

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

S.A., et al.,  
Plaintiffs,  
v.  
DONALD J. TRUMP, et al.,  
Defendants.

Case No. 18-cv-03539-LB

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

Re: ECF No. 24

**INTRODUCTION**

Under the Immigration and Nationality Act (“INA”), the Secretary of Homeland Security has discretion to parole foreign nationals into the United States “temporarily” and “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit[.]” 8 U.S.C.

§ 1182(d)(5)(A).<sup>1</sup> Parole does not constitute admission in a valid immigration or nonimmigrant status, but it allows a foreign national to enter and physically be present in the United States.

In 2014, the government instituted a program called the Central American Minors (“CAM”) Program, which allowed parents who were lawfully present in the United States to apply to bring

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<sup>1</sup> Section 1182(d)(5)(A) refers to the Attorney General, but pursuant to 6 U.S.C. § 557, that authority has now been transferred to the Secretary of Homeland Security. *See, e.g., In re Arrabally*, 25 I. & N. Dec. 771, 777 n.5 (B.I.A. 2012).

1 their children and other qualifying family members in three countries — Honduras, Guatemala,  
2 and El Salvador, collectively known as the “Northern Triangle” — into the United States. A  
3 Program goal was to discourage children from making the long and dangerous journey from the  
4 Northern Triangle to the United States to try to reunite with their parents. The Program sought to  
5 achieve this goal by allowing applicant parents to apply for their beneficiary children while the  
6 children remained in their original countries.<sup>2</sup>

7 The CAM Program had two components: a refugee component and a parole component. U.S.  
8 Citizenship and Immigration Services (“USCIS”), an agency within the U.S. Department of  
9 Homeland Security (“DHS”), first evaluated beneficiaries to see if they qualified for refugee status  
10 (which, among other things, requires persecution or a well-founded fear of persecution “on  
11 account of race, religion, nationality, membership in a particular social group, or political  
12 opinion”). If the beneficiaries qualified, USCIS referred them for approval as refugees under the  
13 CAM Refugee Program. If they did not qualify, USCIS automatically considered them for parole  
14 into the United States under the CAM Parole Program.

15 In January 2017, following a change in presidential administrations, President Donald Trump  
16 issued an Executive Order that (among other things) directed the Secretary of Homeland Security  
17 to “take all appropriate action” to ensure that DHS exercised its parole authority “only on a case-  
18 by-case basis” and “only when an individual demonstrates urgent humanitarian reasons or a  
19 significant public benefit derived from such parole.” Exec. Order 13,767 § 11(d), 82 Fed. Reg.  
20 8793, 8796 (2017). Beginning in January or February 2017, DHS stopped processing CAM  
21 Program applications — including the applications for beneficiaries who had been conditionally  
22 approved for parole and were awaiting processing to finalize their arrangements to travel to the  
23 United States — and began a review of the CAM Parole Program. In August 2017, DHS

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25 \_\_\_\_\_  
26 <sup>2</sup> Some documents related to the CAM Program use the term “applicant” to refer to the parents present  
27 in the United States, while others use it to refer to the children or qualifying family members in the  
28 Northern Triangle countries. This order uses “applicant” to refer to the parents present in the United  
States, “beneficiary” to refer to the children or qualifying family members in the Northern Triangle  
countries, and “participant” to refer to applicants and beneficiaries.

1 announced that it was terminating the CAM Parole Program. It also announced that it was  
2 rescinding the decisions it had previously made under the Program for 2,714 beneficiaries whom it  
3 had conditionally approved for parole but who had not yet traveled to the United States.

4 The plaintiffs in this case — applicant parents lawfully residing in the United States who  
5 applied to the CAM Program, their beneficiary children in Northern Triangle countries, and the  
6 nonprofit immigrant-rights organization CASA — filed this putative class-action lawsuit, bringing  
7 claims under the Administrative Procedure Act (“APA”), the Due Process Clause, and the equal-  
8 protection component of the Due Process Clause, and a claim for equitable estoppel. The claims  
9 challenge as unlawful DHS’s termination of the CAM Parole Program and its decision to rescind  
10 en masse its prior decisions to conditionally approve parole for the 2,714 beneficiaries (including  
11 named beneficiary-children plaintiffs in this case).

12 The defendants moved to dismiss the plaintiffs’ claims. On December 10, 2018, the court  
13 granted in part and denied in part the defendants’ motion to dismiss. *S.A. v. Trump*, \_\_\_ F. Supp. 3d  
14 \_\_\_, No. 18-cv-03539-LB, 2018 WL 6470253 (N.D. Cal. Dec. 10, 2018).<sup>3</sup> The court dismissed the  
15 plaintiffs’ due-process, equal-protection, and equitable-estoppel claims and dismissed the APA  
16 claims challenging DHS’s termination of the CAM Parole Program going forward. *Id.* The court  
17 denied the defendants’ motion to dismiss the plaintiffs’ APA claims challenging DHS’s decision  
18 to mass-rescind conditional approvals of parole that issued before DHS terminated the Program in  
19 August 2017. *Id.* at \*32–33. The court held that DHS acted arbitrarily and capriciously when it  
20 failed to take into account and address the serious reliance interests of participants who were  
21 conditionally approved for parole when it mass-rescinded those approvals. *Id.*

22 The plaintiffs moved for a preliminary injunction (1) enjoining DHS from terminating the  
23 CAM Parole Program and (2) vacating DHS’s mass-rescission of conditional approvals of parole.  
24 With respect to the second request, the plaintiffs do not seek an injunction mandating that DHS  
25 admit any particular Program beneficiary into the United States. Instead, they seek only an order  
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27 <sup>3</sup> Order – ECF No. 51. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint  
28 citations are to the ECF-generated page numbers at the top of documents.

1 requiring DHS to continue to process the conditionally approved beneficiaries under the  
2 procedures that it had in place for processing the beneficiaries before it terminated the Program.<sup>4</sup>

3 The court held two hearings on the plaintiffs' motion: one on October 30, 2018 (a hearing on  
4 the plaintiffs' motion for a preliminary injunction and the defendants' then-pending motion to  
5 dismiss) and, following two rounds of supplemental briefing, a second hearing on February 14,  
6 2019 on the plaintiffs' preliminary-injunction motion.

7 The court now grants in part and denies in part the plaintiffs' motion. Because the court  
8 dismissed the plaintiffs' claims challenging the termination of the CAM Parole Program going  
9 forward, it also denies the plaintiffs' motion to enjoin DHS from terminating the Program going  
10 forward. The court grants the plaintiffs' motion to enjoin DHS's mass-rescission of conditional  
11 approvals of parole, vacates the mass-rescission, and orders DHS to continue processing — under  
12 the DHS policies and procedures in place for processing beneficiaries before January 2017 — the  
13 2,714 beneficiaries conditionally approved for parole.

### 14 STATEMENT

15 The court's first order summarized the facts and allegations regarding the CAM Parole  
16 Program and the plaintiffs' claims. *S.A.*, \_\_\_ F. Supp. 3d \_\_\_, 2018 WL 6470253, at \*3–19. The  
17 following facts are relevant to the plaintiffs' preliminary-injunction motion.  
18

19 The CAM Program was structured as a dual refugee/parole program.<sup>5</sup> Under the CAM  
20 Refugee Program, certain Central American parents living lawfully in the United States could  
21 apply for their minor children and qualifying family members to be considered for refugee  
22 resettlement while the family members were still in Honduras, Guatemala, and El Salvador.<sup>6</sup>  
23 Minor children and qualifying family members were accepted as refugees if they established that  
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25 <sup>4</sup> Pls. Suppl. Reply – ECF No. 67 at 3 (“Plaintiffs do not ask the Court to mandate a particular outcome  
26 in any given CAM application, but simply to require Defendants (including Border Patrol) to follow  
27 their own procedures that were in place during the last uncontested status.”).

28 <sup>5</sup> Compl. – ECF No. 1 at 12 (¶ 37).

<sup>6</sup> *Id.*

1 they qualified for resettlement under U.S. law, that is, by demonstrating that they had a well-  
 2 founded fear of persecution based on race, religion, nationality, membership in a particular social  
 3 group, or political opinion.<sup>7</sup> If the minors and qualifying family members did not meet the  
 4 eligibility criteria for refugee admission under the CAM Refugee Program, then they were  
 5 automatically considered for parole under the CAM Parole Program pursuant to 8 U.S.C.  
 6 § 1182(d)(5).<sup>8</sup>

7 Individuals had to apply to the CAM Refugee Program before they could be considered for the  
 8 CAM Parole Program. The process was as follows.

9 First, a parent lawfully residing in the United States had to file an application with the  
 10 assistance of a “resettlement agency” (a nonprofit organization partially funded by the government  
 11 to welcome refugees into the country) and provide proof of identity, proof of legal status in the  
 12 United States, and a passport photo of the beneficiary child.<sup>9</sup> Second, the International  
 13 Organization for Migration (“IOM”) — the intergovernmental organization that the State  
 14 Department contracted to run its Resettlement Support Center in Latin America — invited the  
 15 child to come to the capital of the country where the child was located so that IOM could  
 16 interview the child, take the child’s biometric data and background information, prepare a case  
 17 file, and initiate security checks.<sup>10</sup> Third, USCIS verified the relationship between parent and child  
 18 through documentary evidence and DNA tests.<sup>11</sup> (The parent had to pay for DNA testing, but  
 19 USCIS reimbursed the parent if the testing confirmed a parent-child relationship.<sup>12</sup>) Fourth,  
 20 USCIS conducted an interview with the child in the country capital.<sup>13</sup> Fifth, after confirming  
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22 <sup>7</sup> *Id.*; accord 8 U.S.C. § 1101(a)(42) (defining “refugee” as requiring, among other things, persecution  
 23 or a well-founded fear of persecution “on account of race, religion, nationality, membership in a  
 24 particular social group, or political opinion”).

25 <sup>8</sup> Compl. – ECF No. 1 at 12–13 (¶ 38).

26 <sup>9</sup> *Id.* at 14 (¶ 42(a)).

27 <sup>10</sup> *Id.* (¶ 42(b)).

28 <sup>11</sup> *Id.* at 14–15 (¶ 42(c)).

<sup>12</sup> *Id.* at 15 (¶ 42(c)).

<sup>13</sup> *Id.* (¶ 42(d)).

1 security-check results and DNA-test results, USCIS made a determination on the refugee  
 2 application and notified beneficiaries of that determination by either a decision letter or a phone  
 3 call.<sup>14</sup> For beneficiaries who received letters, if refugee status was denied, the letter checked one of  
 4 several boxes to explain the reason for the denial and outlined the process to request a review of  
 5 the refugee determination.<sup>15</sup> The letter then indicated whether the beneficiary was eligible for the  
 6 CAM Parole Program.<sup>16</sup>

7 If USCIS approved a beneficiary for the CAM Parole Program, the letter said:

8 You have been conditionally approved for parole into the United States. Final  
 9 approval is conditioned upon successful completion of any remaining clearances  
 10 that are required in the screening process. These clearances include medical  
 11 examination by a U.S. approved panel physician, completion of security clearance  
 12 procedures, and verification of family relationships. Please see attached  
 information sheet for next steps that must be completed for you to be paroled into  
 the United States.<sup>17</sup>

13 If USCIS conditionally approved a beneficiary for parole, then the beneficiary had to undergo  
 14 a medical examination in the country capital at the parent's expense.<sup>18</sup> USCIS told the beneficiary  
 15 that "IOM will contact your relative in the United States to collect payment for the medical exam"  
 16 and "[a]fter receiving payment, IOM will contact you to arrange your exam."<sup>19</sup> If the beneficiary  
 17 cleared the examination, he or she received a medical clearance valid for six months.<sup>20</sup>

18 Next, USCIS told the beneficiary that "[i]f the medical results clear, IOM will contact your  
 19 relatives in the United States to arrange for your flight" and "[a]fter IOM receives payment for  
 20 your travel, [it] will submit the travel itinerary to USCIS."<sup>21</sup> After receiving the travel-itinerary  
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22 <sup>14</sup> *Id.* (¶ 42(e)).

23 <sup>15</sup> *Id.*

24 <sup>16</sup> *Id.*

25 <sup>17</sup> *Id.* at 15–16 (¶ 42(e)).

26 <sup>18</sup> *Id.* at 16 (¶ 42(f)).

27 <sup>19</sup> *Id.*

28 <sup>20</sup> *Id.*

<sup>21</sup> *Id.* (¶ 42(g)).

1 form from IOM, USCIS “will . . . [p]erform final security checks, [e]nsure the medical exam  
2 results remain valid until date of travel, and [v]erify that your relative still has a qualifying legal  
3 presence in the United States.”<sup>22</sup> “[I]f we decide that you have met all requirements for parole  
4 under this program, we will issue Form I-512L, Authorization for Parole of an Alien Into the  
5 United States,” and “IOM will give you this document and your plane ticket the day you fly to the  
6 United States.”<sup>23</sup>

7 Finally, after travel arrangements were made, the beneficiary traveled to a U.S. port of entry,  
8 where DHS Customs and Border Protection could authorize parole for a period of up to two  
9 years.<sup>24</sup> USCIS told the beneficiary that it “will consider CAM parole extension requests for the  
10 duration of the program.”<sup>25</sup>

11 When DHS terminated the CAM Parole Program in August 2017, it mass-rescinded its  
12 approvals of conditional parole for 2,714 children and family members who were still being  
13 processed (meaning, they were completing the remaining post-approval clearances and had not yet  
14 traveled to the United States).<sup>26</sup>

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16 <sup>22</sup> *Id.* (¶ 42(h)).

17 <sup>23</sup> *Id.* (emphasis removed).

18 <sup>24</sup> *Id.* at 17 (¶ 42(i)).

19 <sup>25</sup> *Id.*

20 <sup>26</sup> *Id.* at 30 (¶ 83), 38 (¶ 120); Response to Queries, U.S. Citizenship & Immigration Servs., U.S. Dep’t  
of Homeland Sec., *Termination of CAM Parole Program* (2017 RTQ) – ECF No. 33-9 at 5  
(AR000048).

21 The court makes a clarification to a footnote in its prior order. The court stated there that “30% of  
22 interviewed beneficiaries were approved as refugees, and thus would not have been considered for  
23 parole. Of the remaining 70% of interviewed beneficiaries who were considered for parole, 69% were  
24 approved, which results in a parole-approval rate of approximately 99% (69/70).” *Id.* The court should  
25 have said that “*of the cases that have been issued decisions*, 30% of interviewed beneficiaries were  
26 approved as refugees, and thus would not have been considered for parole. Of the remaining 70%,  
27 69% were approved, which results in a parole-approval rate of approximately 99% (69/70).” 2017  
28 RTQ – ECF No. 33-9 at 5 (AR000048). USCIS placed approximately 14% of interviewed  
beneficiaries (or approximately 1,000 beneficiaries) on an apparent indefinite hold (in most cases so  
that USCIS headquarters could review the applicants’ known or suspected gang affiliations). Report to  
Congressional Addressees, U.S. Gov’t Accountability Office, *Refugees[:] Actions Needed by State  
Department and DHS to Further Strengthen Application Screening Process and Assess Fraud Risks*  
(July 2017) (2017 GAO Report) – ECF No. 25-12 at 75 (p. 68). Those beneficiaries would not have  
received a decision on their initial refugee applications (and thus would not have been considered for  
parole under the CAM Parole Program in the first instance). Additionally, USCIS also rejected or

1 **STANDARD OF REVIEW**

2 “A party can obtain a preliminary injunction by showing that (1) it is ‘likely to succeed on the  
3 merits,’ (2) it is ‘likely to suffer irreparable harm in the absence of preliminary relief,’ (3) ‘the  
4 balance of equities tips in its favor,’ and (4) ‘an injunction is in the public interest.’” *Disney*  
5 *Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal brackets omitted)  
6 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “A preliminary injunction  
7 may also be appropriate if a movant raises ‘serious questions going to the merits’ and the ‘balance  
8 of hardships tips sharply towards’ it, as long as the second and third *Winter* factors are satisfied.”  
9 *Id.* (internal ellipsis omitted) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–  
10 35 (9th Cir. 2011)). “[T]he elements of the preliminary injunction test are balanced, so that a  
11 stronger showing of one element may offset a weaker showing of another.” *Hernandez v.*  
12 *Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105  
13 (9th Cir. 2012)).

14 **ANALYSIS**

15 **1. Success on the Merits**

16 **1.1 Governing Law**

17 “Likelihood of success on the merits ‘is the most important’ *Winter* factor; if a movant fails to  
18 meet this ‘threshold inquiry,’ the court need not consider the other factors, in the absence of  
19 ‘serious questions going to the merits.’” *Disney*, 869 F.3d at 856 (citing *Garcia v. Google, Inc.*,  
20 786 F.3d 733, 740 (9th Cir. 2015) (en banc); *All. for the Wild Rockies*, 632 F.3d at 1134–35).  
21 “However, ‘once the moving party has carried its burden of showing a likelihood of success on the  
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25 disqualified 5% of CAM Program beneficiaries at the DNA-testing stage before reaching the interview  
stage. *Id.* at 74 (p. 67).

26 The court notes that “findings of fact and conclusions of law made by a court in granting a  
27 preliminary injunction are not binding at trial on the merits.” *Shell Offshore Inc. v. Greenpeace, Inc.*,  
28 815 F.3d 623, 631 n.5 (9th Cir. 2016) (citing *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)).  
If later developments in this case provide further clarity or updates regarding these numbers, then the  
court will update its calculations accordingly.



1 merits, the burden shifts to the non-moving party to show a likelihood that its affirmative defense  
 2 will succeed.” *Id.* (quoting *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1158 (9th Cir.  
 3 2007)).

## 4 **1.2 Application**

5 The plaintiffs have shown a likelihood of success on the merits of their claims that DHS’s  
 6 decision to mass-rescind conditional approvals of parole violated the APA. As the order denying  
 7 the defendants’ motion to dismiss explained, the plaintiffs’ filings and the administrative record  
 8 show that DHS failed to take into account and address the serious reliance interests of those  
 9 conditionally approved participants before mass-rescinding their approvals, and its failure to do so  
 10 was arbitrary and capricious in violation of the APA. *S.A.*, \_\_\_ F. Supp. 3d \_\_\_, 2018 WL 6470253,  
 11 at \*32–33. The defendants have not shown a likelihood of success on an affirmative defense.<sup>27</sup>

12 The plaintiffs have satisfied the first preliminary-injunction factor.

## 14 **2. Irreparable Harm**

### 15 **2.1 Governing Law**

16 “A plaintiff seeking preliminary relief must ‘demonstrate that irreparable injury is likely in the  
 17 absence of an injunction.’” *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018) (quoting *Winter*,  
 18 555 U.S. at 22). “The analysis focuses on irreparability, ‘irrespective of the magnitude of the  
 19 injury.’” *Id.* (quoting *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999)). “There must  
 20 be a ‘sufficient causal connection’ between the alleged irreparable harm and the activity to be  
 21 enjoined, and showing that ‘the requested injunction would forestall’ the irreparable harm  
 22 qualifies as such a connection.” *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 886 F.3d  
 23 803, 819 (9th Cir. 2018) (citing *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 981–82 (9th Cir.  
 24

25 \_\_\_\_\_  
 26 <sup>27</sup> See Defs. Suppl. Opp’n – ECF No. 61 (not arguing that the plaintiffs have not shown a likelihood of  
 27 success on the merits or that the defendants have shown a likelihood of success on an affirmative  
 28 defense). The defendants argue that DHS can cure the APA violation, *id.* at 4, but that is not the same  
 as arguing that there was no APA violation or that the plaintiffs have not shown a likelihood of success  
 on the merits.

2011)). “However, a plaintiff ‘need not further show that the action sought to be enjoined is the exclusive cause of the injury.’” *Id.* (quoting *M.R. v. Dreyfus*, 697 F.3d 706, 728 (9th Cir. 2012)).

## 2.2 Application

### 2.2.1 CAM Parole Program participants

#### 2.2.1.1 Harm

The Ninth Circuit has recognized in the context of asylum, withholding-of-removal, and Convention Against Torture cases that a plaintiff’s physical danger in his or her home country can constitute irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).

Additionally, “‘other important irreparable harm factors include separation from family members, medical needs, and potential economic hardship.’” *Id.* at 969–70 (internal brackets omitted) (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc)); accord *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (separation from family members is “a substantial injur[y] and even irreparable harm[.]”); *Regents of the Univ. of Cal v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011, 1046 (N.D. Cal. 2018) (*Regents I*) (same), *aff’d*, 908 F.3d 476 (9th Cir. 2018) (*Regents II*).

The plaintiffs submitted evidence that the CAM Parole Program participants are suffering irreparable harm from prolonged family separation and, with respect to the beneficiary-children plaintiffs, irreparable harm from the physical danger they face in their countries of residence. The named applicant-parent and beneficiary-children plaintiffs submitted declarations attesting to physical danger, as evinced by beatings, the murders of their relatives, and rape and murder threats made against them. Named plaintiff D.D. (who lawfully resides in the United States) and her daughter A.D. (who resides in El Salvador) submitted declarations discussing how gangs killed a boy outside A.D.’s house and how A.D.’s father was shot and killed in broad daylight as he picked up his children from school.<sup>28</sup> Named plaintiff J.A. (who resides in El Salvador) and her mother S.A. (who lawfully resides in the United States) submitted declarations that gang members

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<sup>28</sup> D.D. Decl. – ECF No. 6-10 at 9 (¶ 5); A.D. Decl. – ECF No. 24-7 at 8 (¶¶ 2–3).

1 approached J.A., that one gang member threatened her to “date” him and if she refused, he would  
 2 take her by force, “bad things would happen to [her],” and “[her] family would never see [her]  
 3 again,” and that girls who refuse to “date” gang members are often kidnapped, raped, and  
 4 sometimes killed.<sup>29</sup> Named plaintiffs M.C. and J.C. (who live in El Salvador) and their father R.C.  
 5 (who lawfully resides in the United States) submitted declarations that gang members killed a  
 6 neighbor of M.C.’s and J.C.’s, that a gang member who physically attacked and raped other girls  
 7 was harassing M.C. to be his “girlfriend” and threatened that “[she] was going to pay for it with  
 8 [her] family” if she refused, and that gang members demanded that J.C. join their gang and, after  
 9 he refused, beat him unconscious and sent him to the hospital, injuring him so badly that he had to  
 10 have emergency surgery to remove his spleen and remained bedridden for a month.<sup>30</sup> Named  
 11 plaintiff B.E. (who resides in El Salvador) and his father G.E. (who lawfully resides in the United  
 12 States) submitted declarations that gang members murdered B.E.’s uncle (G.E.’s brother) right  
 13 outside of his house and, after B.E.’s grandfather testified at his uncle’s murder trial, were  
 14 threatening to kill B.E. in retaliation.<sup>31</sup> The plaintiffs also submitted declarations discussing the  
 15 harm they have suffered from their familial separations, including missing important life events  
 16 and the opportunity to care for sick family members.<sup>32</sup> This familial separation and risk of  
 17 physical danger constitutes irreparable harm. *Cf. Leiva-Perez*, 640 F.3d at 969–70.<sup>33</sup>

18 \_\_\_\_\_  
 19 <sup>29</sup> S.A. Decl. – ECF No. 6-12 at 10–11 (¶¶ 16–17); J.A. Decl. – ECF No. 6-13 at 9 (¶ 6), 12–13 (¶¶ 21–  
 20 24).

<sup>30</sup> R.C. Decl. – ECF No. 6-11 at 11–12 (¶¶ 19–21); M.C. Decl. – ECF No. 6-15 at 10 (¶ 13), 11–12  
 21 (¶¶ 21–25); J.C. Decl. – ECF No. 6-17 at 6 (¶¶ 5–9), 8 (¶ 15).

<sup>31</sup> B.E. Decl. – ECF No. 6-16 at 8–9 (¶¶ 5–10), 11 (¶ 21); G.E. Decl. – ECF No. 6-18 at 8 (¶¶ 6–7), 10  
 22 (¶¶ 20–21).

<sup>32</sup> D.D. Decl. – ECF No. 6-10 at 12–13 (¶ 28); R.C. Decl. – ECF No. 6-11 at 9 (¶ 8); S.A. Decl. – ECF  
 23 No. 6-12 at 10 (¶¶ 14–15); J.A. Decl. – ECF No. 6-13 at 13 (¶ 25); M.C. Decl. – ECF No. 6-15 at 10  
 24 (¶ 12); B.E. Decl. – ECF No. 6-16 at 10 (¶ 18); J.C. Decl. – ECF No. 6-17 at 7 (¶ 13); G.E. Decl. –  
 ECF No. 6-18 at 9 (¶ 13).

<sup>33</sup> The defendants do not meaningfully contest that the plaintiffs are suffering irreparable harm. *See*  
 25 Defs. Opp’n – ECF No. 32 at 28 (arguing about the balance of harms but not contesting that CAM  
 26 Parole Program participant plaintiffs are suffering irreparable harm); Defs. Suppl. Opp’n – ECF No. 61  
 27 (not contesting that Program participant plaintiffs are suffering irreparable harm); Defs. Further Suppl.  
 28 Br – ECF No. 70 at 2 (same). The plaintiffs also note that DHS, in originally conditionally approving  
 beneficiaries for parole in the first place (before mass-rescinding those conditional approvals),  
 necessarily made a determination that such beneficiaries were sufficiently at risk of harm in their home

1                   **2.2.1.2 Causal connection**

2           The defendants contend that they did not cause the harm to the plaintiffs of family separation  
3 and danger in their country of residence and that the plaintiffs thus have not shown a sufficient  
4 causal connection between the alleged irreparable harm and the activity to be enjoined.<sup>34</sup> The  
5 court disagrees.

6           The Ninth Circuit’s and Supreme Court’s decisions on the so-called “travel ban” are  
7 instructive on this point. Broadly speaking, the travel-ban cases involved presidential executive  
8 orders limiting immigrant and non-immigrant entry into the United States from several  
9 enumerated countries (most of which are predominately Muslim). In one line of cases, an  
10 individual U.S. citizen of Egyptian descent, Ismail Elshikh (together with the State of Hawaii)  
11 brought a suit to challenge the executive orders. Dr. Elshikh alleged that the second of these  
12 executive orders (“EO-2”) prevented his mother-in-law, a Syrian national residing in Syria, from  
13 obtaining a visa to travel to the United States to reunite with their shared family. *Hawaii v. Trump*,  
14 859 F.3d 741, 762 (9th Cir. 2017) (*Trump I*), stay granted in part and denied in part, *Trump v.*  
15 *Int’l Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (*Trump II*), vacated as moot, *Trump v.*  
16 *Hawaii*, 138 S. Ct. 377 (2017) (*Trump III*). Dr. Elshikh’s mother-in-law had not visited the United  
17 States for over ten years (long before EO-2 was issued), and hence her separation from her family  
18 members had not been directly caused by the executive order. *See id.* The Ninth Circuit

19  
20  
21 countries to warrant awarding them parole. *See* Fact Sheet, Bureau of Population, Refugees, and  
22 Migration, U.S. Dep’t of State and U.S. Dep’t of Homeland Sec., *In-Country Refugee/Parole Program*  
23 *for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United*  
24 *States* (Nov. 14, 2014), available at <https://2009-2017.state.gov/j/prm/releases/factsheets/2014/234067.htm> (last visited Mar. 1, 2019) (“An individual considered for parole may be eligible for  
25 parole if DHS finds that the individual is at risk of harm, he/she clears all background vetting, there is  
26 no serious derogatory information, and someone has committed to financially support the individual  
27 while he/she is in the United States.”). The defendants do not meaningfully contest those DHS  
28 determinations either. *See* 2017 RTQ – ECF No. 33-9 at 6 (AR000049) (DHS expressly stating that in  
terminating the CAM Parole Program, it was not determining that children were no longer in danger).

<sup>34</sup> Defs. Further Suppl. Br. – ECF No. 70 at 2 (“The harm to these plaintiffs consists of continued family separation and potential exposure to violence in their countries—situations that were not caused by defendants. For the children-plaintiffs, living with the identified harms is the status quo. By terminating the CAM program, the Trump Administration removed the helping hand that the Obama Administration had extended, but it did not cause the underlying harm.”).

1 nonetheless held that Dr. Elshikh’s showing of “prolonged separation from family members”  
 2 constituted irreparable harm warranting an injunction barring the government from enforcing the  
 3 travel ban. *Id.* at 782–83. The Ninth Circuit thus implicitly held that the causal-connection  
 4 requirement was satisfied in that case. On a petition for a writ of certiorari, the Supreme Court  
 5 considered the Ninth Circuit’s injunction and left it in place with respect to individuals in the  
 6 United States and family members abroad. *Trump II*, 137 S. Ct. at 2087.<sup>35</sup> The Supreme Court did  
 7 not stay or set aside the Ninth Circuit’s injunction for failure to satisfy a causal-connection  
 8 requirement. *See id.*

9 The Supreme Court subsequently vacated the Ninth Circuit’s order as moot after the  
 10 government rescinded EO-2 and replaced it with a new executive order (“EO-3”). *Trump III*, 138  
 11 S. Ct. 377. On Dr. Elshikh’s (and Hawaii’s) renewed challenge to EO-3, the Ninth Circuit once  
 12 again held that Dr. Elshikh made a showing of irreparable harm warranting an injunction. *Hawaii*  
 13 *v. Trump*, 878 F.3d 662, 698–99 (9th Cir. 2017) (*Trump IV*), *rev’d*, *Trump v. Hawaii*, 138 S. Ct.  
 14 2392 (2018) (*Trump V*). The Ninth Circuit thus implicitly reaffirmed that the causal-connection  
 15 requirement was satisfied in that case. (The Supreme Court ultimately reversed *Trump IV* on the  
 16 issue of whether the plaintiffs had shown a likelihood of success on the merits, without addressing  
 17 the issue of irreparable harm or any causal-connection requirement. *Trump V*, 138 S. Ct. at 2423.)

18 While the Ninth Circuit’s decisions in *Trump I* and *Trump IV* were ultimately vacated or  
 19 reversed (on grounds unrelated to the irreparable-harm prong), the decisions nonetheless provide  
 20 insight into the application of the causal-connection requirement here. *See generally Doe v.*  
 21 *Trump*, 288 F. Supp. 3d 1045, 1069 n.15 (W.D. Wash. 2017) (*Doe I*) (“[*Trump v. Hawaii I* . . .  
 22 remains persuasive authority despite the Supreme Court’s vacatur.”) (citing *Orhorhaghe v. INS*, 38  
 23 F.3d 488, 493 n.4 (9th Cir. 1994)), *recons. denied*, 284 F. Supp. 3d 1182 (W.D. Wash. 2018) (*Doe*  
 24 *II*). Like this case, those cases involved a U.S. resident plaintiff separated from family members

25  
 26  
 27 <sup>35</sup> The Supreme Court stayed the injunction with respect to foreign nationals who did not have a  
 28 “credible claim” of a “bona fide relationship” with a person or entity in the United States. *Trump II*,  
 137 S. Ct. at 2088.

1 living outside the United States. As in this case, in those cases the government was not the  
 2 immediate direct cause of the familial separation, which long predated the government’s actions.  
 3 The Ninth Circuit nonetheless affirmed injunctions in those cases, thereby implicitly holding that  
 4 there was a sufficient causal connection in those cases between the alleged irreparable harm  
 5 (prolonged familial separation) and the activity to be enjoined (the government’s travel ban  
 6 preventing family members from traveling to the United States) to warrant injunctive relief. The  
 7 court here similarly finds that there is a sufficient causal connection between alleged irreparable  
 8 harm (prolonged familial separation and physical danger to the beneficiary-children plaintiffs) and  
 9 the activity to be enjoined (the government’s mass-rescission of beneficiaries’ conditional parole  
 10 into the United States). *Cf. Trump I*, 859 F.3d at 782–83; *Trump IV*, 878 F.3d at 698–99; *see Nat’l*  
 11 *Wildlife*, 886 F.3d at 819 (“[A] plaintiff ‘need not further show that the action sought to be  
 12 enjoined is the exclusive cause of the injury.’ . . . Irreparable harm may be caused by activities  
 13 broader than those that plaintiffs seek to enjoin.”) (quoting *M.R.*, 697 F.3d at 728).

14 The defendants also argue that even if the court were to vacate DHS’s mass-rescission of  
 15 conditional parole, DHS would retain discretion whether to ultimately grant or deny parole to any  
 16 conditionally approved beneficiary. Whether DHS retains discretion or whether CAM Parole  
 17 Program participants lack an enforceable “right” to parole in any individual case does not vitiate  
 18 the causal connection or render injunctive relief inappropriate. *Cf. Kuang v. U.S. Dep’t of Def.*,  
 19 340 F. Supp. 3d 873, 920–21 (N.D. Cal. 2018) (holding that “[d]elaying naturalization  
 20 applications after applicants have been promised an expedited path to citizenship constitutes  
 21 irreparable harm” and that “[w]hile Plaintiffs have no ‘right to naturalization,’ they can still suffer  
 22 irreparable harm from unjustified delays in the process”) (quoting *Kirwa v. United States*, 285 F.  
 23 Supp. 3d 21, 42 (D.D.C. 2017)), *appeal docketed*, No. 18-13781 (9th Cir. filed Dec. 17, 2018); *see*  
 24 *also Doe I*, 288 F. Supp. 3d at 1064–65 (executive order and agency memo that suspended certain  
 25 derivative refugees from being able to enter the United States inflicted harm even if derivative  
 26 refugees would be subject to additional requirements before they could enter the United States in  
 27 any event because “[w]hether [a derivate refugee] has other hurdles to cross . . . does not diminish  
 28 the fact that the [] provisions of the Agency Memo adds two more” and thus causes harm).

1 Vacating DHS’s mass-rescission of conditional parole removes at least some of the hurdles, if not  
 2 all, to the beneficiary-children plaintiffs’ ability to travel to the United States and relieve the harm  
 3 they and their parents suffer. As the Ninth Circuit has recognized, “[i]t is not an abuse of  
 4 discretion for a court to issue an injunction that does not completely prevent the irreparable harm  
 5 that it identifies.” *Nat’l Wildlife*, 886 F.3d at 822.<sup>36</sup>

## 6 2.2.2 CASA

### 7 2.2.2.1 Harm

8 The Ninth Circuit has recognized that an organizational plaintiff’s suffering “ongoing harms to  
 9 [its] organizational missions” can constitute irreparable harm. *Valle del Sol Inc. v. Whiting*, 732  
 10 F.3d 1006, 1029 (9th Cir. 2013). Courts within this circuit have granted preliminary injunctions to  
 11 organizations on the basis of harm to the organizations’ missions, reputations, goodwill, and  
 12 funding.<sup>37</sup> For example, in *East Bay Sanctuary Covenant v. Trump*, \_\_\_ F. Supp. 3d \_\_\_, No. 18-cv-  
 13 06810-JST, 2018 WL 6660080 (N.D. Cal. Dec. 19, 2018) (*East Bay II*), *appeal docketed*, No. 18-  
 14 17436 (9th Cir. filed Dec. 26, 2018), four legal and social-services immigration organizations

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16 <sup>36</sup> The court extended the defendants (and the plaintiffs) the opportunity to submit supplemental  
 17 briefing specifically on the causal-connection requirement. Req. for Suppl. Briefing – ECF No. 69.  
 18 The defendants did not cite any cases on point that establish that the causal-connection requirement  
 19 has not been satisfied here.

20 The defendants first cite *Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7 (2008). The  
 21 plaintiffs there sought to enjoin the Navy from conducting sonar exercises that the plaintiffs alleged  
 22 harmed marine mammals. *Id.* at 16–17. The plaintiffs’ ultimate legal claims there, however, were that  
 23 the Navy had to prepare an environmental-impact statement (“EIS”), not that it had to stop conducting  
 24 sonar exercises. *Id.* at 32. The portion of the *Winter* opinion that the defendants cite is dictum about  
 25 what the appropriate relief after a final judgment might be and how a permanent injunction barring  
 26 sonar exercises (as opposed to an injunction tailored to the preparation of an EIS) might be an abuse of  
 27 discretion. *Id.* at 32–33. This case does not address the causal-connection requirement for irreparable  
 28 harm on a preliminary injunction. The defendants also cite *Fiallo v. Bell*, 430 U.S. 787, 792 (1977), to  
 argue that the exclusion of aliens is a “fundamental sovereign attribute exercised by the Government’s  
 political departments largely immune from judicial control,” and *Bruker v. City of New York*, No.  
 93Civ.3848(MGC) (HBP), 2003 WL 256801, at \*6 (S.D.N.Y. Feb. 4, 2003), and *Gebhardt v. Nielsen*,  
 879 F.3d 980, 988 (9th Cir. 2018), to argue that the plaintiffs have no due-process right to reunite with  
 their families. These arguments go to the merits of the plaintiffs’ claims, not the separate issue of  
 irreparable harm and its attendant causal-connection requirement. *Cf. Leiva-Perez*, 640 F.3d at 969  
 (consideration of irreparable harm should be “determined apart from merits issues”).

<sup>37</sup> While purely monetary harm is not normally considered “irreparable,” it may be irreparable in  
 certain contexts, including in APA cases because the APA does not permit recovery of monetary  
 damages. *Azar*, 911 F.3d at 581 (citing 5 U.S.C. § 702).

1 argued that a government rule that makes anyone who crosses the U.S. southern border  
2 somewhere other than at a designated point of entry ineligible for asylum, inflicted irreparable  
3 harm on the organizations. *Id.* at \*7–8. The court there held that “the Organizations ‘have  
4 established a likelihood of irreparable harm’ based on their showing of serious ‘ongoing harms to  
5 their organizational missions,’ including diversion of resources and the non-speculative loss of  
6 substantial funding from other sources,” warranting a preliminary injunction. *Id.* at \*13 (citing  
7 *Valle del Sol*, 732 F.3d at 1029). Similarly, in *Doe I*, 288 F. Supp. 3d 1045, two organizations that  
8 provide services to and help resettle refugees in the United States argued that an executive order  
9 and agency memo suspending certain derivative refugees from entering the United States inflicted  
10 irreparable harm on them because resources that the organizations had devoted to resettling  
11 refugees would be wasted, and the organizations would have to divert resources to address fears  
12 raised by the executive order and agency memo, cancel established programs, lose relationships  
13 and goodwill with volunteers and community partners, and lay off employees. *Id.* at 1061–62,  
14 1066. The court there held that “[i]n short, the Agency Memo threatens the organizational  
15 Plaintiffs’ mission, services, and goodwill, and therefore causes them irreparable harm,”  
16 warranting a preliminary injunction. *Id.* at 1082–83; *accord Doe II*, 284 F. Supp. 3d at 1185.

17 Named plaintiff CASA is an immigrant-rights organization whose mission is to improve the  
18 quality of life in low-income immigrant communities, including by offering a wide variety of  
19 social, health, job-training, employment, and legal services to immigrant communities, and  
20 advocating for immigrant rights and social justice.<sup>38</sup> CASA’s Chief of Programs and Services  
21 submitted a declaration that CASA has devoted significant resources over the life of the CAM  
22 Program to help members apply for the Program, to engage in a major education and outreach  
23 campaign to inform members about the Program, and to seek out partnerships with refugee-  
24 resettlement nonprofits who could submit Program applications on behalf of its members.<sup>39</sup> A  
25 significant number of CASA staff worked on the CAM Program (two managers, three paralegals,

26 \_\_\_\_\_  
27 <sup>38</sup> Escobar Decl. – ECF No. 24-2 at 2 (¶¶ 3–5).

28 <sup>39</sup> *Id.* at 3–4 (¶¶ 8–13).



1 four organizers, and 25 volunteers) and invested approximately 6,000 staff hours (equivalent to  
 2 approximately \$125,000 in salaries paid), a significant investment of CASA’s time and  
 3 resources.<sup>40</sup> In the wake of DHS’s mass-rescinding conditional approvals of parole for Program  
 4 beneficiaries, CASA had to divert more resources to assist its members affected by the mass-  
 5 rescission in finding alternative legal options for their family members and was forced to redirect  
 6 resources, including altering staff and volunteer work plans and reassigning employees who had  
 7 assisted with the CAM Program and had built considerable expertise with the Program.<sup>41</sup> CASA  
 8 also suffered damage to its reputation as a trusted provider to a vulnerable community, because  
 9 applicant families are frustrated because the CAM Program’s long application process in many  
 10 cases proved unfruitful, and many believe that CASA has placed them at risk of being targeted by  
 11 the government’s anti-immigrant policies as a result of their submitting significant private  
 12 information (including DNA, addresses, and other confidential details) to the government as part  
 13 of the Program’s application process.<sup>42</sup> This impairment of CASA’s organizational mission, loss  
 14 of reputation and goodwill, and financial impairment constitutes irreparable harm. *Cf. East Bay II*,  
 15 \_\_\_ F. Supp. 3d \_\_\_, 2018 WL 6660080, at \*13; *Doe I*, 288 F. Supp. 3d at 1082–83; *Doe II*, 284 F.  
 16 Supp. 3d at 1185.

#### 17 **2.2.2.2 Causal connection**

18 The court finds a sufficient causal connection between the irreparable harm that CASA claims  
 19 that it suffers (impairment of its organizational mission, loss of reputation and goodwill, and  
 20 financial impairment) and the activity to be enjoined (the government’s mass-rescission of  
 21 conditional parole), for the same reasons that apply to the CAM Parole Program participants.

22 The defendants argue that CASA is not suffering irreparable harm that can be remedied by  
 23 injunctive relief because “[t]he harm [to CASA] has already occurred, is unlikely to recur, and is  
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26 <sup>40</sup> *Id.* at 3 (¶ 9).

27 <sup>41</sup> *Id.* at 5–6 (¶¶ 17–18).

28 <sup>42</sup> *Id.* at 5–6 (¶ 18).

1 unlikely to be remedied by a temporary stay.”<sup>43</sup> The harms to CASA, however, are ongoing: for  
 2 example, CASA is devoting resources on an ongoing basis to assist members affected by the  
 3 mass-rescission in finding alternative legal options for their family members. *Cf. East Bay II*, \_\_\_ F.  
 4 Supp. 3d \_\_\_, 2018 WL 6660080, at \*13 (issuing preliminary injunction based on showing of  
 5 ongoing harms to organizational missions, including ongoing diversion of resources to find  
 6 alternatives to asylum).

7 \* \* \*

8 The plaintiffs have satisfied the second preliminary-injunction factor.

### 10 **3. Balance of Harms and Public Interest**

#### 11 **3.1 Governing Law**

12 Where the government is the party opposing the preliminary injunction, the third and fourth  
 13 preliminary-injunction factors — assessing the harm to the opposing party and weighing the  
 14 public interest — merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)  
 15 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

#### 16 **3.2 Application**

17 The plaintiffs have submitted evidence that they will suffer irreparable harm in the absence of  
 18 injunctive relief. Additionally, the plaintiffs have shown a likelihood of success on the merits of  
 19 their APA claims, and “[t]he public interest is served by compliance with the APA: ‘[t]he APA  
 20 creates a statutory scheme for informal or notice-and-comment rulemaking reflecting a judgment  
 21 by Congress that the public interest is served by a careful and open review of proposed  
 22 administrative rules and regulations.’” *Azar*, 911 F.3d at 581 (quoting *Alcaraz v. Block*, 746 F.2d  
 23 593, 610 (9th Cir. 1984)).<sup>44</sup>

24  
 25 \_\_\_\_\_  
 26 <sup>43</sup> Defs. Suppl. Opp’n – ECF No. 61 at 3; *accord* Defs. Further Suppl. Br. – ECF No. 70 at 5–6.

27 <sup>44</sup> The focus is not solely on the result, i.e., whether DHS, had it complied with the APA, nonetheless  
 28 could have achieved the same result (mass-rescinding conditional approvals of parole) that the  
 plaintiffs challenge here. “[T]he public interest is served from proper process itself.” *Azar*, 911 F.3d at  
 581–82 (citing *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 976 (9th Cir. 2003)).

1 In opposition, the defendants argue that “[a]ny order that enjoins a governmental agency from  
2 enforcing statutes and executive orders promulgated by the duly-elected representatives of the  
3 people constitutes an irreparable injury that weighs heavily against the entry of injunctive relief”  
4 and that the balance of harms and public interest thus weigh in their favor.<sup>45</sup> This argument  
5 reaches too far. The APA is a statute promulgated by duly elected representatives too, and courts  
6 may enjoin an agency when it violates the APA. *Regents II*, 908 F.3d at 512 (preliminary-  
7 injunctive relief “is commonplace in APA cases”); *see also Ramos v. Nielsen*, 336 F. Supp. 3d  
8 1075, 1088 (N.D. Cal. 2018) (“The risk of interference with governmental actions inheres in any  
9 public injunction, but that does not categorically bar such injunctions. While courts must exercise  
10 particular caution in issuing injunctions on matters that concern immigration given Congress and  
11 the President’s extensive authority in this arena, it is beyond peradventure that governmental  
12 decision[s], even those that concern [] immigration, are not immune from judicial review.”) (citing  
13 *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001); *Osorio-Martinez v. Att’y Gen. U.S.A.*, 893 F.3d 153,  
14 175 (3d Cir. 2018)). The defendants argue that the plaintiffs “seek[] to use the courts to undermine  
15 the policy consequences of an election.”<sup>46</sup> But while a new administration may change the policies  
16 of its predecessor — “[e]lections have policy consequences,” *S.A.*, \_\_ F. Supp. 3d \_\_, 2018 WL  
17 6470253, at \*31 (quoting *Organized Vill. of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 968 (9th  
18 Cir. 2015) (en banc)) — it may not violate the APA when it does so. *Organized Vill. of Kake*, 795  
19 F.3d at 968 (“even when reversing a policy after an election,” an agency must comply with the  
20 APA).

21 The defendants have not put forth evidence of how a preliminary injunction might cause them  
22 specific injury or harm in this case. The defendants do not point to any national-security threat  
23 posed by the CAM Parole Program participants here. They have not established that DHS would  
24 be unduly burdened if the court vacates its mass-rescission of conditional approvals of parole.<sup>47</sup>

25 \_\_\_\_\_  
26 <sup>45</sup> Defs. Opp’n – ECF No. 32 at 28.

27 <sup>46</sup> *Id.*

28 <sup>47</sup> The defendants submitted a declaration from USCIS’s Chief of the International Operations  
Division that discusses the work USCIS and USCIS’s third-party contractor, the International

1 The defendants' vague claims about burden generally are insufficient to establish that the balance  
 2 of harms or the public interest favor their position. *Cf. Doe I*, 288 F. Supp. 3d at 1083 (issuing  
 3 preliminary injunction where "Defendants have not put forth evidence of how a preliminary  
 4 injunction might cause specific injury or harm [to Defendants] in this instance").

5 The plaintiffs have satisfied the third and fourth preliminary-injunction factors here.

#### 7 **4. Scope of the Injunction**

##### 8 **4.1 Governing Law**

9 "District courts have broad latitude in fashioning equitable relief when necessary to remedy  
 10 an established wrong." *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016)  
 11 (quoting *Earth Island Inst. v. Carlton*, 626 F.3d 462, 475 (9th Cir. 2010)). "The 'purpose of a  
 12 preliminary injunction is to preserve the status quo ante litem pending a determination of the  
 13 action on the merits.'" *Id.* (quoting *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir.  
 14

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15 Organization for Migration ("IOM"), did to process beneficiaries that DHS had conditionally approved  
 16 for parole. Rosenberg Decl. – ECF No. 61-1 at 2–3 (¶¶ 5–7). USCIS's contract and budget with IOM  
 17 provided for two people in Honduras, one person in Guatemala, and two people in El Salvador (plus a  
 18 third person spending 50% of his time) working on CAM Program processing. *Id.* at 3 (¶ 7). This  
 19 included both post-approval processing for beneficiaries who were conditionally approved for parole  
 and pre-approval processing for beneficiaries who were applying for parole (and refugee) status. Hr'g  
 Tr. – ECF No. 75 at 6. Counsel for the defendants was not able to say how much time these spent  
 solely on post-approval (and not pre-approval) processing for beneficiaries conditionally approved for  
 parole (and not for refugee status), *id.* at 7, but logically it must be less than 100%.

20 USCIS's contract with IOM for CAM Parole Program processing ended in 2017. Rosenberg Decl. –  
 21 ECF No. 61-1 at 4 (¶ 8). The defendants do not claim that USCIS could not enter into a new contract  
 22 with IOM to process beneficiaries that DHS conditionally approved for parole, or, alternatively, that  
 23 USCIS could not do that work itself or outsource it to another third party. The plaintiffs argue, and the  
 24 defendants do not dispute, that IOM continues to work with USCIS to process beneficiaries who were  
 approved as refugees. *See* M.C. Decl. – ECF No. 24-5 at 12 (¶¶ 4–7) (IOM processing refugee  
 applications in June 2018); *accord* Hr'g Tr. – ECF No. 75 at 7–8 (plaintiffs' asserting, and defendants'  
 not denying, that IOM is continuing to process refugee applications as late as January 2019). It thus  
 appears that USCIS can make arrangements to process beneficiaries who were conditionally approved  
 for parole.

25 The court also notes that the defendants did not offer any evidence of burden in their initial  
 26 opposition to the plaintiffs' preliminary-injunction motion. *See* Defs. Opp'n – ECF No. 32 at 28–29.  
 27 The court called for supplemental briefing and gave the defendants an opportunity to submit evidence  
 on the burdens that the government might have to bear if it had to restart processing conditionally  
 approved CAM Parole Program beneficiaries. Order – ECF No. 52 at 2. The defendants did not submit  
 28 any evidence on this issue other than the one USCIS declaration. Defs. Suppl. Opp'n – ECF No. 61.

1 2009)). “The status quo ante litem refers not simply to any situation before the filing of a lawsuit,  
2 . . . . [which c]ould lead to absurd situations, in which plaintiffs could never bring suit once  
3 [unlawful] conduct had begun,” but “instead to ‘the last uncontested status which proceeded the  
4 pending controversy.’” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)  
5 (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)); accord  
6 *Boardman*, 822 F.3d at 1024 (quoting *GoTo.com*, 202 F.3d at 1210).

7 “The scope of injunctive relief is dictated by the extent of the violation established, not by the  
8 geographical extent of the plaintiff.” *East Bay Sanctuary Covenant v. Trump*, 909 F.3d 1219,  
9 1255 (9th Cir. 2018) (*East Bay I*) (internal brackets omitted) (quoting *Califano v. Yamasaki*, 442  
10 U.S. 682, 702 (1979)). “An injunction may extend ‘benefit or protection’ to nonparties ‘if such  
11 breadth is necessary to give prevailing parties the relief to which they are entitled.’” *Id.* (quoting  
12 *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987)). “Equitable relief may ‘be no more  
13 burdensome to the defendant than necessary to provide complete relief to the plaintiffs.’” *Id.*  
14 (quoting *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994)).

15 “In immigration matters, [the Ninth Circuit] ha[s] consistently recognized the authority of  
16 district courts to enjoin unlawful policies on a universal basis.” *East Bay I*, 909 F.3d at 1255  
17 (citing *Regents II*, 908 F.3d at 511; *Trump IV*, 878 F.3d at 701; *Washington*, 847 F.3d at 1166–67).  
18 “Such relief is commonplace in APA cases, promotes uniformity in immigration enforcement,  
19 and is necessary to provide the plaintiffs here with complete redress.” *Id.* (quoting *Regents II*, 908  
20 F.3d at 512). While the Ninth Circuit has “recognize[d] a growing uncertainty about the propriety  
21 of universal injunctions,” it recently reaffirmed that its cases affirming nationwide injunctions in  
22 the context of immigration enforcement are an “uncontroverted line of precedent.” *Id.* at 1255–56.

23 The Ninth Circuit recently confronted issues regarding the scope of a preliminary injunction in  
24 the context of the Deferred Action for Childhood Arrivals (“DACA”) program. *Regents II*, 908  
25 F.3d 476. There, DHS made the decision to rescind DACA and announced that all DACA requests  
26 and applications for employment authorization would be rejected. *Regents I*, 279 F. Supp. 3d at  
27  
28

1 1026. The plaintiffs brought an APA challenge to DHS’s rescission decision and sought a  
 2 preliminary injunction.<sup>48</sup> The district court enjoined DHS from rescinding DACA and ordered it  
 3 “to maintain the DACA program on a nationwide basis on the same terms and conditions as were  
 4 in effect before the rescission . . . , including allowing DACA enrollees to renew their enrollments,  
 5 with [certain] exceptions[.]” *Id.* at 1048; *accord Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 409  
 6 (E.D.N.Y. 2018) (similarly enjoining DHS from rescinding the DACA program and ordering DHS  
 7 to “continue processing both initial DACA applications and DACA renewal requests under the  
 8 same terms and conditions that applied before September 5, 2017, subject to [certain]  
 9 limitations”). It also ordered DHS to “post reasonable public notice that it will resume receiving  
 10 DACA renewal applications and prescribe a process consistent with this order.” *Regents I*, 279 F.  
 11 Supp. 3d at 1048. It further ordered DHS to “keep records of its actions on all DACA-related  
 12 applications and provide summary reports to the Court (and counsel) on the first business day of  
 13 each quarter.” *Id.* On appeal, the Ninth Circuit affirmed the district court’s injunction, holding that  
 14 the district court had the authority to vacate DHS’s decision to rescind DACA on a nationwide  
 15 basis and rejecting the government’s arguments that the injunction should be narrowed. *Regents II*,  
 16 908 F.3d at 511–12.

## 17 4.2 Application

### 18 4.2.1 The court’s injunction

19 The court holds that an injunction similar to the one that the *Regents* district court issued and  
 20 the Ninth Circuit affirmed is appropriate here and is necessary to preserve the status quo ante litem  
 21 pending a final determination of the case on the merits.

22 The court first addresses the issue of what the status quo ante litem is (an issue disputed by the  
 23 parties). The plaintiffs challenge not just DHS’s formal announcement in August 2017 that it was  
 24 mass-rescinding conditional approvals of parole but also DHS’s decision in January or February  
 25

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26 <sup>48</sup> The plaintiffs there also brought due-process and equal-protection claims and a claim for equitable  
 27 estoppel, *Regents I*, 279 F. Supp. 3d at 1027–28, but the district court relied on only the APA claims in  
 28 issuing a preliminary injunction, *see id.* at 1037–46; *accord Regents II*, 908 F.3d at 511 (affirming  
 preliminary injunction on the basis of district court’s “APA merits holding”).

1 2017 to stop processing beneficiaries conditionally approved for parole without announcing that it  
 2 was doing so (which the plaintiffs characterize as a “secret shutdown”).<sup>49</sup> Given this context, the  
 3 status quo ante litem is the point before January or February 2017 when DHS was still processing  
 4 conditionally approved beneficiaries.<sup>50</sup> *Cf. GoTo.com*, 202 F.3d at 1210 (“The status quo ante  
 5 litem refers not simply to any situation before the filing of a lawsuit, but instead to ‘the last  
 6 uncontested status which preceded the pending controversy.’”) (citation omitted).

7 To preserve the status quo ante litem, the court orders the following.

8 First, the court vacates DHS’s decision to mass-rescind conditional approvals for the 2,714  
 9 beneficiaries conditionally approved for parole but who had not traveled to the United States. *Cf.*  
 10 *Regents II*, 908 F.3d at 511–12 (affirming preliminary injunction vacating agency action that  
 11 likely violates the APA and noting that “[s]uch relief is commonplace in APA cases”).

12 Second, the court orders DHS to continue the post-conditional-approval processing for these  
 13 2,714 beneficiaries under the policies and procedures that it had in place prior to January 2017 for  
 14 processing such beneficiaries, including the procedures described in USCIS’s publication *Central*  
 15 *American Minors (CAM) Parole Program: Information for Conditionally Approved Applicants*  
 16 (Exhibit 48 in the administrative record).<sup>51</sup> *Cf. Regents I*, 279 F. Supp. 3d at 1048 (enjoining DHS  
 17 from rescinding the DACA program and ordering DHS to maintain the DACA program on the  
 18 same terms and conditions that were in effect before its attempt to terminate DACA, including  
 19 with respect to DACA renewal applications); *Batalla Vidal*, 279 F. Supp. 3d at 409 (similarly  
 20 enjoining DHS from rescinding the DACA program and ordering DHS to “continue processing  
 21

22 \_\_\_\_\_  
 23 <sup>49</sup> The defendants do not deny that DHS stopped processing conditionally approved beneficiaries in  
 24 January or February 2017. *See* Defs. Suppl. Opp’n – ECF No. 61 at 2.

25 <sup>50</sup> The court held that DHS’s public announcement in August 2017 that it was terminating the CAM  
 26 Parole Program mooted the plaintiffs’ APA challenge to the “secret shutdown” as it relates to DHS’s  
 27 terminating the CAM Parole Program going forward. *S.A.*, \_\_\_ F. Supp. 3d \_\_\_, 2018 WL 6470253, at  
 28 \*32. By contrast, the plaintiffs’ challenge here relates to the mass-rescinding of conditional approvals  
 of parole that had already been issued. The alleged “secret shutdown” is relevant in determining the  
 status quo ante litem with respect to that issue.

<sup>51</sup> *U.S. Citizenship & Immigration Servs., Central American Minors (CAM) Parole Program: Information for Conditionally Approved Applicants* (Nov. 23, 2015) – ECF No. 33-48.

1 both initial DACA applications and DACA renewal requests under the same terms and conditions  
2 that applied before September 5, 2017, subject to [certain] limitations”).<sup>52</sup>

3 The court notes that the defendants have raised the prospect that, even if DHS’s decision to  
4 mass-rescind conditional approvals of parole were vacated and the beneficiaries’ conditional  
5 approval were restored, DHS might refuse to process the beneficiaries in good faith and instead  
6 might place the beneficiaries on an indefinite hold.<sup>53</sup> The court thus explicitly orders that DHS  
7 may not adopt any policy, procedure, or practice of not processing the beneficiaries or placing  
8 their processing on hold en masse. Instead, DHS must process the beneficiaries in good faith.  
9 Nothing in this order prevents DHS from placing any beneficiary’s processing on hold on an  
10 individualized basis to the extent that it could do so under the policies and procedures it had in  
11 place prior to January 2017.

12 Third, the court orders DHS, by March 21, 2019, to submit to the court and counsel a plan for  
13 resuming processing the 2,714 beneficiaries, with benchmarks for assessing compliance. *Cf.*  
14 *Regents I*, 279 F. Supp. 3d at 1048 (ordering DHS to prescribe a process consistent with the  
15 court’s injunction order); *Ramos*, 336 F. Supp. 3d at 1108–09 (ordering DHS to report to the court  
16 the administrative steps taken to comply with the court’s injunction order); *see generally Thomas*  
17 *v. County of Los Angeles*, 978 F.2d 504, 510 (9th Cir. 1993) (“The district court is authorized to  
18 direct the submission of [] reports to ensure compliance with an injunction. Provided it is not  
19 ‘overly burdensome,’ such oversight can be a proper exercise of the district court’s discretion  
20 ‘because it helps ensure compliance with the injunction.’”) (citing *Gluth v. Kangas*, 951 F.2d  
21 1504, 1511 (9th Cir. 1991)).

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25 <sup>52</sup> The court does not order DHS or USCIS necessarily to reengage IOM to process these beneficiaries.  
26 DHS and USCIS can opt to perform processing, use IOM, or contract with another third party.

27 <sup>53</sup> *See* Defs. Suppl. Opp’n – ECF No. 61 at 2 (“If the Court were to stay the August 2017 agency  
28 decision terminating that CAM Parole Program, as Plaintiffs request, the natural result would be for  
the program to return to the holding pattern it was in prior to that decision, not to active processing.”).



1 Nothing in this order compels DHS to reach any particular outcome with respect to the  
2 processing of any individual beneficiary or prevents DHS from exercising its discretion with  
3 respect to the parole of any individual beneficiary.

4 Nothing in this order prevents DHS from reconsidering its decision to mass-rescind  
5 conditional approvals of parole, including reassessing the serious reliance interests of participants  
6 conditionally approved for parole.

#### 7 **4.2.2 The defendants' objections**

8 The defendants raise several objections to the entry of a preliminary injunction.

9 The defendants first object that the preliminary injunction “does not seek to preserve the status  
10 quo, as plaintiffs posit. Instead, plaintiffs seek to alter the status quo, asking the Court to turn back  
11 the clock . . . and reinstate the [CAM Parole] program for applicants in the pipeline at the time it  
12 was officially terminated.”<sup>54</sup> To the extent that the court’s injunction “turn[s] back the clock,” it  
13 does so to preserve the status quo ante litem, which — contrary to the defendants’ claims — is not  
14 measured from the moment the plaintiffs filed their complaint but “instead to the ‘last uncontested  
15 status which preceded the pending controversy.’” *GoTo.com*, 202 F.3d at 1210 (citation omitted).

16 The defendants argue that the plaintiffs did not file their complaint until ten months after DHS  
17 announced the termination of the CAM Parole Program and that this delay counsels against entry  
18 of an injunction. “But, ‘courts are loath to withhold relief solely’ because of delay, which ‘is not  
19 particularly probative in the context of ongoing, worsening injuries.’” *Disney*, 869 F.3d at 866  
20 (quoting *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014)). Also, here, a number of the  
21 plaintiffs initially responded to DHS’s decision to rescind their conditional approvals of parole by  
22 first filing requests for review (“RFRs”) of the decisions denying them refugee status under the  
23 CAM Refugee Program.<sup>55</sup> Two plaintiffs, M.C. and J.C., did not have their RFRs denied until  
24 June 2018.<sup>56</sup> The other plaintiffs who filed RFRs received no responses when they filed this

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26 <sup>54</sup> Defs. Opp’n – ECF No. 32 at 15 (citations and internal quotation marks and brackets omitted).

27 <sup>55</sup> B.E. Decl. – ECF No. 6-16 at 11 (¶ 22); G.E. Decl. – ECF No. 6-18 at 10 (¶ 18); A.B. Decl. – ECF  
28 No. 6-14 at 10 (¶ 20); M.C. Decl. – ECF No. 24-5 at 12 (¶ 3); S.F. Decl. – ECF No. 24-6 at 11 (¶ 17).

<sup>56</sup> M.C. Decl. – ECF No. 24-5 at 12 (¶¶ 4–7).

1 action.<sup>57</sup> The delay is not suggestive of the plaintiffs’ “sleeping on [their] rights,” as opposed to  
 2 the plaintiffs’ possibly “waiting to file for preliminary relief until a credible case for irreparable  
 3 harm can be made.” *Cf. Arc. of Cal.*, 757 F.3d at 991.

4 The defendants argue that the plaintiffs are requesting a mandatory injunction that alters the  
 5 status quo, rather than a prohibitory injunction that maintains the status quo, and that their request  
 6 thus should be subject to a heightened standard. The Ninth Circuit has held, however, that  
 7 preliminary injunctions “that prohibit enforcement of a new law or policy . . . [are] prohibitory,”  
 8 not mandatory. *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014); *accord*  
 9 *Regents I*, 279 F. Supp. 3d at 1025–26, 1048 n.20 (where plaintiffs did not file their complaint for  
 10 three months after DHS terminated the DACA program, court nonetheless held that its injunction  
 11 vacating DHS’s rescission of DACA and ordering DHS to continue processing DACA renewal  
 12 applications was prohibitory, not mandatory, as it simply preserved the status quo ante litem). Nor  
 13 does the fact that the injunction requires DHS to process conditionally approved beneficiaries  
 14 transform the injunction into a mandatory one. DHS previously processed such beneficiaries  
 15 during the status quo ad litem, and the court may order DHS to continue with that approach to  
 16 maintain that status quo. *Cf. Regents I*, 279 F. Supp. 3d at 1048 (requiring DHS to receive and  
 17 process DACA renewal applications); *Batalla Vidal*, 279 F. Supp. 3d at 409 (same).<sup>58</sup>

18 The defendants next object that a preliminary injunction would grant the plaintiffs the same  
 19 relief that they ultimately seek in their complaint. But the Ninth Circuit has held that, at least in  
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21 <sup>57</sup> B.E. Decl. – ECF No. 6-16 at 11 (¶ 22); G.E. Decl. – ECF No. 6-18 at 10 (¶ 18); A.B. Decl. – ECF  
 No. 6-14 at 10 (¶ 20); S.F. Decl. – ECF No. 24-6 at 11 (¶ 17).

22 <sup>58</sup> The defendants cite *Singh v. Carter*, 185 F. Supp. 3d 11 (D.D.C. 2016), to argue that the injunction  
 23 here is mandatory. Defs. Opp’n – ECF No. 32 at 16. That case is inapposite. It involved a Sikh army  
 24 officer who sought a permanent religious accommodation to allow him to wear uncut hair, a beard, and  
 25 a turban as required by his faith but barred by Army grooming regulations. *Singh*, 185 F. Supp. 3d at  
 26 14. The Army had not previously granted the plaintiff a permanent accommodation that it later  
 27 rescinded. (After the plaintiff filed his complaint, the Army granted him a temporary limited  
 28 accommodation, but it never granted him a permanent one. *Id.* at 15.) The preliminary injunction the  
 plaintiff sought thus would not have preserved a preexisting status quo but would have imposed new,  
 never-before-instituted obligations on the Army. The court held that such a preliminary injunction  
 would be mandatory. *Id.* at 17 (“the plaintiff’s requested injunction is mandatory — that is, . . . its  
 terms would alter, rather than preserve, the status quo by commanding some positive act”). Here, by  
 contrast, a preliminary injunction would return to a preexisting status quo.

1 the context of APA challenges in immigration matters, “[w]hen a reviewing court determines that  
2 agency regulations are unlawful, the ordinary result is that the rules are vacated,” and the fact that  
3 vacatur is the ordinary relief provided on a final judgment does not undermine a preliminary  
4 injunction that vacates the agency’s actions on a preliminary basis. *Regents II*, 908 F.3d at 511–12  
5 (quoting *Nat’l Mining Ass’n v. U.S. Army Corps. of Eng’rs*, 145 F.3d 1399, 1409 (D.C. Cir.  
6 1998)).<sup>59</sup>

7 The defendants next object that the court cannot enjoin the Secretary of Homeland Security’s  
8 exercise of discretion with respect to parole decisions. This concern is misplaced. As stated above,  
9 the court does not enjoin the Secretary’s exercise of discretion and does not require DHS to reach  
10 a particular ultimate decision on parole with respect to any given beneficiary. *Cf. Regents I*, 279 F.  
11 Supp. 3d at 1048 (issuing injunction but allowing DHS to exercise fair discretion on an  
12 individualized basis and not constraining DHS’s ability to remove any individual DACA enrollee  
13 that DHS determines in its judgment should be removed); *Batalla Vidal*, 279 F. Supp. 3d at 437  
14 (issuing injunction but holding that DHS “of course, may adjudicate DACA renewal requests on a  
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17 <sup>59</sup> The defendants cite *Taiebat v. Scialabba*, No. 17-cv-0805-PJH, 2017 WL 747460 (N.D. Cal. Feb.  
18 27, 2017), to argue that a preliminary injunction that provides the same relief that the plaintiffs  
19 ultimately seek after a full judgment is improper. That case, which was not an APA case, is inapposite.  
20 The plaintiff there was a non-citizen who sought a writ of mandamus compelling USCIS to process his  
21 application for an adjustment of his immigration status. *Id.* at \*1. The plaintiff sought a preliminary  
22 injunction compelling USCIS to process his application — the same relief he requested in his petition  
23 for a writ of mandamus. *Id.* at \*2–3. The court denied the plaintiff’s request for a preliminary  
24 injunction on the grounds that the plaintiff was not seeking to preserve any preexisting status quo and  
25 instead “[wa]s seeking a mandatory injunction that would require the government to immediately  
26 adjudicate his petition for adjustment of status.” *Id.* at \*3. Here, by contrast, a preliminary injunction  
27 would return the plaintiffs to a preexisting status quo.

28 The defendants also cite *University of Texas v. Camenisch*, 451 U.S. 390 (1981), to argue that “[i]t is  
generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment  
on the merits.” Defs. Opp’n – ECF No. 32 at 16 (citing *Camenisch*, 451 U.S. at 395). This argument  
does not change the outcome either. *Camensich* said nothing about the form that preliminary injunctive  
relief could or could not take: the question of a preliminary injunction in that case was moot, and the  
Court declined to address it. *Id.* at 394. What the Court was saying was that findings of fact and  
conclusions of law made by a court in granting a preliminary injunction are just that — preliminary —  
and do not bind the court at a trial on the merits. *Id.* at 395. As a result, it is inappropriate to enter a  
final judgment (such as a summary judgment) at the preliminary-injunction stage. *See id.* at 395–96.  
The court is not entering a final judgment here — and nothing in *Camenisch* holds that the scope of a  
preliminary injunction cannot overlap with the relief requested for an eventual final judgment.

1 case-by-case, individualized basis”). The court requires only that DHS follow the procedures that  
2 were previously in place with respect to processing conditionally approved beneficiaries.<sup>60</sup>

3 The defendants next argue that any preliminary injunction should be limited to the named  
4 plaintiffs who were CAM Parole Program participants. In support of this argument, the defendants  
5 cite *Azar*, 911 F.3d 558, where the Ninth Circuit narrowed a preliminary injunction issued in  
6 connection with a challenge to regulations promulgated under the Affordable Care Act from  
7 applying nationwide to applying only in those states that were plaintiffs in the case. *Id.* at 582–  
8 84.<sup>61</sup> The defendants do not explain how an injunction limited to the named individual plaintiffs in  
9 this case would provide full relief to CASA. *Cf. East Bay I*, 909 F.3d at 1256 (declining to narrow  
10 nationwide injunction where “the Government failed to explain how the district court could have  
11 crafted a narrower remedy that would have provided complete relief to the Organizations”)  
12 (internal quotation marks and brackets omitted) (citing *Regents II*, 908 F.3d at 512). *Azar* also did  
13 not involve immigration, an area where the Ninth Circuit has “consistently recognized the  
14 authority of district courts to enjoin unlawful policies on a universal basis” to “promote[]  
15 uniformity in immigration enforcement, and . . . provide the plaintiffs . . . with complete redress.”  
16 *East Bay I*, 909 F.3d at 1255 (citing *Regents II*, 908 F.3d at 511–12; *Trump IV*, 878 F.3d at 701;  
17 *Washington*, 847 F.3d at 1166–67). “Because *Azar* did not involve immigration laws, it did not  
18 cast doubt on the Ninth Circuit’s ‘uncontroverted line of precedent’ regarding nationwide  
19 injunctions in this context, which assuredly involve issues of ‘nationwide impact.’” *East Bay II*, \_\_\_  
20 F. Supp. 3d \_\_\_, 2018 WL 6660080, at \*17 (citing *East Bay I*, 909 F.3d at 1256; *Azar*, 911 F.3d at  
21 584).

22 Finally, the defendants argue that the court should remand DHS’s decision to mass-rescind  
23 conditional approvals of parole to DHS for reconsideration, rather than enjoining or vacating  
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25 <sup>60</sup> *Accord* Pls. Suppl. Reply – ECF No. 67 at 3 (“Plaintiffs do not ask the Court to mandate a particular  
26 outcome in any given CAM application, but simply to require Defendants (including Border Patrol) to  
follow their own procedures that were in place during the last uncontested status.”).

27 <sup>61</sup> Within those states, the injunction still applied statewide and thus affected nonparties beyond the  
28 named plaintiffs in the case.

United States District Court  
Northern District of California

1 DHS’s decision.<sup>62</sup> (On February 27, 2019, two weeks after the second hearing in this case, the  
2 Director of USCIS submitted a declaration stating that USCIS is currently undergoing a  
3 reconsideration process that is expected to take approximately 60 days.<sup>63</sup>) The Ninth Circuit has  
4 affirmed the propriety of preliminary injunctions in APA cases staying or vacating agency action  
5 over remanding the matter to the agency. *See Regents II*, 908 F.3d at 511–12. While “[a] federal  
6 court ‘is not required to set aside every unlawful agency action,’ and the ‘decision to grant or deny  
7 injunctive or declaratory relief under APA is controlled by principles of equity,’” the defendants  
8 have not persuaded the court why it should decline to issue an injunction here. *All. for the Wild  
9 Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1121 (9th Cir. 2018) (quoting *Nat’l Wildlife Fed’n v.  
10 Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995)). While DHS can consider the issue for as long as it  
11 wants, the court issues a preliminary injunction now to preserve the status quo ante litem.<sup>64</sup>

12  
13 **CONCLUSION**

14 The court grants in part and denies in part the plaintiffs’ motion for a preliminary injunction.  
15 The court denies the plaintiffs’ motion to enjoin DHS from terminating the CAM Parole Program  
16 going forward. The court grants the motion to require DHS to continue to process the 2,714  
17 conditionally approved beneficiaries under the procedures that it had in place for processing the  
18 beneficiaries before it terminated the Program and orders the following:

- 19 1. DHS’s decision to mass-rescind conditional approvals for the 2,714 beneficiaries  
20 conditionally approved for parole but who had not traveled to the United States is vacated.
- 21 2. DHS must continue the post-conditional-approval processing for the 2,714 beneficiaries  
22 under the policies and procedures for processing beneficiaries that it had in place before  
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24 <sup>62</sup> Defs. Suppl. Opp’n – ECF No. 61 at 4–7.

25 <sup>63</sup> Cissna Decl. – ECF No. 76-1 at 2 (¶ 2).

26 <sup>64</sup> *Compare id.* (stating 79 days after the court first issued its order denying in part the defendants’  
27 motion to dismiss that USCIS plans to reconsider the issue for an additional 60 days) *with NAACP v.  
28 Trump*, 298 F. Supp. 3d 209, 249 (D.D.C. 2018) (issuing preliminary injunction vacating DHS’s  
decision to rescind DACA and staying injunction and giving DHS 90 days to better explain its  
decision).

United States District Court  
Northern District of California

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January 2017, including the procedures described in USCIS’s publication *Central American Minors (CAM) Parole Program: Information for Conditionally Approved Applicants* (Exhibit 48 in the administrative record). DHS is preliminarily enjoined from adopting any policy, procedure, or practice to not process the beneficiaries or to place their processing on hold en masse. Nothing in this order prevents DHS from placing any beneficiary’s processing on hold on an individualized basis to the extent that it could do so under the policies and procedures it had in place before January 2017.

- 3. By March 21, 2019, DHS must submit to the court and counsel its plan for processing these 2,714 beneficiaries with benchmarks for assessing compliance.
- 4. Nothing in this order compels DHS to reach any particular outcome with respect to the processing of any individual beneficiary or prevents DHS from exercising its discretion with respect to the parole of any individual beneficiary.
- 5. Nothing in this order prevents DHS from reconsidering its decision to mass-rescind conditional approvals of parole, including the serious reliance interests of participants conditionally approved for parole.

**IT IS SO ORDERED.**

Dated: March 1, 2019



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LAUREL BEELER  
United States Magistrate Judge