case determinations for parole even in the context of parole programs. The executive specified classes of people to apply for parole and then assessed each applicant individually. Each parolee from Hungary and Cuba was individually screened.[4] Indeed, there were times before the passage of IIRIRA when this individualized assessment was explicitly referred to as "case by case." For example, a September 30, 1994, INS Focus pamphlet from the Office of the Commissioner of the Immigration and Naturalization Service (INS) explained that "the INS authorizes parole, under delegated authority from the Attorney General, on a case-by-case basis." A September 1995 GAO report on the parole of Cubans under the Clinton program in 1994 likewise referred to it as a "case-by-case" process.[5] Federal court challenges to this Cuban parole program –including challenges that raised the costs of the program to states and localities—were unsuccessful[6]; indeed, there has never been a successful court challenge to an executive branch parole program. It is also important to point out that contra assertions by the plaintiffs (at 106 and 108 in the Amended Complaint and at 66 in the supplementary complaint), nothing in the statute specifies the application procedures (how requests for parole should be submitted or processed) the executive must use in exercising its parole authority. As discussed further below, parole programs in the past, like the CAM program,

[4] Carl J. Bon Tempo, *Americans at the Gate: The United States and Refugees during the Cold War* chs. 3, 5 (2008).
[5] GAO, U.S. Response to the 1994 Cuban Migration Crisis, (Sept. 1995), www.gao.gov/assets/nsiad-95-211.pdf.
[6] *Fed'n for Am. Immigration Reform, Inc. v. Reno*, 93 F.3d 897 (D.C. Cir. 1996), https://casetext.com/case/federation-for-american-immigration-v-reno.

have frequently required people in the U.S. to attest that they will financially support parolees should they be considered eligible for parole.

In the nearly 30 years since the parole authority was amended to include the "case-by-case" language, the Executive and Congress have continued to indicate that the statute permits programmatic uses of the parole. In June 2001, for example, INS General Counsel Bo Cooper issued a legal opinion on the continued INS authority to parole individuals from the former Soviet Union who are denied refugee status. Cooper concluded:

> Designating, whether by regulation or policy, a class whose members generally would be considered appropriate candidates for parole does not conflict with the 'case-by-case' decision requirement, since the adjudicator must individually determine whether a person is a member of the class and whether there are any reasons not to exercise the parole authority in the particular case. . . . So long as individual consideration is given to parole decisions, the Service's determination—that it is generally in the public interest to parole denied refugee applicants from Moscow who belong to groups specified in the Lautenberg amendment-—does not violate the case-by-case requirement.[7]

In the years following the passage of IIRIRA, Congress was kept well informed as to the use of the parole authority (as required by the reporting requirement in Section 602 of IIRIRA itself)[8] and passed laws endorsing the programmatic use of parole by the Executive including the aforementioned Indochinese Parole Adjustment Act of 2000 (Pub. L. No. 106-429, 114 Stat. 1900A-57). In 2010, Congress provided for the adjustment of status of Haitian orphans paroled into the United States after the earthquake in Haiti (Pub. L. No. 111-293, 124 Stat. 3175).[9] In recent years, Congress has continued to take legislative action approving parole programs. For

[7] Memorandum from General Counsel of INS, Legal Opinion: Parole of Individuals from the Former Soviet Union Who Are Denied Refugee Status, at 6 (June 15, 2001). https://www.americanprogress.org/wp-content/uploads/sites/2/2023/04/INS-GenCou-ParoleLegOp-1996-amends18.pdf.

[8] *Id*. Reports to Congress on use of the Attorney General's parole authority for the years 1996-1999 are here: https://permanent.fdlp.gov/lps16226/index.htm.

[9] Help Haitian Adoptees Immediately to Integrate Act of 2010, H.R. 5283, 111th Cong. (2010), https://www.govinfo.gov/content/pkg/PLAW-111publ293/pdf/PLAW-111publ293.pdf.

example, in Section 1758 of the 2020 National Defense Authorization Act (Pub. L. No. 116-92, 133 Stat. 1860), Congress essentially mandated as a legislative matter a parole program that had been created years earlier by the Executive. Like the Executive-created program, the legislation defined a class (certain family members of those in the military) and then ordered case-by-case consideration of requests for parole of individual members of that class. In 2021 (Pub. L. No. 117-43, 135 Stat. 377) and 2022 (Pub. L. No. 117-128, 136 Stat. 1218), Congress extended benefits to Afghans and Ukrainians, respectively, who had already been paroled in through one of the programs created by the Biden Administration, and to certain Afghans and Ukrainians who might be paroled into the United States sometime in the future.

II. CAM's Facilitation Of Family Unification, Broadly Construed, As Well As Other Humanitarian And Public Interests Is Similar To Previous Parole Programs

For over 70 years, parole has been used to facilitate admission of people of particular nationalities who also have family ties to the United States. Parole in the past has been used to unite families regardless of the status of the U.S.-based relatives and including parole of relatives from outside the United States who would not have qualified for family-based immigrant visas (i.e., extended relatives and household members). This is because there was a humanitarian urgency, as well as foreign and public policy benefits, to paroling in people from certain groups in this way after consideration of each individual case by case. These parole programs and their implementation procedures have not been created through regulations but rather through executive agency policies, instructions, and forms.

In 1962, 95,800 mostly Mexican nationals were paroled temporarily into the United States at southwest land border ports, many to their relatives in the U.S.[10] In the early 1970s,

[10] James Carey and Laurence Kesler to Deputy Associate Commissioners of Travel Control and Domestic Control, "Study of Section 212 (d) (5) Parole Policy and Procedures", (Dec. 3, 1962),

Congress and the executive branch agreed on executive authority to parole groups of people and approved use of parole for Cubans relatives beyond those who would be eligible for visas.[11]

In the wake of the 1980 Refugee Act, parole was explicitly used alongside resettlement in order to unify families and achieve certain foreign policy goals. In 1985, the Reagan administration created a parole program for Cambodians living in violent dangerous conditions at the Thai-Cambodian border and had relatives in the United States (many of whom could not petition for immigrant visas). Cambodians at the border eligible for the program included extended family members of non-current immigration visa beneficiaries as well as others without any U.S. family ties. Similar to the CAM program, parole applications included affidavits of support and "statements showing how medical and housing needs" of parolees would be met by sponsors in the U.S.[12] In 1989, all Soviet Jews who did not qualify for refugee status under the

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CO 212.28P, RG 85, Nat'l Archives & Records Admin., Washington D.C. *See also*, Survey Paper in re: Section 212 (d) (5) of the Immigration and Nationality Act by Inspector John Bowser, Jan. 28, 1963, same file.

[11] When flights bringing Cubans directly from Cuba to the United States to be paroled became irregular and then stopped, Representative Emanuel Celler, the primary author of the 1965 Immigration Law, corresponded with the administration about potential additional legislation authorizing the parole into the United States of Cubans from third countries but concluded that the Attorney General already had the legislative authority not only to parole from third countries those who were close relatives of Cubans in the U.S., but also, when special humanitarian conditions exist, to parole Cubans from third countries to the United States regardless of family relationship. Letters of Emanuel Celler, Chairman of the House Judiciary Comm. to Secretary of State William P. Rogers, March 25 and April 14, 1971 and Letter from David Abshire, Assistant Secretary for Congressional Relations, to Emanuel Celler, July 28, 1972. In: Box 106, Office of Refugee and Migration Affairs, RG 59, NARA College Park.

[12] See "Requesting Humanitarian Parole for Border Khmer," Immigration and Naturalization Service, (Oct. 1986), in Court Robinson and Arthur Wallenstein, "Unfulfilled Hopes: the Humanitarian Parole/Immigrant Visa Program for Border Cambodians" United States Committee for Refugees (Sept. 1988). The appendices of this report also include forms used by relatives to attest to their support. See also reporting to Congress about the program: Hearing Before Comm. on the Judiciary, United States Senate, 92nd Congress, 2d Session, (Sept. 16, 1986), 69, and Hearing Before the Committee on the Judiciary, United States Senate, 102nd Congress, 1st Session (Sept. 24, 1991), at 33.

Lautenberg standard were considered for parole if, as in the CAM program, they had relatives in the United States who submitted affidavits of support attesting to their willingness to sponsor the parolees.[13] Between 1990 and 1995, over 45,000 Vietnamese—mostly family members of Vietnamese ineligible for immigrant visas, former United States government employees and former reeducation prisoners denied refugee status, and accompanying relatives of Amerasians and former prisoners—were paroled into the United States directly from Vietnam as part of the Orderly Departure Program. This use of parole was crucial to the normalization of U.S.-Vietnam relations, especially the United States' decisions to permit international financial institutions to lend to Vietnam in July 1993, lift the embargo in February 1994, and establish formal diplomatic relations in July 1995.[14] It is important to point out that, as with CAM program, the ODP program *did not* have what the plaintiff's refer to as a "separate" "stand alone" application for parole (see Amended Complaint at 108 and 110) yet this certainly did not preclude case-by-case discretionary determinations by the executive.[15]

In 1990s, and indeed after the passage of IIRIRA, parole programs continued to be used to unite families beyond those eligible for visas, for foreign policy reasons, as well as for the public benefit of deterring irregular migration. For example, in the first half of the decade the

[13] Foreign Operations, Export Financing, and Related Programs Appropriations for 1990, Hearing Before a Subcommittee of the Committee on Appropriations, House of Representatives, 101st Congress, 1st Session (1989), at 403; Soviet Refugees: Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary, House of Representatives, 101st Congress, 1st Session (Apr. 6, 1989), at 83.

[14] The number of parolees compiled by the author from statistics on the Orderly Departure Program in *Refugee Reports* (U.S. Committee for Refugees), 1990-1995. On U.S.-Vietnam relations see, Amanda C. Demmer, *After Saigon's Fall: Refugees and US-Vietnamese Relations 1975-2000* (2021).

[15] Gregg Beyer, "Guidance Concerning the 18th ODP Trip"(adjudications), (Mar. 18, 1989), USCIS Historical Library. You can see an example of the combined application here (through the Texas Tech archives):
https://vva.vietnam.ttu.edu/images.php?img=/images/1849B/1849B024062000.pdf.

U.S. supported the Comprehensive Plan of Action (CPA), a multilateral effort that involved the screening for refugee status of the growing number of Vietnamese who arrived by boat in first countries of asylum in the region and the repatriation of those who did not qualify as refugees. In 1995, when first countries of asylum like Hong Kong insisted on closing camps where screened out refugees lived and pushing back all future Vietnamese boat arrivals, the United States and Vietnam negotiated an agreement called Resettlement Opportunity for Vietnamese Returnees. The program accepted the CPAs requirement that all screened-out migrants return to Vietnam but offered returnees one more chance to apply for resettlement to the United States. If they did not qualify for resettlement, they could be considered for parole. In 1998, about 20 percent of the Vietnamese who came to the United States through ROVR were paroled.[16] The existence of the program prevented forced repatriation in the region and upheld a commitment to resettle families together. Ending the program at the end of the millennium honorably ended a twenty year U.S. engagement on the Vietnamese refugee crisis and paved the way to the U.S. awarding Vietnam most favored nation status in late 2001.

The creation of parole programs for Cubans in the 1990s and 2000s attest to the use of parole in the interest of family unification, migration control, and to advance U.S. foreign policy interests before and after the passage of IIRIRA. In the spring and summer of 1994 there was an uptick in irregular sea migration from Cuba. The Clinton administration responded with an interdiction and detention program and asked the Cuban government to help stop the flow and allow detained migrants to return to Cuba without reprisal. In exchange, the Clinton administration committed to allowing 20,000 Cubans to enter the United States annually. To get to the annual 20,000 migrants, parole was used in various ways to keep families together or to

[16] *Refugee Reports* (U.S. Committee for Refugees) (April/May 1998), at 16.

expedite their reunification. As individuals in Cuba were issued family-based immigrant visas and were identified as refugees for admission to the United States, the United States considered paroling family members of these individuals—extended family members in the same household and economic unit—who would not have counted as derivatives on their applications into the United States. The Attorney General also paroled Cubans selected by lotteries held in 1994, 1996 and 1998 from applicants who met certain criteria (completed secondary school or a higher level of education; have at least three years of work experience or job skills; have relatives residing in the United States; have previously manifested an interest in migrating) and met medical and other requirements for immigration. As indicated above, even as this parole program was going on, Congress reaffirmed (rather than repealed, as was considered and rejected by Congress) in IIRIRA the Cuban Adjustment Act of 1966 that provides for the adjustment to permanent resident status of Cuban parolees after one year. By June 1998, the U.S. interests section in Havana has approved 29,000 lottery applicants to enter the United States.

Between January 2004 and June 2009, the Department of State cancelled talks with Cuba because it was not abiding by agreements by refusing to discuss the issuance of exit permits, to allow registration for the Special Cuban Migration Program, to permit U.S. diplomats to travel to monitor returned migrants, and to accept the return of Cuban nationals the United States wished to deport. It was in this context that the United States once more turned to the statutory parole authority to advance a significant public benefit in the eyes of the Executive and to support U.S. foreign policy objectives with respect to Cuba. In 2006, the Bush administration created the Cuban Medical Professionals Parole (CMPP) Program, which allowed Cuban doctors and other medical professionals working in third countries to request that they and their dependents be paroled into the United States. The program was designed to further U.S. foreign policy goals of undercutting

Cuba's international medical aid program—a source of Cuban influence abroad and of foreign currency. In 2007, the Bush administration also created the Cuban Family Reunification Parole Program, which continued the tradition of using parole to unite Cubans with relatives in the United States and to prevent irregular migration.[17]

The Obama administration also used parole programs to advance family unification, migration management, and humanitarian and foreign policy related goals. The Haitian Family Reunification Parole (HFRP) Program, like its Cuban predecessor, is for certain beneficiaries of approved family-based immigrant visa petitions. The 2014 Federal Register Notice about the program explained that "[b]y expanding existing legal means for Haitians to immigrate, the HFRP Program serves a significant public benefit by promoting safe, legal, and orderly migration to the United States." The Notice additionally recognized that using parole for HFRP Program beneficiaries would facilitate the ability of beneficiaries to more quickly work lawfully in the United States and earn money that could be sent back to Haiti in the form of remittances to help fund the "rebuilding and development of a safe and economically strong Haiti," a multi-year project and "a priority for the United States."[18] In 2016, the Obama administration also created the Filipino World War II Veterans Parole Policy (FRVP). Like the CFRP and HFRP, the FWVP policy was designed to facilitate the early arrival into the United States of principal beneficiaries (and their qualified family members) of approved family-based immigrant visa petitions, some of whom faced wait times for visas that exceeded 20 years (e.g., siblings of U.S. citizens were receiving immigrant visas in 2016 only if their relative petitioned for them before July 22, 1992). DHS explained that promoting family unity would allow some of the elderly veteran petitioners

[17] 72 Fed. Reg. 65,588 (Sept. 21, 2007).
[18] 79 Fed. Reg. 75,581, 75,582 (Dec. 18, 2014).

(or their surviving spouses) to receive support and care from their relatives in their older years, which could additionally address urgent humanitarian concerns. The FWVP FRN also contemplates allowing certain individuals to be considered for parole even where the petitioner is deceased, so long as USCIS has decided to reinstate the approval of the petition for humanitarian reasons. Such paroles could be seen as furthering the policy's interest in honoring "the extraordinary contributions and sacrifices of Filipino veterans who fought for the United States during World War II."[19]

The Obama administration and Biden administration CAM programs were similarly designed to unite families, while also addressing humanitarian and protection needs in origin countries and stopping dangerous migration in the hands of smugglers. Today's CAM program is administered much like parole programs of the 1980s and 1990s and it serves some of the same humanitarian and public policy goals as past parole programs. The CAM Program allows certain parents and legal guardians with authorized presence in the United States to request that their unmarried children in El Salvador, Guatemala, and Honduras under the age of 21, as well as some of the child's relatives, receive a refugee resettlement interview. When those interviewed are not deemed to be a refugee but nonetheless determined to be at risk of harm in their country, USCIS decides whether each person merits a grant of parole. As with the parole of Vietnamese nationals through the Orderly Departure Program and other past parole programs for people from the Soviet Union and Cambodia, commitments of support from a U.S.-based supporter are required to be considered for parole through CAM.

The process of screening children for CAM—first to verify their familial relationship, then to determine if they are eligible for refugee status, then to consider whether they should be

[19] 81 Fed. Reg. 28,097, 28,098 (May 9, 2016).

granted parole—takes several months and the arrival of children in the United States under the Biden administration's CAM program has been gradual and limited[20]; at stakeholder engagements in 2023, USCIS reported that only a few hundred Central American children had been interviewed and arrived in the United States[21] such that there has never been a "sudden influx" of arrivals in plaintiff states as a result of the CAM program as asserted by the plaintiffs (at 81 in the Amended complaint). Further, because parents in the United States must already have an authorized status or applied for asylum or for a U or T visa by April 2023 to be eligible to apply for the CAM program, the plaintiff's repeated claim that the CAM program "encourages" unauthorized migration is unfounded (at 100 in Amended complaint). To the contrary, as is noted in the federal register notice for the enhancements to the CAM program, when the program was halted by the previous administration, children in the CAM Program's eligible population sought reunification through irregular migration. As the federal register notice says : "In the course of resuming to process certain CAM parole cases under the *S.A. v. Trump* Final Judgment and Order for Permanent Injunction agreement and related settlement agreement, DHS learned that a significant number of CAM parole beneficiaries whose conditional approvals

[20] International Refugee Assistance Project, "More than Words: Making Good on the Promise of the Central American Minors Program," (Sept. 21, 2022), https://refugeerights.org/wp-content/uploads/2022/09/CAM-Report-FINAL-v3.pdf.
Yael Schacher and Rachel Schmidtke, "Mixed Blessing: Guatemalan Experiences Under the New Central American Minors Program," Refugees Int'l (Mar. 15, 2023), https://www.refugeesinternational.org/reports-briefs/mixed-blessing-guatemalan-experiences-under-the-new-central-american-minors-program/.

[21] USCIS, Questions and Answers for Refugee Processing National Stakeholder Engagement (Mar. 15, 2023), https://www.uscis.gov/sites/default/files/document/questions-and-answers/Refugee_Processing_Quarterly_Engagement-Fiscal_Year_2023_Quarter_2_Stakeholder_Questions.pdf.
Slides from USCIS Refugee Processing Quarterly Stakeholder Engagement (June 20, 2023) https://www.uscis.gov/sites/default/files/document/outreach-engagements/RefugeeProcessingQuarterlyEngagementFY23Q3.pdf.

of parole had been rescinded in 2017 had already found their way to the United States to reunify with their parents, doing so via irregular—and likely dangerous—means."[22] DHS has also encountered other groups of individuals who may, when facing no alternative, seek family reunification through irregular migration. For example, DHS has encountered individuals with approved family-based immigrant visa petitions who nonetheless determined they could not wait for an immigrant visa to become immediately available before traveling to the United States."

CONCLUSION

The CAM Program fits squarely within a long historical tradition and is consistent with and authorized by law. The respective motions to dismiss of Defendant and Defendant-Intervenors should be granted.

Dated: October 23, 2023

Respectfully submitted,

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[22] 88 Fed. Reg. 21,694, 21,700 (Apr. 11, 2023).