

Office of the Attorney General
State of Illinois



Office of the Attorney General
District of Columbia

February 26, 2021

Via Federal eRulemaking Portal
Alejandro Mayorkas, Secretary
Department of Homeland Security
Tracy Renaud, Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
Washington, DC 20528

RE: Comments on *Removal of Instructions Regarding the Haitian Family Reunification Program and Filipino World War II Veteran Parole Program*, 85 Fed. Reg. 84,362 (December 28, 2020), Docket ID USCIS–2007–0045

Dear Secretary Mayorkas and Senior Official Renaud:

We, the Attorneys General of Illinois, the District of Columbia, California, Colorado, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and Vermont (the States), write to urge the U.S. Department of Homeland Security ("DHS") and U.S. Citizenship and Immigration Services ("USCIS") to withdraw the Notice of December 28, 2020, *Removal of Instructions Regarding the Haitian Family Reunification Program and Filipino World War II Veteran Parole Program*, 85 Fed. Reg. 84,362, Docket ID USCIS-2007-0045, OMB Control Number 1615–0013 (the "Notice").

USCIS's decision to terminate the Haitian Family Reunification Parole Program ("HFRP Program") arrives at an especially perilous time for Haiti. Eleven years after a catastrophic earthquake struck and crippled Haiti for years, the nation now faces government destabilization and severe political unrest along with cascading crises of food insecurity and endemic kidnapping that has forced many Haitians not to leave their homes. HFRP, which allows Haitians the opportunity to arrive early in the United States after their visa applications are already approved, has brought relief to many Haitians seeking to rejoin their families and escape increasingly dire conditions at home.

USCIS's Notice ending the Program along with the Filipino World War II Veteran Parole ("FWVP") Program acknowledges none of this: not the economic and political hardships playing out in Haiti, the obvious benefits flowing from early arrival of Haitians in the States, or the

abandonment of the goals USCIS announced when establishing HFRP in 2014. Indeed, USCIS has offered a strikingly sparse justification of its decision to terminate the modest but clearly advantageous changes brought about by HFRP, which undoubtedly violates the Administrative Procedure Act. In light of the ongoing challenges that persist in Haiti, the family unity and other benefits HFRP and other family reunification programs have brought to the States, and USCIS's poor justification for terminating the HFRP Program, the States urge not only that USCIS withdraw the Notice, but that USCIS commits to restarting and expanding the HFRP Program. The States also urge USCIS to reexamine the flawed bases for terminating the FWVP Program and continue to honor the sacrifices of Filipino-American veterans by ensuring financial and emotional support from their relatives.

I. Background.

A. Implementation of the HFRP and FWVP Programs.

The HFRP Program is the product of innovative government thinking in response to a disaster of unthinkable proportions. In 2010, one of the most destructive earthquakes in recorded history struck Haiti about 15 miles from its capital and most populous city, Port-au-Prince.[1] Over 300,000 people died and 1.5 million were left homeless.[2] The earthquake destroyed 105,000 homes and damaged 208,000 others.[3] The cost of the devastation was estimated between $7.2 and $13.2 billion.[4] Two years after the earthquake, over 550,000 displaced people remained in unsanitary tent camps,[5] and the nation struggled to rebuild in the ensuing years despite pledges of billions of dollars in international aid.[6] Haiti was then and remains the poorest country in the Western hemisphere, with 6 million of Haiti's approximately 10 million people living below the poverty line of $2.41 per day.[7]

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[1] Reginald DesRoches *et al.*, *Overview of the 2010 Haiti Earthquake*, 27 EARTHQUAKE SPECTRA S1, S1 (2011), *available at* https://bit.ly/2NuP1RC; Marc Eberhard *et al.*, *The M_w 7.0 Haiti Earthquake of January 12, 2010: Report #1*, EERI SPECIAL EARTHQUAKE REPORT (April 2010), https://escweb.wr.usgs.gov/share/mooney/138.pdf.

[2] Alisha Davis, *Haiti Earthquake: 5 Years Later, Country Still Feeling Aftershocks*, ABC NEWS (Jan. 12, 2015), https://abcn.ws/3u2zglD.

[3] Damien Cave, *Rubble of a Broken City Strains Haitians' Patience*, N.Y. TIMES (May 29, 2010), https://nyti.ms/3jTdIDv.

[4] Marc Lacey, *Estimates of Quake Damage in Haiti Increase by Billions*, N.Y. TIMES (Feb. 16, 2010), https://nyti.ms/3tZcXNT.

[5] Alan Taylor, *Haiti: 2 Years After the Quake*, ATLANTIC (Jan. 11, 2012), https://bit.ly/2ZonKD2.

[6] *See, e.g.*, Carrie Kahn & Jeffrey Pierre, *A 'Lost Decade': Haiti Still Struggles to Recover 10 Years After Massive Earthquake*, NPR (Jan. 12, 2020), https://n.pr/3rZKnKu.

[7] MAUREEN TAFT-MORALES, CONG. RESEARCH SERV., R45034, HAITI'S POLITICAL AND ECONOMIC CONDITIONS 4 (2020).

In 2014, the United States engineered a program to assist Haiti. At the time, Haitians with visa approvals experienced waits of up to 12 years before they could receive their actual visas.[8] On December 14, 2014, USCIS provided notice that it was implementing the HFRP Program.[9] The Program provides a pathway for Haitians with approved family-based immigrant visa applications to join their family members in the United States prior to receiving their visas.[10] Upon invitation from USCIS, relatives living in the United States may petition for the parole of family members in Haiti whose visas are expected to arrive within 18 to 30 months.[11] Invitation recipients receive instructions on how to complete and submit Form I-131; from there, qualified beneficiaries are interviewed by consular officers in Port-au-Prince, and "[i]f USCIS exercises its discretion to grant parole," the beneficiary will receive the proper travel documents to come to the United States.[12]

HFRP's benefits were clear from the outset. As then-Deputy Secretary of Homeland Security Mayorkas said in 2014, the HFRP Program "promotes a fundamental underlying goal of our immigration system—family reunification. It also supports broader U.S. goals for Haiti's reconstruction and development by providing the opportunity for certain eligible Haitians to safely and legally immigrate sooner to the United States."[13] USCIS's notice also cited its intention for HFRP to "help Haiti continue to recover from the devastation and damage suffered in the January 12, 2010 earthquake," including through remittances that "contribute to Haiti's post-earthquake reconstruction and development."[14]

For many Haitians, the HFRP Program changed that. By March 31, 2016, USCIS had issued 7,634 HFRP invitations to U.S.-based family members to apply on behalf of relatives in Haiti and approved 1,086 applications for participation in the HFRP Program.[15] Those numbers steadily grew. By the end of 2019, USCIS had issued 12,534 HFRP invitations, and had issued 8,313 final approvals for individuals to participate in the HFRP Program.[16] These decisions had

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[8] Erik Eckholm, *Obama Administration to Expedite Family Reunification for Some Haitians*, N.Y. TIMES (Oct. 17, 2014), https://nyti.ms/3bbqNE3.

[9] Implementation of Haitian Family Reunification Parole Program, 79 Fed. Reg. 75,581 (Dec. 18, 2014) ("HFRP Implementation Notice").

[10] *Id.* at 75,582.

[11] *Id.*

[12] *Id.*

[13] Press Release, DHS to Implement Haitian Family Reunification Parole Program, U.S. Citizenship & Immigration Services (Oct. 17, 2014), https://bit.ly/2ZpbHW0.

[14] HFRP Implementation Notice, 79 Fed. Reg. at 75,581, 75,582.

[15] Number of I-131 Travel Document Applications for the Haitian Family Reunification Parole (HFRP) Program as of March 31, 2016, U.S. CITIZENSHIP & IMMIGRATION SERVICES (May 25, 2016), https://bit.ly/2ZoKmn1.

[16] Form I-131, Travel Document Applications for the Haitian Family Reunification Parole (HFRP) Program Applications Accepted, Denied, Approved, and Pending as of December 31, 2019, U.S. CITIZENSHIP & IMMIGRATION SERVICES (Apr. 20, 2020), https://bit.ly/2N6JS2w.

palpable benefits. In addition to the ability to escape poor conditions in Haiti and unite with family members living in the United States, people in the HFRP Program are eligible to apply for U.S. employment authorization.[17] Further, Haitians paroled into the United States through the HFRP Program are immediately eligible to apply for food security benefits without a waiting period.[18]

Two years after the initiation of the HFRP Program, USCIS began paroling qualified applicants under the FWVP Program.[19] At that time, USCIS concluded that there would be a "significant public benefit" in "[r]ecognizing the contributions and sacrifices of Filipino veterans who fought for the United States during World War II."[20] Of the estimated 260,000 Filipino soldiers enlisted to serve, approximately 26,000 became U.S. citizens.[21] USCIS estimated that between 2,000 and 6,000 Filipino World War II veterans were living in the United States in 2016.[22] Providing a pathway for reunifying these veterans with family members in the Philippines would, given the advanced age of the demographic, "address urgent humanitarian concerns" and provide them with "support and care."[23] The FWVP Program was set to be in effect for five years, ending in June 2021. As of June 30, 2019, 648 applications were submitted and 301 were approved.[24]

B. USCIS Moves to End the HFRP and FWVP Programs.

Unfortunately, the 2010 earthquake was not the last disaster to strike Haiti. Following the earthquake, Haiti experienced a cholera epidemic that killed at least 10,000 and sickened hundreds of thousands more.[25] The outbreak was largely attributed to infected United Nations peacekeepers who arrived to assist with earthquake recovery.[26] In October 2016, Hurricane Matthew struck Haiti, the worst storm to harm the nation in more than 50 years.[27] The hurricane killed over 1,300 people, razed towns and villages, and left 175,000 people displaced nearly six months after its

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[17] HFRP Implementation Notice, 79 Fed. Reg. at 75,582.

[18] Food & Nutrition Service, U.S. Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP) Eligibility of Individuals Who are Participating in Department of Homeland Security Haitian Family Reunification Parole Program (2015), https://bit.ly/3praSXy.

[19] Filipino World War II Veterans Parole Policy, 81 Fed. Reg. 28,097 (May 9, 2016).

[20] *Id.* at 28,908.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Letter from Senators Lisa Murkowski and Dan Sullivan to USCIS* (Nov. 14, 2019), https://bit.ly/3byuiVz.

[25] TAFT-MORALES, *supra* note 7, at 6; Jonathan M. Katz, *U.N. Admits Role in Cholera Epidemic in Haiti*, N.Y. TIMES (Aug. 17, 2016), https://nyti.ms/3pr3xab.

[26] *See, e.g.*, Ed Pilkington, *UN Response to Haiti Cholera Epidemic Lambasted by Its Own Rights Monitors*, GUARDIAN (May 4, 2020), https://bit.ly/2NDWsWz.

[27] Azam Ahmed, *Hurricane Matthew Makes Old Problems Worse for Haitians*, N.Y. TIMES (Oct. 6, 2016), https://nyti.ms/3u7mHFW.

landfall.[28] Problems still linger today. Ten years after the earthquake, significant portions of Haiti including the National Palace had still not been rebuilt, with much of the promised relief aid either undelivered or unspent.[29] Many Haitians continue to grapple with psychological trauma due to the earthquake and other ongoing crises.[30] On top of these severe problems, droughts and a national lockdown driven by political instability have contributed to an ongoing food insecurity crisis.[31]

In the midst of these continuing catastrophes, USCIS announced in August 2019 that it intended to eliminate the HFRP Program as well as the FWVP Program.[32] The "Acting Director"[33] of USCIS, Ken Cuccinelli, stated that the decision had come after an extensive review; he claimed that people used HFRP and FWVP "to skip the line and bypass the proper channels established by Congress" and that USCIS sought to "not encourage aliens to unlawfully enter the United States."[34] Over sixteen months after this announcement, USCIS published a four-page notice in the Federal Register confirming the termination of the HFRP and FWVP Programs.[35]

To justify its decision to dismantle HFRP, USCIS pointed to the promulgation of Executive Order 13767.[36] That order instructed the DHS Secretary to "ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole."[37] USCIS further pointed to a 2017 memorandum by the then-DHS Secretary John F. Kelly entitled "Implementing the President's Border Security and Immigration Enforcement

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[28] Alex McDougall, *Haiti: Recovery and Resilience After Hurricane Matthew*, AL-JAZEERA NEWS (Apr. 1, 2017), https://bit.ly/3asEMX7; *Hurricane Matthew: Haiti South '90% Destroyed,'* BBC NEWS (Oct. 8, 2016), https://bbc.in/37mNvIs.

[29] *See* Kahn & Pierre, *supra* note 6.

[30] *See* Caitlin Hu, *Ten Years After a Devastating Earthquake, Some Haitians Say They're Losing Hope*, CNN (Jan. 13, 2020), https://cnn.it/3b9D246.

[31] *See* Sarah Marsh & Andre Paultre, *Haiti Political Morass Fuels Growing Crisis of Hunger, Malnutrition*, REUTERS (Feb. 19, 2020), https://reut.rs/3pueTdM; Caitlin Hu, *Millions in Haiti Face Hunger in 2020*, CNN (Dec. 30, 2019), https://cnn.it/2LXzx8f.

[32] Press Release, U.S. Citizenship & Immigration Services, USCIS to End Certain Categorical Parole Programs (Aug. 2, 2019), https://bit.ly/2ZmlI6y.

[33] The lawfulness of Mr. Cuccinelli's appointment has been questioned and has served as a basis for invalidating his directives. See generally James Doubek, *Judge Says Ken Cuccinelli Was Appointed Unlawfully to Top Immigration Post*, NPR (Mar. 1, 2020), https://n.pr/3k2nJy3.

[34] Press Release, U.S. Citizenship & Immigration Services, USCIS to End Certain Categorical Parole Programs (Aug. 2, 2019), https://bit.ly/2ZmlI6y. (quotation of "USCIS Acting Director Ken Cuccinelli").

[35] Removal of Instructions Regarding the Haitian Family Reunification Program and Filipino World War II Veteran Parole Program, 85 Fed. Reg. 84,362 (Dec. 28, 2020) ("HFRP Elimination Notice").

[36] *Id.* at 84,363.

[37] Exec. Order No. 13,767, 82 Fed. Reg. 8793, 8796 (2017).

Improvements Policies."[38] USCIS relied on portions of that memorandum advising that discretionary use of parole authority "should be exercised sparingly," and asserted that "granting parole to certain aliens in pre-designated categories" had, among other issues, "contributed to a border security crisis" and had "created an incentive for additional illegal immigration."[39]

To further justify its elimination of HFRP, USCIS asserted in its December 2020 Notice that "Haiti has made significant progress recovering from the 2010 earthquake and subsequent effects," citing unspecified conclusions by the State Department and a single study on resettlement of displaced Haitians.[40] "In light of these determinations," USCIS stated, "DHS has determined that the HFRP program no longer serves a significant public benefit for new applicants."[41] In terminating HFRP, USCIS further asserted that its decision could not affect any possible reliance interest. It argued that because new invitations to the program had not been issued since 2016, "a potential applicant will not be surprised by the change and will not have suffered harm as a result of acting in reliance on the continuation of the HFRP program."[42] USCIS cited no support for this assertion.

USCIS's move to terminate the HFRP Program in December 2020, including its pronouncement that Haiti "had made significant progress," arrived amid a Haitian constitutional crisis that has and is continuing to produce mass unrest and insecurity across the country. Several factors contribute to the situation. A wave of kidnappings and other criminal activity has brought the country to a near-standstill as Haitians have formed mass protests against the rule of President Jovenel Moïse.[43] Moïse has been ruling by decree since January 2020, and Haiti lacks an active parliament after scheduled elections did not occur in 2019.[44] Moïse also ordered the retirement of three of the country's supreme court justices; in response, the Haitian judicial system has ceased operation entirely.[45] Riot police are cracking down on the resulting protests, firing live rounds at protestors with handguns and rifles.[46] Kidnapping reached epidemic levels in 2020 and continues

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[38] HFRP Elimination Notice, 85 Fed. Reg. at 84,362.

[39] *Id.* at 84,362–63 (citing Memorandum from the Secretary of Homeland Security, Implementing the President's Border Security and Immigration Enforcement Improvements Policies 9 (Feb. 20, 2017), https://bit.ly/2Nj765j ("February 2017 DHS Memo")).

[40] *Id.* at 84,363–64.

[41] *Id.* at 84,364.

[42] *Id.*

[43] *See* Anthony Faiola, *Coup Allegations and Rival Claims to the Presidency Deepen Haiti's Crisis*, WASH. POST (Feb. 8, 2021), https://wapo.st/3dqxPrl; Jacqueline Charles, *'On the Verge of Explosion': Violence, Constitutional Crisis Push Haiti to the Brink*, MIAMI HERALD (Feb. 2, 2021), http://hrld.us/2ZofvXR.

[44] *See Explainer: Why Haiti's Political Strife Has Worsened*, ASSOC. PRESS (Feb. 8, 2021), https://bit.ly/37Fajn1.

[45] Caitlin Hu & Etant Dupain, *Protests in Haiti As Political Standoff Continues*, CNN (Feb. 21, 2021), https://cnn.it/2ZBLm7d.

[46] *See* Stuart Ramsay, *Haiti: Explosion of Kidnappings Shows a Country Sliding into Absolute Anarchy*, SKY NEWS (Feb. 9, 2021), https://bit.ly/2NzW6jQ.

to leave many Haitians in fear of leaving their homes; many schools have closed, and a conference of Haiti's bishops recently pronounced the nation "on the verge of explosion."[47]

USCIS's justification for terminating the FWVP Program also relied upon the authority and rationale of Executive Order 13767 and Secretary Kelly's implementing memorandum.[48] USCIS noted that it has "no data substantiating that the admission of participants in the FWVP program routinely addresses an urgent humanitarian concern" and determined that "new FWVP program applications are more appropriately adjudicated through an individual application instead of a categorical program."[49]

II. The decision to terminate the HFRP and FWVP Programs has no basis in law and violates the Administrative Procedure Act.

The Administrative Procedure Act ("APA") provides that agency action is unlawful and must be set aside if it is "not in accordance with law;" "in excess of statutory jurisdiction, authority, or limitations;" or "arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. §§ 706(2)(A), (C). Agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). "[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Id.* (internal quotation omitted). Courts must hold unlawful and set aside rulemaking that fails to meet these standards. 5 U.S.C. § 706(2)(A).

Here, USCIS's Notice is without legal basis and the agency's stated reasons for its action are unsupported and inconsistent with the available evidence. First, the Notice relies upon an Executive Order and implementing memorandum from the previous administration that are no longer in effect. Second, not only are the Executive Order and the implementing memorandum no longer in effect, but even if they were, they provide no justification for ending the HFRP Program by their own terms. Third, the stated rationale for ending the Program in the Notice itself ignores the various bases for authorizing the program in the first place as well as current conditions in Haiti. And fourth, the Notice also terminates the FWVP Program even though the initial justifications for that program are just as compelling today as they were in 2016, and, in a single sentence, also appears to end the Cuban Family Reunification Parole ("CFRP") Program. In sum, the Notice cannot withstand legal scrutiny.

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[47] Harold Isaac, Andrew Paultre, & Maria Abi-Habib, *Haiti Braces for Unrest as a Defiant President Refuses to Step Down*, N.Y. TIMES (Feb. 7, 2021), https://nyti.ms/3bbs12o.

[48] 85 Fed. Reg. at 84,362–63.

[49] *Id.* at 84,364.

A. USCIS's legal justifications for terminating HFRP and FWVP are void.

In its Notice announcing the elimination of the HFRP and FWVP Programs, USCIS relied on two sources of legal authority: (1) Executive Order 13767 and (2) the DHS Secretary's February 2017 memorandum implementing Executive Order 13767.[50] USCIS made this reliance explicit, stating that maintaining HFRP was "inconsistent with the Executive Order [13767] and Secretary Kelly's implementing guidance directing that the policy of DHS is to exercise its parole authority narrowly."[51] However, the President revoked Executive Order 13767 via Executive Order 14010 on February 2, 2021.[52] Thus the February 2017 DHS memo is now a legal nullity. In addition, the then-Acting Secretary of Homeland Security issued a memorandum on January 20, 2021 that rescinded and superseded the February 2017 DHS memo.[53] In short, the two legal bases for USCIS's December 28, 2020 termination of the HFRP and FWVP Programs no longer exist. Yet USCIS has not yet withdrawn the Notice providing for that termination.

B. The termination of family reunification parole programs is unrelated to the stated goals of the programs.

The Notice purports to be borne out of the now-invalid Section 11 of Executive Order 13767, which provides that "[i]t is the policy of the executive branch to end the abuse of parole and asylum provisions currently used to prevent the lawful removal of removable aliens."[54] Pursuant to that Executive Order, the Notice asserts that family reunification parole programs have "contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process and created an incentive for illegal immigration."[55]

Though Executive Order 13767 announced a policy to "end the abuse" of parole programs, neither the Executive Order nor the Notice make any attempt to demonstrate that the HFRP Program, or any other family reunification parole program it terminates, has been "abused." At no point does the Notice even contend, much less establish, that Haitian, Filipino, or Cuban families have exploited or manipulated categorical parole. As a result, there is no support for the proposition that purports to underpin the entire basis for the Notice. These are fatal flaws under the APA.

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[50] *See, e.g.*, HFRP Elimination Notice, 85 Fed. Reg. at 84,362, 84,363, 84,364. The February 2017 memorandum states in its first line that it "implements the Executive Order entitled 'Border Security and Immigration Enforcement Improvements,' issued by the President on January 25, 2017." February 2017 DHS Memo at 1. Executive Order 13767 is entitled "Border Security and Immigration Enforcement Improvements" and was issued January 25, 2017. Exec. Order No. 13,767, 82 Fed. Reg. 8793 (2017).

[51] HFRP Elimination Notice, 85 Fed. Reg. at 84,363.

[52] Exec. Order No. 14010, 86 Fed. Reg. 8267, 8270 (2021).

[53] Memorandum from the Acting Secretary of Homeland Security, Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities 2 & App'x (Jan. 20, 2021), https://bit.ly/3aqw0J3.

[54] 85 Fed. Reg. 84,362.

[55] *Id.* at 84,362–63.

Nor does the February 2017 DHS memorandum bolster the justification for the Notice. Instead, it exacerbates the Notice's defects, as neither it nor the Notice itself endeavor to explain how, precisely, categorical parole programs "contribute[] to a border security crisis," "undermine[] the integrity of the immigration laws," or "create[] an incentive for illegal immigration." Even the most generous interpretation of the Notice fails to establish that family reunification parole programs—entirely legal, formally established, and in effect for years—have contributed to a border security crisis. Beyond citing to the implementing memorandum, the Notice makes no mention of border security.

The Notice also does nothing to support the memorandum's claim that family reunification parole programs incentivize illegal immigration. By their very terms, the HFRP, FWVP, and CFRP programs establish *legal* pathways for family reunification. For example, USCIS initiated the HFRP Program to "expedite family reunification through safe, legal, and orderly channels of migration to the United States" and "increase existing avenues for legal migration from Haiti."[56] Only U.S. petitioners who receive invitations from the Department of State's National Visa Center are even eligible to apply for parole on behalf of eligible relatives in Haiti.[57] Then, upon receipt of the invitation, applicants are required to submit a parole application, along with a fee (or fee waiver application), for each relative.[58] USCIS then conducts applicant interviews in Haiti and determines whether to provide parole on a case-by-case basis[59]—meaning that beneficiaries of the HFRP Program could not possibly affect "border security," given that they have to wait in Haiti to benefit from the Program. In short, there is a substantive disconnect between what the Notice and memorandum allege and how these programs actually function. The Notice does not and cannot support the contention that family reunification parole programs are abused or that they incentivize illegal immigration.

C. The Notice overlooks the multipronged justification for the HFRP Program and inaccurately characterizes current conditions in Haiti.

As expressly acknowledged in the Notice, the HFRP Program was created to serve several objectives. First, by expanding legal pathways for Haitian families to reunite in the United States, the Program "serves a significant public benefit by promoting safe, legal, and orderly migration to the United States."[60] Second, the Program "supports U.S. goals for Haiti's long-term reconstruction and development."[61] And third, HFRP Program beneficiaries who received work

[56] 79 Fed. Reg. 75,581.

[57] Haitian Family Reunification Parole Program Fact Sheet, USCIS (March 2015), https://bit.ly/3qBiSXb.

[58] *Id.*

[59] *Id.*

[60] 79 Fed. Reg. 75,581; 85 Fed. Reg. 84,363.

[61] *Id.*

authorization also "may contribute to Haiti's post-earthquake reconstruction and development through remittances."[62] In short, the program served a variety of American and Haitian interests.

Here, the Notice ignores several of those objectives. Instead, the Notice conducts a cursory review of one objective—Haiti's recovery from the 2010 earthquake. The Notice's conclusion that the extent of the recovery is sufficient to justify the HFRP Program is not supported by the evidence. The Notice points to a single metric—that the International Organization for Migration ("IOM") reported that 98 percent of those displaced by the earthquake have been resettled—and concludes that because of that scant evidence (provided in a total of two sentences), "the HFRP program no longer serves a significant public benefit for new applicants."[63] This brevity alone renders the conclusion arbitrary and capricious. Moreover, the conclusion is contrary to available evidence regarding the current conditions in Haiti. And while the IOM reported the 98 percent statistic, its *overall* assessment of Haiti's progress over the last decade is a stark departure from the Department's. In 2020, the IOM reported that "[d]espite all these efforts [by Haitians and by the international community], many people affected by the earthquake continue to face challenges and to date, still lack access to basic services, electricity, water, food, health, education and livelihood opportunities, as do many others in Haiti. Migratory flows from Haiti to neighbouring countries as well as to North and South America are increasing as the most vulnerable population seeks new opportunities abroad."[64] Accordingly, there is no basis to conclude that "the HFRP program no longer serves a public benefit for new applicants." To the contrary, a holistic assessment of Haiti's recovery combined with its more recent political and economic strife, justifies rescission of the Notice.[65]

The Notice also fails to consider or discuss the Program's *other* objectives, such as promoting lawful orderly migration and supporting Haiti's long-term development. The support for the multi-pronged justification for establishing HFRP is ample. The U.S. is the top global destination for Haitian migrants, with the Haitian diaspora comprising approximately 1.2 million people.[66] As noted above, recent political events have exacerbated economic instability, heightening the need for international assistance. The United States' interest in ensuring that Haitian migration is legal, in addition to the desire to facilitate Haitian development, is just as valid today as it was when USCIS established HFRP in 2014. In ignoring those objectives, the Notice fails to consider critical aspects of the HFRP program and overlooks evidence that contradicts USCIS's decision to terminate the program.

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[62] *Id.*

[63] 85 Fed. Reg. 84,363-64.

[64] *10 Years After 'Goudou Goudou' IOM Assists Haitian Women Artists Raise Funds for the Vulnerable*, INTERNATIONAL OFFICE OF MIGRATION (Jan. 10, 2020), https://bit.ly/3qynHkf.

[65] 85 Fed. Reg. 84,363–64.

[66] Kira Olsen-Medina & Jeanne Batalova, *Haitian Immigrants in the United States*, MIGRATION POLICY INSTITUTE (Aug. 12, 2020), https://bit.ly/3bbTiBu.

D. USCIS's attempt to terminate other family reunification programs is similarly flawed.

The Notice also points to Executive Order 13767 and the February 2017 DHS memorandum as the basis for terminating the FWVP Program. But the same flaws in the basis for terminating the HFRP Program—the lack of any record of "abuse," contribution to a border security crisis, or incentivization of illegal immigration—similarly undercut the Department's attempt to terminate the FWVP Program. Additionally, with five years since the initiation of the program, these veterans are likely in even greater need of assistance and companionship from their families.

The Notice also appears to eliminate the CFRP Program with a single sentence. Despite the Notice's title, the Notice's text states that it is "also revising the [I-131] form to remove references to the Cuban Family Reunification Parole Program."[67] To the extent that this signals the termination of this Program, it woefully fails to meet the standards of the APA. The public received no effective notice of the change and the complete lack of reasoned justification renders it arbitrary and capricious.

III. Termination of family reunification parole programs harms the States.

The Haitian community has long been an integral part of American life. The United States is home to the largest Haitian migrant population in the world with more than 687,000 residents.[68] The Haitian community, including beneficiaries of the HFRP Program, has enriched the undersigned States culturally and financially. More Haitian immigrants of working age—71%—participate in the civilian labor force than the overall foreign-born population—66%—and the U.S.-born population—62%.[69] While precise data is unavailable, those figures strongly suggest that HFRP beneficiaries participate in the American labor force at high rates, thereby contributing to State tax revenues, bolstering their families' financial stability, and reducing the need for public assistance. Haitian immigrants also become U.S. citizens at higher rates than immigrants generally —61% compared to 51%—suggesting the HFRP beneficiaries are more likely than most to permanently invest in our communities.

The Filipino-American community is similarly robust. The United States is also home to the largest Filipino migrant population in the world with more than two million residents.[70] The Filipino immigrant population is highly educated—49% hold a bachelor's degree compared to

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[67] 85 Fed. Reg. 84,363.

[68] Kira Olsen-Medina & Jeanne Batalova, *Haitian Immigrants in the United States*, MIGRATION POLICY INSTITUTE (Aug. 12, 2020), https://bit.ly/3bbTiBu.

[69] *Id.*

[70] Luis Hassan Gallardo & Jeanne Batalova, *Filipino Immigrants in the United States*, MIGRATION POLICY INSTITUTE (July 15, 2020), https://bit.ly/3bsGbwa.

33% of U.S. born adults.[71] Filipinos also become American citizens at extremely high rates—as of 2018, 71% of Filipinos were naturalized citizens.[72] In addition, the Haitian and Filipino communities also provide a significant contribution to the United States health care system, which has been crucial during the COVID-19 pandemic. Immigrants from the Philippines accounted for 28% of the 512,000 immigrants working as registered nurses, while Haiti is one of the top countries of origin for home health care aides.[73]

Here, the Notice will undermine the progress of these communities and cause unnecessary family separation. States benefit from family units that provide stability and support for their members as well as irreplaceable care and nurturing of children. *See, e.g.*, *Moore v. City of East Cleveland*, 431 U.S. 494, 503–04 (1977) ("It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."). The Select Commission on Immigration and Refugee Policy, a congressionally appointed commission tasked with studying immigration policy, expounded upon the necessity of family reunification in 1981:

> "[R]eunification . . . serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and wellbeing of the nation. Psychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States."[74]

Congress recognized the importance of family unity when it adopted the modern immigration system. *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005) ("The Immigration and Nationality Act ('INA') was intended to keep families together."). Separating families undermines these core principles, and irreparably harms the neighborhoods and communities within the States.

Family separation can also result in negative health outcomes including irregular sleep patterns, which can lower academic achievement among children; toxic stress, which can delay brain development and cause cognitive impairment; and symptoms of post-traumatic stress disorder.[75] Separation can be particularly traumatizing to children, resulting in a greater risk of developing mental health disorders such as depression and anxiety. Trauma can also have negative physical effects on children, such as loss of appetite, stomachaches, and headaches, which can

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[71] *Id.*

[72] *Id.*

[73] IMMIGRANT HEALTH CARE WORKERS IN THE UNITED STATES, MIGRATION POLICY INST. (May 14, 2020), https://bit.ly/3aU9Cbt.

[74] Human Rights Watch, *US: Statement to the House Judiciary Committee on "The Separation of Nuclear Families under US Immigration Law"* (Mar. 14, 2013), https://tinyurl.com/HRWFamilySeparation (quoting U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST, U.S. SELECT COMMITTEE ON IMMIGRATION AND REFUGEE POLICY (1981)).

[75] Colleen K. Vesely, Ph.D., et al, *Immigrant Families Across the Life Course: Policy Impacts on Physical and Mental Health*, NAT'L COUNCIL ON FAMILY RELATIONS (2019), https://tinyurl.com/NCFRpolicybrief.

become chronic if left untreated.[76] Similarly, spousal separation can cause fear, anxiety, and depression.[77]

The States, their residents, and their healthcare programs, will be forced to bear the burden of the effect of the separation of families under the Notice.

IV. Conclusion

The Haitian Family Reunification Parole Program and Filipino World War II Veteran Parole Program have changed the lives of thousands. These include not only those who were permitted to exit unsafe and unstable conditions in Haiti to join their families in the United States, or those finally able to come to the aid of aging veterans, but also countless U.S. citizens and residents whose lives were materially improved by gaining the presence of a loved one. And allowing these individuals to enter the United States after a careful invitation and screening process in turn has not just benefited families. It has brought broader benefits to the nation by welcoming Haitian and Filipino people who want to contribute to American society and become American citizens, improving the States' economies and strengthening the cultural life of our country.

The decision to allow the HFRP Program to wither on the vine over the past several years, then terminate it in late 2020, is both curious and cruel. The HFRP Program has not been a drastic or severe change to the U.S. immigration system. It has let Haitian nationals enter the United States via parole approximately two years before they would normally be able to do so via visa.[78] Yet to individuals seeking to leave the now-critically dangerous conditions in Haiti and join their families in this country, those two years can and often do mean everything. And HFRP has reunited thousands of families, each of which has gained the incalculable benefit of having a loved one return from a chaotic and insecure situation in Haiti.

Similarly, there is no compelling rationale for ending the FWVP Program. The Program's modest scope, with just a few hundred applications approved, comes with enormous benefits to its beneficiaries. Those who have served this country, and who are in greater need of care and support with each passing year, deserve to age while surrounded by their families.

It is for these reasons that the States do not merely urge USCIS to withdraw the Notice and its arbitrary decision to terminate the HFRP and FWVP Programs. These Programs must instead be reinvigorated and strengthened. For the FWVP Program, eligible veterans should be affirmatively notified that they can petition USCIS on behalf of their relatives in the Philippines.

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[76] Allison Abrams, *LCSW-R, Damage of Separating Families*, PSYCH. TODAY (June 22, 2018), https://tinyurl.com/AbramsSeparation.

[77] Yeganeh Torbati, *U.S. denied tens of thousands more visas in 2018 due to travel ban: data*, REUTERS (Feb. 29, 2019), https://tinyurl.com/TorbatiReuters (describing a U.S. citizen's plight to obtain a visa for his wife, and that their separation was causing them both to "break down psychologically").

[78] HFRP Implementation Notice, 79 Fed. Reg. at 75,582.

For the HFRP Program, new invitations to those who qualify should be issued and the eligibility window should be widened, enlarging the number of Haitians who may receive invitations along with a chance to leave the increasingly worsening conditions in their home country. There is little question that ending HFRP erodes the principles USCIS set out in establishing it: "promoting family unity" along with "safe, legal, and orderly migration to the United States" and the "long-term reconstruction and development" of Haiti.[79]

Forging a new commitment to these Programs would help the United States return to the principles that underpinned their creation. It would also send a new, clear signal that the United States supports Haitian people and Filipino veterans during their time of need. These changes will likely not cause significant disruption to the operations of USCIS, but would undoubtedly improve the lives of the Programs' beneficiaries. The States urge USCIS to withdraw the notice and renew its commitment to the HFRP and FWVP Programs.

Sincerely,

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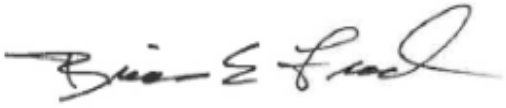
[79] *Id.*



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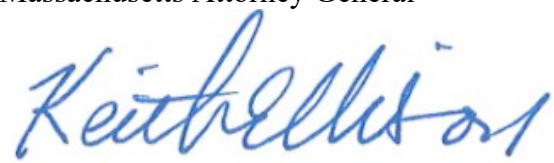
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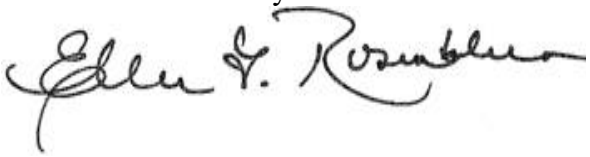
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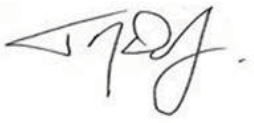
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