United States District Court Northern District of Texas Dallas Division

The State of Texas, et al., Plaintiffs,

v.

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

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

Defendants.

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.

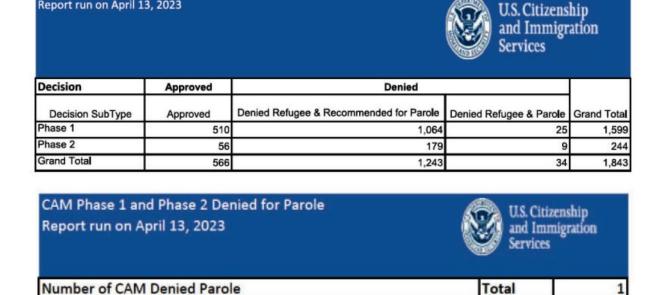
Slide 32 gives a false impression of how the CAM Program functions. What the Federal Defendants' discovery responses show is that, from March 10, 2021 to April 13, 2023, 1,843 persons applied to the CAM Program. Refugee status was granted to 566, leaving 1,277 applicants who were not granted refugee 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



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

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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