



Twenty Red States File Badly Flawed Lawsuit Seeking to Terminate Private Sponsorship Program for People Fleeing Socialism and Oppression in Four Latin American Nations

The flaws in the states' position are revealed by their own governors' statements about the evils of socialism and the crisis at the border.

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The Biden Administration recently adapted the approach used by [the successful Uniting for Ukraine private migrant sponsorship program](#) to include [a combined total of up to 30,000 migrants per month](#) from four Latin American countries: Cuba, Venezuela, Nicaragua, and Haiti. Under these programs, migrants fleeing war, oppression, poverty, and violence in these countries can quickly gain legal entry into the United States and the right to live and work here for up to two years, if they have a private sponsor in the US who commits to supporting them.

Yesterday, twenty GOP-controlled states filed [a lawsuit](#) challenging the legality of the program for the four Latin American nations (though not Uniting for Ukraine). They claim the program lacks proper congressional authorization, and that it needed to go through the "notice and comment" procedure of the Administrative Procedure Act (APA). Ironically, the flaws in the lawsuit are highlighted by the plaintiff state governors' own statements about the evils of socialism and the urgent need to address the crisis at the southern border.

The legal basis for these private sponsorship programs is [a 1952 law](#) that gives the attorney general the power to use "parole" to grant foreign citizens temporary residency rights in the US, "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." Are there "urgent humanitarian reasons" to grant entry to migrants fleeing these four Latin American nations? Most definitely! But don't take my word for it. Take that of the governors of several of the states that filed this lawsuit.

Three of the four nations included in the program are ruled by oppressive socialist dictators, whose policies have created horrific conditions. Few have put it better than Florida Governor Ron DeSantis, whose state is one of the participants in lawsuit. As he [said last year](#), Venezuela's socialist president Nicolas Maduro is a "murderous tyrant" who "is responsible for countless atrocities and has driven Venezuela into the ground." DeSantis went on to say that "people [in Venezuela] are "really hurting," due to the government's policies. It is indeed true that Venezuelan socialism has resulted in widespread oppression, poverty, and hyperinflation,

leading to the biggest refugee crisis in the history of the Western hemisphere, with some 6 million people fleeing. Texas Governor Greg Abbott, whose state is spearheading the lawsuit, has also noted the severe economic crisis in Venezuela, which he (rightly) blames on socialism.

In 2021, DeSantis signed a law requiring Florida public schools to provide 45 minutes of instruction each year on the evils of Communist regimes, including that of Cuba, which DeSantis correctly described as responsible for "poverty, starvation, migration, systemic lethal violence, and suppression of speech." Cuba, likewise, inflicts severe poverty and oppression on its people, including recent brutal suppression of protests in July 2021. It's no accident that, before the recent Venezuela crisis, the biggest refugee flow in the history of the Western Hemisphere was that of people fleeing Cuban communism in the 1960s and 70s. Many would like to flee today, as well.

Nicaragua under the increasingly authoritarian socialist rule of Daniel Ortega is a similar story. Ortega's repression has deepened already severe poverty, and created what even the left-leaning BBC describes as an "atmosphere of terror." That's why many Nicaraguans have sought to flee. As one Nicaraguan human rights activist puts it, conditions are so bad that "[t]hey'd rather die than return to Nicaragua."

I don't know about you. But it sure sounds to me like there are "urgent humanitarian reasons" for Cubans, Venezuelans, and Nicaraguans to seek refuge in the US. And few understand that better than the people bringing the lawsuit seeking to prevent them from getting it. Abbott, DeSantis, and other GOP governors have repeatedly denounced both the evils of socialism generally, and those of the Cuban, Venezuelan, and Nicaraguan governments specifically.

But perhaps they have somehow forgotten these things. If so, DeSantis should invite his fellow GOP governors to sit in on one of the 45-minute classes on the evils of communism, established under the law he signed last year. Their support of this lawsuit indicates they might need a refresher course on the subject!

Haiti, the one nation with a non-socialist government included in the program, has long been one of the poorest and most dysfunctional societies in the world. Over the last year, conditions have gotten even worse, with intensifying violence and shortages of basic necessities. It's hard to deny that Haitians, too, have "urgent humanitarian reasons" to seek refuge.

In addition to humanitarian reasons, the law also allows the attorney general to grant parole when there is a "significant public benefit" in doing so. In this case, the significant benefit is alleviating what Republican governors constantly claim is a massive crisis at the border. Just last month, Texas Gov. Abbott demanded that President Biden immediately address a "dire border crisis" caused by many thousands of migrants illegally crossing the border.

The parole policy does exactly that. Many of the migrants seeking illegal entry at the border come from the four nations covered by program. Parole would enable them to come in legally by ship or plane, and thereby bypass the border entirely, thus relieving pressure at the border, and alleviating what Abbott calls a "terrible crisis for border communities in Texas." Earlier, more limited, expansions of legal entry opportunities for Haitians and Venezuelans have already caused a substantial reduction in illegal entry by nationals of those countries. The parole program can achieve much greater progress on that front.

Unlike in the case of the evils of socialism, I find much of what GOP governors say about the border crisis unconvincing. Immigration, including that from Latin America, is far more a benefit to the US than a burden. To the extent there are humanitarian problems at the border, they are largely caused by migration restrictions that have closed off pathways to legal entry for many people fleeing terrible conditions. But the more credence you give to GOP governors' rhetoric about the scale and urgency of the border crisis, the stronger the legal rationale for Biden's parole program.

Of course, most Republicans would rather address the border situation through increasing exclusion and deportation, rather than by making legal entry easier. I think their approach is likely to fail (and has historically failed), for much the same reasons as Prohibition led to an expanded illegal trade in alcoholic beverages. But even if their strategy really is better, it still doesn't undercut the legal rationale for Biden's actions. The relevant provision of the law only requires that parole produce a "substantial public benefit," not that it be the best possible way of achieving it.

Another "significant public benefit" of the parole program is strengthening the US position in the international war of ideas against socialist authoritarians. By giving refuge to people fleeing brutal socialist governments, we send a powerful message of the superiority of our system over theirs. Conservatives used to understand this point during the days of the Cold War, which is why most supported the use of this same parole power to grant entry to Hungarian, Cuban, and Vietnamese refugees from communism, among others. Sadly, today, too many on the right prioritize nativism over opposition to socialism.

The state lawsuit also argues that the parole program is illegal because it does not engage in "case-by-case" determinations of eligibility, as required by the statute. But unless it is going to be completely arbitrary or random, case-by-case discretion must be guided by general rules. And, as a general rule, migrants from these four countries face severe oppression and privation if they are forced to return. Thus, their admission is justified by "urgent humanitarian reasons." The Supreme Court recently upheld the use of relatively broad rules under the parole power in the "Remain in Mexico" case.

I discussed the relationship between case-by-case discretion and general rules in immigration policy, in more detail in this 2016 article.

The same considerations that defeat the states' statutory argument also undercut their procedural APA claim. While notice and comment rule-making is generally required for major regulatory changes, there is a "good cause" exception for—among other things—emergencies that require urgent action. The dangers faced by migrants from the four countries are pretty obviously an emergency. Every day of delay means more suffering for them, and in many cases more exposure to violence. And if the border crisis is as bad as GOP governors say it is, it qualifies as an emergency requiring swift action, as well.

It is arguable that the private sponsorship programs—including Uniting for Ukraine—cannot be continued indefinitely without going through the notice and comment process. But, given urgent exigencies, they can at least be initiated without it.

Finally, it is telling that the GOP states have sued to terminate the private sponsorship parole program for the four Latin American countries, but not the very similar one for Ukrainians,

despite the fact that the latter is the model for the former. The most obvious explanation is that Ukrainian migrants are more popular—especially among Republicans—than Latin American ones. But such politically motivated distinctions suggest the plaintiffs are motivated more by politics, rather than any supposed commitment to the rule of law. In fairness, that is a common pattern, when it comes to lawsuits filed by politicians.

Whatever the plaintiffs' motives here, it is important to recognize that, if they prevail, Uniting for Ukraine is likely to be imperiled, as well as the program they are challenging. The legal justifications for the two are close to identical. Even if the plaintiff states would prefer to spare Uniting for Ukraine, that may not preserve it against challenges by other potential litigants (though some of the latter might be blocked by standing and other procedural barriers).

In this case, as in other state challenges to immigration policies, standing is likely to be an issue. I won't go into detail on that question here, except to reiterate my longstanding view that states should have broad standing rights to challenge federal policies, even when I believe they are wrong on the merits, as in the case of *Biden v. Texas*, currently before the Supreme Court.

In sum, this lawsuit deserves to fail for reasons well-articulated by some of the very people who filed it.

UPDATE: Cato Institute immigration policy expert David Bier makes some related points about the legal justification for the use of parole in this case, [here](#).

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