



Cato Institute Says GOP Statements Undermine Parole Suit

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Libertarian think tank Cato Institute, a law professor and nonprofit have thrown their support behind the Biden administration's parole program for Cuba, Haiti, Nicaragua and Venezuela, saying comments from Republican officials trying to strike it down contradict their effort. The think tank, the nongovernmental organization MedGlobal and George Mason University's Antonin Scalia Law School professor Ilya Somin said Republican officials in the states that brought the suit in January have undermined their own arguments that the program fails to meet the law's requirements that noncitizens be paroled into the country only for urgent humanitarian reasons or significant public benefit, according to an amicus brief filed Monday.

In particular, the amici said the program, which allows up to 30,000 migrants a month from Cuba, Haiti, Nicaragua and Venezuela to enter the U.S. for two years with work authorization, has gone a long way to counteract record numbers of migrants arriving at the southern border, which Republican state officials have publicly and repeatedly deemed a "border crisis."

"In this case, the significant public benefit is alleviating what the plaintiff states themselves claim is a massive crisis at the border," the brief said.

The brief noted the program allows individuals from the four countries to arrive by ship or plane, diverting them away from the border. And it has had an impact, according to statistics the brief cited from the conservative think tank Manhattan Institute, which found that the program reduced the number of unlawful border crossings by about 98,000 per month.

According to the brief, reducing migration at the southern border falls squarely within the permissible uses of parole, even if the Republican states that sued, led by Texas, would prefer that the administration only increase exclusions and deportations to manage the border crossings.

"The relevant law only requires that parole produce a 'substantial public benefit,' not that it be the only way or even the best possible way of achieving it," the brief said.

The brief also drew attention to comments Republican state officials have made about the governments in Cuba, Haiti, Nicaragua and Venezuela that the amici said further justify the parole program.

In addition to significant public benefit, noncitizens can also be paroled into the U.S. for urgent humanitarian reasons. The individuals entering the U.S. through the program are "fleeing a combination of rampant violence, brutal oppression by authoritarian socialist regimes, and severe economic crises," which the brief said has been acknowledged by Republican governors of the states that sued.

The brief cites comments from Gov. Ron DeSantis of Florida, one of the states that brought the suit, who said in March 2022 that Venezuelan President Nicolás Maduro is a "murderous tyrant ... responsible for countless atrocities" who drove the country into the ground.

According to the Monday brief, roughly 7 million Venezuelans have fled the country's brand of socialism, which the amici said has caused "widespread oppression, poverty, and hyperinflation." Somin, who filed the brief on behalf of himself, Cato and MedGlobal, called the states' position self-refuting.

"They recognize the socialist dictatorships are horrible. And also, they want there to be fewer migrants at the border. This program both alleviates the humanitarian need created by the horrible socialist dictatorships in these three countries and Haiti ... and it also reduces pressure at the border," Somin said in an interview with Law360 on Tuesday.

The U.S. Department of Justice and the Texas Office of the Attorney General did not immediately respond to requests for comment Tuesday.

The Texas-led coalition of states challenging the program has also accused the Biden administration of flouting the parole statute's requirement that it be granted only on a case-by-

case basis. But Monday's amicus brief said Congress did not impose a numerical cap on how many noncitizens can be paroled into the country.

"Imposing such a cap by limiting parole to 'small numbers' of migrants would be an arbitrary judicial mandate unsupported by statutory text and at odds with Supreme Court precedent," the brief said.

According to a Cato Institute study from July, various administrations have used parole power at least 126 times, the amici said.

A bench trial in the case is scheduled to begin Aug. 24.

The states are represented by their respective attorneys general, and Texas is also represented by Leif A. Olson, Ryan D. Walters, M. David Bryant and Gene P. Hamilton of the Texas Office of the Attorney General.

The federal government is represented by Erez R. Reuveni, Brian Ward, Elissa P. Fudim and Erin Ryan of the U.S. Department of Justice's Office of Immigration Litigation.

Cato, MedGlobal and Somin are represented by Ilya Somin of the George Mason University's Antonin Scalia Law School.

The intervenors are represented by Esther Sung, Karen Tumlin, Jane P. Bentrrott and Lauren Michel Wilfong of the Justice Action Center, Vanessa Rivas-Bernardy of the Refugee and Immigrant Center for Education and Legal Services, and Monika Y. Langarica and Ahilan T. Arulanantham of the UCLA Center for Immigration Law and Policy.

The case is State of Texas et al. v. U.S. Department of Homeland Security et al., case number 6:23- cv-00007, in the U.S. District Court for the Southern District of Texas.