United States District Court
Southern District of Texas
Victoria Division

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants.

Case 6:23-cv-00007

PLAINTIFF STATES' RESPONSES TO OBJECTIONS TO THEIR EXHIBIT AND WITNESS LIST

Plaintiff States filed their Exhibit and Witness List, ECF No. 195, but the Federal Defendants and Intervenor Defendants have filed objections to a number of the exhibits. ECF Nos. 204, 205.

Federal Defendants object to Exhibits 18 through 37 on the grounds of relevance, with intervenors joining these same objections as to Exhibits 31 through 37 (citing Fed. R. Evid. 402). Federal Defendants and Intervenor Defendants also object to Exhibits 4 through 7—four declarations of officials of Texas State agencies—on the grounds that they are not relevant and are hearsay (citing Fed. RR. Evid. 402, 802). [1]

As an initial matter, it must be kept in mind that this case is going to a bench trial—there is no jury to be protected from any purportedly irrelevant, prejudicial, or confusing evidence. In this circumstance, the Court can be trusted to give any evidence before it the proper weight it deserves, if any. Attempting to prevent the Court from doing so makes little sense.

Exhibits 18 through 37 meet the minimal test required for relevance because they provide background information for the Court regarding the operation of aspects of the challenged parole

[1] Plaintiffs had included their Motion for Preliminary Injunction as Exhibit 1 as the predecessors of the following four declaration exhibits were attached to it. However, in light of Federal Defendants' and Intervenor Defendants' objections to this exhibit, Plaintiffs withdraw it as an exhibit.

processes, including how sponsors for parolees are evaluated, advance travel authorization is approved, and data on which States have the most sponsors. Exhibit 29 also provides data on the number of school-age children among parole program beneficiaries, which is relevant to Plaintiff States' claims of injury due to public education expenditures. *See* ECF No. 22 at 11–12. Exhibits 31 through 37 are the Federal Defendants' own forms for competing immigration processes and are relevant to Plaintiff States' arguments that the challenged parole programs unlawfully "circumvent congressionally established immigration policy." ECF No. 22 at 17 (citation omitted).

The four declarations—Exhibits 4 through 7—are relevant to demonstrate the States' standing for driver's license, education, healthcare, and corrections costs. *See* ECF No. 22 at 10–13. All of the declarations state that they are based on personal knowledge of the declarant and their positions with a State agency.

None of the State agency data referenced in these declarations is excludable under the hearsay rule, either. The data referenced in or attached to these declarations are not hearsay because they fall within the public records exception.[2] Fed. R. Evid. 803(8). That Rule excepts the following from the rule against hearsay:

> A record or statement of a public office if:
> (A) it sets out:
> (i) the office's activities;
> (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or
> (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
> (B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Fed. R. Evid. 803(8).

[2] All of the declarants state that they have personal knowledge of the referenced data, though that would not be required for that data to not constitute hearsay. *See Jones v. Sandusky Cnty., Ohio*, 652 F. App'x 348, 356 (6th Cir. 2016) ("the personal-knowledge requirement does not apply to reports admissible under the public-records exception found in Fed. R. Evid. 803(8)").

Under this Rule, a proponent of a document must show that it (1) was "prepared by a public office;" and (2) "set[ ] out information as specified in the Rule." Advisory Committee Note to Fed. R. Evid. 803(8). When the proponent satisfies these requirements, "the burden is on the opponent to show that the source of information or other circumstances indicate a lack of trustworthiness." *Id.* Here, the referenced data are prepared by the relevant State agencies through their normal operations. "The relevant inquiry under Rule 803(8) is whether the information was *recorded* by a public official as part of a routine procedure in a non-adversarial setting." *United States v. Puente*, 826 F.2d 1415, 1418 (5th Cir. 1987) (emphasis in original; citation omitted). "There is no reason to believe that because this information was later retrieved in connection with litigation, it is less reliable than when first recorded." *Id.*

Accordingly, the burden shifts to Defendant to show that the source of the information or other circumstances indicate a lack of trustworthiness. *See* Advisory Committee Note to Fed. R. Evid. 803(8); *see also* Fed. R. Evid. 803(8)(B). There is no such indication of untrustworthiness here.

None of Plaintiff States exhibits fail the test of relevance to the issues in this case. And none of the declaration exhibits contain inadmissible hearsay.

Dated: August 2, 2023

Respectfully submitted,

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Certificate of Service

I certify that on August 2, 2023, I filed this motion through the Court's CM/ECF system, which served it on all counsel of record.

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