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Amicus Brief Defending Legality of Immigration Parole Program for Migrants Fleeing Socialism, Oppression, and Violence in Four Latin American Nations

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Earlier today, I submitted an amicus brief to the US District Court for the Southern District of Texas in *Texas v. Department of Homeland Security*, a case challenging the legality of the CNVH immigration parole program. I wrote the brief on behalf of the Cato Institute, MedGlobal (a humanitarian organization that provides medical assistance to refugees and victims of natural disaster), and myself. Here is an excerpt from the summary of the brief posted on the Cato website:

In January, the Biden Administration 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, Nicaragua, Venezuela, and Haiti (the CNVH countries). 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.

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. 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 CNVH program is authorized by the Immigration and Nationality Act which states that "[t]he Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Part I of the brief demonstrated that migrants from the CNVH countries indeed have "urgent humanitarian reasons" to seek refuge in the United States. They are fleeing a combination of

rampant violence, brutal oppression by authoritarian socialist regimes, and severe economic crises. So great is the humanitarian need here, that even the leaders of some of the plaintiff states have recognized and denounced the horrific conditions in these countries.

In Part II, we show that paroling CNVH migrants also creates a major "public benefit." That benefit is reducing pressure and disorder on America's southern border. Here, too, some of the Plaintiff states have themselves recognized the importance of this benefit, and indeed have loudly called for measures to achieve it. The CNVH program has already massively reduced cross-border undocumented migration by citizens of the four nations it covers.

Part III explains why the parole program is consistent with the statutory requirement that parole be conducted on a "case by case basis." 8 U.S.C. § 1182(d)(5)(A). The Plaintiffs' position on this point is inconsistent with statutory text, Supreme Court precedent, and basic principles of statutory interpretation. It would also lead to absurd results.

Finally, Part IV shows that, while the Plaintiffs have limited their lawsuit to challenging the CNVH program, if the court accepts their position it would also imperil Uniting for Ukraine. The latter relies on the same legal authority as the former.

In sum, this ill-conceived lawsuit deserves to fail for reasons well-articulated by leaders of some of the very same states that filed it.

The CNVH program has already helped many thousands of migrants fleeing violence and socialist oppression, and has also had a big impact alleviating pressure on the southern border. A court decision shutting it down would be both legally unjustifiable, and likely to cause great harm.

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