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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 S.A.; J.A.; A.B.; R.C., on behalf of himself and  
as Guardian Ad Litem for J.C., a minor child;  
14 M.C.; D.D.; G.E., on behalf of himself and as  
Guardian Ad Litem for B.E., a minor child; J.F.  
15 on behalf of himself and as Guardian Ad Litem  
for H.F. and A.F., minor children, on behalf of  
16 themselves and on behalf of a class of all  
similarly situated individuals, and CASA,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, in his official capacity as  
20 President of the United States; U.S.  
DEPARTMENT OF HOMELAND  
21 SECURITY; U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES; U.S.  
22 DEPARTMENT OF STATE; KIRSTJEN  
NIELSEN, in her official capacity as Secretary  
23 of Homeland Security; MICHAEL R.  
POMPEO, in his official capacity as Secretary  
24 of State; L. FRANCIS CISSNA, in his official  
capacity as Director of U.S. Citizenship and  
25 Immigration Services; UNITED STATES OF  
AMERICA,

26 Defendants.  
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28

Case No. 18-CV-03539 LB

**DEFENDANTS' RESPONSE TO THE COURT'S  
FEBRUARY 2, 2019 ORDER (ECF 69)**

Date: February 14, 2019  
Time: 9:30 a.m.

The Honorable Laurel Beeler

1 By Order dated February 6, 2019 (ECF 69), the Court requested supplemental preliminary  
2 injunction briefing regarding the causal connection requirement between the alleged irreparable harm  
3 and the activity the plaintiffs seek to enjoin. Defendants' response is set forth below.

#### 4 INTRODUCTION

5 Given the posture of the case, there are only two remaining subgroups of individual plaintiffs at  
6 issue with respect to injunctive relief: (1) minors residing in Guatemala, Honduras, or El Salvador who  
7 received conditional approval of their CAM applications prior to August 2017, and (2) the parents of  
8 those children, residing in the United States, presumably with Temporary Protected Status.<sup>1</sup> When  
9 defendants refer to "plaintiffs" in this discussion, they are intending to refer only to those two  
10 subgroups.

11 The parent-plaintiffs have been separated from their children since they chose, or were  
12 compelled by economic or safety considerations, to leave their birth countries and come to the United  
13 States. They have lived here in the United States for many years, while others, usually siblings or  
14 parents, have been caring for their children back home. The children-plaintiffs have been separated  
15 from their parents for the same number of years.

16 The harm to these plaintiffs consists of continued family separation and potential exposure to  
17 violence in their countries—situations that were not caused by defendants. For the children-plaintiffs,  
18 living with the identified harms is the status quo. By terminating the CAM program, the Trump  
19 Administration removed the helping hand that the Obama Administration had extended, but it did not  
20 cause the underlying harm. That harm exists independently of the CAM program, caused by the  
21 decision of the parent-plaintiffs to come or remain in the United States without their children and the  
22 unfortunate circumstances that exist in parts of Guatemala, Honduras, and El Salvador, as a result of the  
23 proliferation of criminal street gangs. The injunctive relief that plaintiffs seek does not meet the causal-  
24 connection requirement.

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26 <sup>1</sup> Generally speaking, citizens or Lawful Permanent Residents have other avenues to have their  
27 children admitted into the United States. *See, e.g., Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 82  
28 (2014) ("United States citizens and lawful permanent residents (LPRs) may petition for certain relatives  
who reside abroad (known as the 'principal beneficiaries' of such petitions) to receive immigrant  
visas.").

1       **1. How does the causal-connection requirement apply in a case where the plaintiffs are from**  
2       **the outset separated from their families and located in dangerous countries but the**  
3       **government did not affirmatively place them in those situations?**

4           In this APA action, the Court has recognized that the agency has the right to terminate the CAM  
5 program; it simply must undergo a full evaluation of the plaintiffs' reliance interests before doing so,  
6 appreciating and taking responsibility for its decision. The issue then is not whether the program was  
7 beneficial or not, but whether the agency undertook the appropriate evaluation prior to terminating the  
8 CAM program. In this respect, it is similar in posture to *Winter v. NRDC, Inc.*, 555 U.S. 7, 32-33  
9 (2008), a case in which the Supreme Court vacated an injunction entered by the circuit court. *Winter*  
10 involved a challenge to the Navy's use of sonar during exercises and the potential negative impact of  
11 that sonar on marine mammals. The Ninth Circuit had entered an injunction placing several restrictions  
12 on the use of sonar during naval exercises, despite the impact of those restrictions on the efficacy of the  
13 exercises. The Supreme Court recognized that an injunction was inappropriate in that case, in part  
14 because the legal claim was whether the Navy had to prepare an environmental impact report, not  
15 whether the Navy must cease sonar training. The Supreme Court also noted that the Navy had been  
16 using sonar during training for 40 years. Finding that the lower courts had many remedial tools at their  
17 disposal that would be tailored to the preparation of an environmental impact report, the Supreme Court  
18 held that entering an injunction restricting the Navy's training exercises was overly broad, particularly  
19 given the impact the injunction had on military preparedness. *Id.*

20           As was the case with the plaintiffs in *Winter*, plaintiffs here are seeking an injunction that does  
21 not speak to the underlying legal claim. The claim is that the government violated the APA in the  
22 manner in which it terminated the CAM program, not that the United States is required by statute or  
23 treaty to provide temporary refuge to the children-plaintiffs. In order for there to be the requisite causal  
24 connection between the underlying claim and the requested injunctive relief, the injunctive relief, if any,  
25 must address the mechanism for APA compliance, not the processing of applications under the CAM  
26 program. This is particularly true given that, as in *Winter*, this Court has other more appropriate  
27 remedial tools (such as *vacatur* and remand) and that public policy concerns weigh strongly in favor of  
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1 the defendants, as control over exclusion of aliens is a “fundamental sovereign attribute exercised by the  
2 Government’s political departments largely immune from judicial control.” *Fiallo v. Bell*, 430 U.S. 787,  
3 792 (1977).

4 Moreover, caselaw recognizes that very different situations are presented by families that the  
5 government separated and families who made the decision to separate themselves. *See Bruker v. City of*  
6 *New York*, No. 93CIV3848, 2003 WL 256801, at \*6 (S.D.N.Y. Feb. 4, 2003) (“To the extent plaintiff is  
7 alleging that defendants failed to intervene to reverse family disruption they did not cause, no  
8 substantive due process right has been violated.”). An interest in residing with one’s family is  
9 insufficient to grant a right to reside *in the United States* with said family. *See Gebhardt v. Nielsen*, 879  
10 F.3d 980, 988 (9th Cir. 2018) (“[T]he generic right to live with family is ‘far removed’ from the specific  
11 right to reside in the United States with non-citizen family members.”). It would be inappropriate for  
12 the Court to intervene to reverse family separations that the United States did not cause.

13 **2. How does the causal connection requirement -- including the option to satisfy this**  
14 **requirement by showing that “the requested injunction would forestall the irreparable**  
15 **harm”-- apply if the plaintiffs “do not ask the Court to mandate a particular outcome in**  
16 **any given CAM application?**

17 Plaintiffs request that the Court enjoin the United States to resume the CAM parole processing  
18 for individuals who previously received conditional approval, describing the remaining process  
19 incorrectly as ministerial. There certainly are some ministerial tasks left for the government to  
20 complete, such as running background checks, reviewing medical reports, and tracking travel plans.  
21 However, any decision left to the discretion of the agency cannot be accurately termed ministerial, and  
22 parole is, by statute, discretionary. *See* 8 U.S.C. § 1182(d)(5)(A).

23 The Court cannot enjoin the exercise of discretion, which means that the Court cannot compel  
24 the Secretary of Homeland Security to allow any of the children-plaintiffs to enter the United States.  
25 The Secretary of Homeland Security during the Obama Administration may have chosen to exercise  
26 discretion in a manner that maximized the granting of parole. The Secretary of Homeland Security  
27 under the Trump Administration may choose to exercise her discretion in a manner that minimizes the  
28 granting of parole. An injunction that requires processing, but cannot reach parole itself, bears no causal

1 connection to the relief available in this APA action or to the harm suffered by the plaintiffs.

2 Enjoining the Department of Homeland Security to resume processing CAM parole applications,  
3 without requiring a favorable exercise of discretion, would be detrimental, not beneficial to these  
4 plaintiffs. They and their families would spend more funds, with no guarantee that discretion will be  
5 exercised favorably on their behalf once the children reach the port of entry where the final exercise of  
6 discretion occurs. Even if the children receive a favorable exercise of discretion at the port of entry,  
7 there is no mechanism for them to remain lawfully in the United States beyond the initial 2-year parole  
8 period, because the CAM program has been terminated. They will not qualify for an extension to their  
9 initial parole unless they qualify under standard humanitarian parole (not the less demanding CAM  
10 parole process) or a new program is introduced for their benefit, both of which are highly speculative.  
11 Uprooting children from the homes they have known their whole lives, transporting them to the United  
12 States where they will undoubtedly face significant challenges adjusting, and then uprooting them again  
13 after two years when their lawsuit status is set to terminate is, in itself, harmful. It will put another stress  
14 on the children and their families, and it will ultimately burden an already overburdened immigration  
15 court system.

16 The injunction sought here by plaintiffs does not meet the causal connection requirement,  
17 because the relief the plaintiffs really want, which is parole into the United States, is not available by  
18 injunction.

19 **3. How does the causal connection requirement apply to a government's decisions with**  
20 **respect to a government program and an organization's reputational harm or resource**  
21 **allocation?**

22 As defendants pointed out in their supplemental brief of January 22, 2019, the alleged harm to  
23 CASA cannot be resolved through injunctive relief. (ECF 61, p. 3.) There is no causal connection  
24 between the injunction sought by plaintiffs and the harm CASA alleges to have suffered. CASA  
25 describes its harm as economic, based on the dedication of some of its limited financial resources to the  
26 CAM program, and reputational, for fundraising for, and encouraging participation in, a program that  
27 has since been terminated. Whether or not the Court enjoins the Department of Homeland Security to  
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1 resume processing of the applications of the subset of children plaintiffs identified above, the CAM  
2 program will remain terminated. CASA will not recover its financial investment in the CAM program.  
3 Assuming that its reputation and ability to raise funds has been damaged, which is unlikely, such  
4 damage can only be repaired through time and community outreach and engagement.

5 **CONCLUSION**

6 Injunctive relief is inappropriate in this action. The harm to plaintiffs exists independent of the  
7 CAM program; it has not been caused by defendants' actions. The APA does not dictate the decisions  
8 that the agency can reach; rather, it requires that the agency consider reliance interests and own the full  
9 impact of its decision making. For there to be the necessary causal connection, injunctive relief here, if  
10 any, must go to Court's finding that the agency did not conduct an adequate evaluation of the plaintiffs'  
11 reliance interests prior to reaching its decision to terminate the program, not to the resumption of the  
12 program itself.

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14 DATED: February 11, 2019

Respectfully submitted,

15 DAVID L. ANDERSON  
16 United States Attorney

17 /s/ Alison E. Daw  
18 ALISON E. DAW  
19 Assistant United States Attorney  
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