Courts should uphold valuable immigration policy

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Judge Drew Tipton of the U.S. District Court for the Southern District of Texas is in the process of considering an important immigration lawsuit that could have tragic effects if the plaintiffs prevail. The trial, which ran between Aug. 24 and 25, involves an ill-conceived lawsuit brought by Texas and nineteen other GOP-controlled state governments attempting to shut down an immigration policy that simultaneously rescues people fleeing violence and oppression and relieves pressure on the southern border. Ironically, statements by the plaintiff states' own leaders show why they deserve to lose.

In January, the Biden administration expanded 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 (sometimes known as the "CNVH" countries).

Under these programs, migrants fleeing war and oppression in these nations 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 U.S. sponsor who commits to supporting them financially. Some 160,000 migrants have come to the United States under the program.

The legal basis for these private sponsorship programs is the 1952 Immigration and Nationality Act, which, as later modified, gives the Department of Homeland Security the power to use "parole" to grant foreign citizens temporary residency rights in the United States "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." Here, we have both "urgent humanitarian reasons" *and* "significant public benefit."

The humanitarian need is undeniable. Three of the four nations included in the program — Cuba, Nicaragua, and Venezuela — are ruled by oppressive socialist dictators, whose policies have created horrific conditions. Few have put it better than Florida Gov. Ron DeSantis (R), whose state is one of the plaintiffs in the present case.

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." Venezuelan oppression and socialist economic policies have created the biggest refugee crisis in the history of the Western hemisphere, with some 7 million people fleeing. Texas Gov. Greg Abbott (R),

whose state is spearheading the lawsuit, has also noted the severe economic crisis in Venezuela, which he (rightly) blames on socialism.

In 2021, DeSantis rightly described Cuba's communist regime as responsible for "poverty, starvation, migration, systemic lethal violence, and suppression of speech." Cuba's government continues to be highly repressive, including recent brutal suppression of protests in July 2021.

Nicaragua, under the increasingly authoritarian socialist rule of Daniel Ortega, is a similar story. That's why many Nicaraguans have sought to flee. As one Nicaraguan human rights activist puts it, conditions are so bad that migrants fleeing the country say "[t]hey'd rather die than return to Nicaragua."

Haiti 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.

The CNVH program also creates a significant "public benefit." In December, Texas Gov. Greg Abbott sent a public letter to President Biden urging him to immediately address what he called a "terrible crisis for border communities."

CNVH parole does exactly that. Many of the migrants seeking entry at the border came from the four nations covered by program. Parole enables them to instead enter with advance authorization by ship or plane, and thereby bypass the border entirely, thus alleviating the "crisis" of which Abbot complained. A report by the conservative Manhattan Institute finds that "[t]he CHNV parole program…. has reduced combined illegal immigration by more than 98,000 immigrants per month."

The Federal Customs and Border Protection agency reports that between the announcement of the parole program on Jan. 5 and March 31, average daily encounters outside ports of entry with migrants from the four countries covered declined by 72 percent.No other policy change that occurred between Jan. 5 and March 31 can account for this decline.

The states also contend the program lacks adequate "case-by-case" consideration, as the statute requires. But any case-by-case decision-making must be guided by rules and presumptions, if it is not to be completely random arbitrary. And it is entirely reasonable to presume that migrants from nations with horrifically oppressive governments, widespread violence and economic crisis, have urgent humanitarian needs.

The same goes for the presumption that paroling people from these countries will reduce pressure on the southern border, as it actually has. Moreover, parole for CNVH migrants is not automatic. They must have a U.S. sponsor willing to provide financial support, a factor that increases the likelihood they will bypass the border. The states' ultra-narrow definition of "case by case" has a number of other flaws detailed in my amicus brief in the case.

Historically, the parole system has repeatedly been used to let in large numbers of people fleeing violence and oppression, most notably refugees from communist states during the Cold War. The CNVH program continues this longstanding tradition. Nothing in the text of the statute requires limiting admission to "small numbers" of people, as the states claim.

If the states prevail in this case, it will have dire consequences going far beyond the CNVH program. It would also imperil Uniting for Ukraine, which relies on the same authority, and has granted entry to some 140,000 Ukrainians fleeing Russia's war of aggression.

In addition, it would make it difficult or impossible for presidents to use parole to aid migrants fleeing future wars and repressive regimes. This harms both migrants unable to escape awful conditions, and the U.S. economy, which is deprived of the major contributions these migrants make. It also undermines the U.S. position in the international war of ideas of against oppressive dictatorships, like those of Cuba, Russia and Venezuela.

Welcoming migrants fleeing their governments is a powerful signal of the superiority of ours. Conservatives understood this point during the Cold War, when they supported the use of this same parole power to grant entry to Hungarian, Cuban, Vietnamese and other refugees from communism.

Parole is far from perfect. The two year residency period it gives should be made permanent by Congress, or at least extended. In addition, the 30,000 per month cap on CNVH has resulted in a massive backlog; it should be raised. But CNVH and Uniting for Ukraine are vastly better than nothing. Courts should not let an ill-conceived lawsuit destroy them.

Ilya Somin is Professor of Law at George Mason University, B. Kenneth Simon Chair in Constitutional Studies at the Cato Institute, and author of "Free to Move: Foot Voting, Migration and Political Freedom." He is also a sponsor in the Uniting for Ukraine program. He authored an amicus brief in this case on behalf of the Cato Institute, MedGlobal and himself. Some material here is adapted from the brief.