

Exhibit 3



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December 9, 2021

VIA EMAIL & U.S. MAIL

Commissioner Chris Magnus
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229
Via U.S. Mail Only

Director of Field Operations Guadalupe Ramirez
Office of Field Operations
U.S. Customs and Border Protection
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Chief Border Patrol Agent John R. Modlin
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U.S. Border Patrol
2430 S. Swan Road
Tucson, AZ 85711
John.r.modlin@cbp.dhs.gov

**Re: Border Patrol's Failure to Timely and Meaningfully Adjudicate
Humanitarian Parole Requests**

Dear Commissioner Magnus, Director Ramirez, and Chief Agent Modlin:

The Florence Immigrant & Refugee Project ("The Florence Project") and Arizona Justice for our Neighbors ("AZJFON") call upon the U.S. Customs and Border Protection ("CBP") and the Border Patrol (collectively the "Agencies") to address the persistent and systemic neglect of humanitarian parole requests at the Nogales Port-of-Entry and Tucson Sector. We urge the Agencies to (1) individually respond to and adjudicate humanitarian parole requests that have been systemically ignored; and (2) publish criteria used for adjudicating humanitarian parole requests.

The Florence Project is a non-profit organization that provides free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. The Florence Project was founded in 1989 to provide free

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legal services in a remote immigration detention center in Florence, Arizona where detainees had no meaningful access to counsel. It has since expanded to provide free legal and social services to detained adults and unaccompanied children throughout Arizona. In addition, in 2017, the Florence Project partnered with the Kino Border Initiative, a binational organization, to provide legal services to asylum seekers at the U.S.-Mexico border. Through that partnership, the Florence Project's Border Action Team ("BAT") now provides regular group and individual legal orientations and representation to asylum seekers in Nogales, Sonora, just across the border from the Nogales Port of Entry into Nogales, Arizona. In 2020, the Florence Project provided legal services to 3,672 adults.

Arizona Justice for Our Neighbors is a comprehensive legal services provider that offers immigration legal assistance to the most vulnerable of the low-income migrant population in Southern Arizona. AZJFON began offering legal services in January of 2018, with a family-based immigration program aimed at maintaining family unity. In 2020 AZJFON began a comprehensive asylum legal services program in Nogales, Sonora, Mexico offering asylum workshops, declaration and translation assistance, individualized assessments of asylum claims, and I-589 asylum application completion.

These organizations are on the frontlines of the humanitarian crisis that has been unfolding at the Arizona-Mexico border for nearly the past two years. During this time, the asylum process has been unavailable to the clients they serve, and humanitarian parole is the only mechanism currently in place to protect those most vulnerable. However, the CBP has routinely neglected its statutory duties to timely and meaningfully adjudicate humanitarian parole requests. As outlined below, this failure is in violation of federal law and immediate action is required to resolve it and restore a functional humanitarian parole process.

I. CBP has an ongoing duty to timely adjudicate humanitarian parole requests, and DHS must articulate and follow its procedures to deny parole only when there is a facially legitimate and bona fide reason.

The duty to adjudicate humanitarian parole requests has existed since Congress enacted the Immigration and Nationality Act ("INA") § 212(d)(5). The INA grants the Attorney General the authority to parole aliens into the United States temporarily for "humanitarian reasons or significant public benefit." The law further designates authority to grant parole under § 212(d)(5)(A) at port-of-entry to various officials, including "port directors." 8 C.F.R. § 212.5(c); *see also* INA § 212(d)(5); 8 C.F.R. § 212.5(a) ("The authority of the Secretary to continue an [applicant] in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by [the Secretary's designees]...subject to the parole and detention authority of the Secretary or [their]

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designees.”). The 2008 Memorandum of Understanding (“MOA”) between USCIS, ICE and CBP confirms that CBP has authority to make parole decisions at ports-of-entry.¹

While the Attorney General, and by extension, his delegated agents, have exceptionally broad discretion to make determinations about humanitarian parole, these decisions are not immune from judicial review.² A court will find an abuse of discretion if there is no “facially legitimate and bona fide reason” for the denial.³ In determining whether an agency determination meets the above-stated standard, courts look to “(1) whether local immigration officials *in fact exercised* their discretion under [the statute] to make individualized determinations” and (2) whether the criteria employed in making those determinations were consistent with relevant statutes, regulations and policies.⁴

In addition, agencies must follow their own procedures and not act arbitrarily and capriciously.⁵ This not only safeguards the rights of immigrants but ensures that the government explains its actions so that “members of the public know how their elected officials have used their enforcement powers, and they can hold those officials accountable by speaking out, by petitioning their representatives, or ultimately at the ballot box.”⁶

II. In the last 5 years, policies like metering, the Migrant Protection Protocols, and Title 42 have exacerbated an already existing bottleneck of humanitarian parole adjudications.

The Migrant Protection Protocols (“MMP”) or “Remain in Mexico” program, first instituted in January 2019, dramatically changed the process of applying for asylum at the southern border and made it much more difficult for asylum seekers to receive a fair review of their claims, in part because their access to representation was severely limited. During MPP, the Florence Project was unable to represent asylum seekers in MPP courts because appearances were generally scheduled in distant locations, such as Tijuana or Ciudad Juarez. For their most vulnerable clients, the Florence Project and AZJFON submitted humanitarian parole applications, but most received boilerplate denials. The

¹ <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>

² *Jean v. Nelson*, 727 F.2d 957, 966 (11th Cir. 1984), *aff’d*, 472 U.S. 846 (1985) (“Despite these broad grants of authority, executive officials function as agents of Congress in enforcing the law.... If such officers depart from the zone of authority charted in the statute they act illegally and their actions can be corrected in the courts.” (quotations omitted)).

³ *Id.* at 977.

⁴ *Id.* at 978-79 (emphasis added).

⁵ 5 U.S.C. §§ 701–706; *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954) (holding that even discretionary decisions must be made according to an agency’s validly prescribed regulations).

⁶ *S.A. v. Trump*, 636 F.Supp.3d 1048, 1090 (N.D. Cal. 2018) (quoting *NAACP v. Trump*, 298 F.Supp.3d 209, 249 (D.D.C. 2018)).

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cases that were successful involved multiple humanitarian parole requests, significant and continued advocacy by Florence Project and AZJFON attorneys and congressional representative offices, as well as media scrutiny—a level of advocacy that is unsustainable and unavailable to the vast majority of humanitarian parole applicants.

On March 20, 2020, the Trump Administration used a public health measure under Title 42 to close the border to nearly all asylum seekers, purportedly as part of an effort to slow the spread of COVID-19.⁷ That Administration later lifted almost all other restrictions, but Title 42 remains in effect. While MPP and Title 42 were in effect, humanitarian parole (under INA § 212(d)(5)(A)) was the only mechanism for individuals and families in urgent need of safety or medical treatment to enter the U.S.

Earlier this year, there were two possible Title 42 exemption processes that created pathways for migrants to present at the port-of-entry and be processed into the U.S.: 1) exemptions through the ACLU's litigation in *Huisha Huisha*,⁸ and 2) exemptions for vulnerable populations through the consortium process,⁹ in which NGOs were charged with screening and beginning the asylum process for applicants still in Mexico. Both processes have been discontinued, leaving hundreds who would have otherwise qualified for an exemption stranded at the border and at high risk of harm. Since the discontinuation of these exemption processes, the Florence Project and AZJFON have once again turned to humanitarian parole requests under § 212(d)(5) as the only mechanism to request processing into the U.S. for the most at-risk people. Nearly all the requests filed by the Florence Project and AZJFON with CBP's Nogales Port of Entry and the Border Patrol's Tucson Sector have been ignored or denied with little to no written explanation, even in the most vulnerable cases.

III. Meanwhile, as policies shift and politicians disagree, the most vulnerable are still suffering.

The stakes could not be higher for the thousands of individuals who are still at-risk. AZJFON filed three requests for humanitarian parole toward the end of March 2021, prior to the Nogales Port of Entry's compliance with Title 42 exemptions in connection with the *Huisha Huisha* litigation. These requests were made on behalf of single mothers

⁷ HHS-CDC, Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists" (Oct. 2020) <https://www.cdc.gov/coronavirus/downloads/10.13.2020-CDC-Order-Prohibiting-Introduction-of-Persons-FINAL-ALL-CLEAR-encrypted.pdf>.

⁸ <https://www.aclu.org/cases/huisha-huisha-v-mayorkas>.

⁹ Elliot Spagat & Julie Watson, *Biden Taps Groups to Help Pick Asylum-seekers to Come to US*, AP (June 4, 2021) <https://apnews.com/article/only-on-ap-united-nations-donald-trump-immigration-health-98d4da6cb6f2999787c3fcd3579de695>.

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at very advanced stages of pregnancy, and these mothers were traveling alone with their other young children. The only response to each of these requests was: "Your request has been denied." AZJFON filed an additional request for an especially vulnerable pregnant woman who was traveling alone three weeks from her due date. AZJFON did not receive a response until a week and a half later, merely stating that the request "was not approved."

The Florence Project has filed twenty requests for humanitarian parole since August 2021 alone. Because of the pattern of denials, the organization has focused its efforts on only cases with clearly demonstrated need, including severe medical problems, high-risk pregnancy, and LGBTQ+ individuals with significant safety concerns. Nineteen of the twenty requests remain pending.

The one response the Florence Project has received was vague as to whether the request was being denied or was still in process, as it said only: "Thank you for your patience while we processed your request. Our office has reviewed all information provided and at this time this request is not approved." Requests for more information about why the petition was not approved were fruitless, yielding only a brief email explaining that decisions were made on a case-by-case basis, no guidance was available to aid practitioners, and "current policy" is a factor in making parole determinations. Regarding current policy, the email simply explained that CBP was "awaiting further guidance from DHS regarding the reimplementation of MPP." (Exhibit A).

Below are a few examples of the cases that remain pending and ignored¹⁰:

- On September 23, 2021, the Florence Project filed a request for humanitarian parole for Elena and her family based on her medically vulnerable child. Elena is a single parent who was forced to flee alone with three young children. Elena's son, Matt, is very ill and suffering from chronic kidney failure. He requires ongoing care and is vulnerable to infections. Since arriving in Nogales, Sonora, Elena has had to take Matt to the hospital several times. Elena has generally struggled to care for Matt and his complex medical condition. The family's request for humanitarian parole has been completely ignored without a single response by CBP to date.
- On October 10, 2021, the Florence Project filed a request for humanitarian parole for Rosalinda and her family. Rosalinda is a seven-year-old who suffers from a life-threatening skin condition that, if left untreated, can cause systemic harm. It has already affected her pancreas and places other organs at risk. She

¹⁰ All names and personal information have been changed to protect confidentiality.

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is in constant pain and has been unable to access medical treatment while their family waits at the U.S.-Mexico border to present their asylum case before U.S. authorities. The border is not their home; Rosalinda and her family traveled hundreds of miles to escape certain death after several of their family members were brutally murdered by current and former government officials. This request for humanitarian parole was ignored for over a month without a single response. Through diligent effort, the Florence Project finally learned in early December that the request was sent to headquarters for review. To date, the Florence Project has not received any written response.

- On October 20, 2021, the Florence Project filed a request for humanitarian parole on behalf of Ruben and his partner, Cesar. Ruben and Cesar, a gay couple from Honduras, are seeking protection in the United States because of death threats made against them in Honduras. Ruben and Cesar have suffered discrimination, extortion, and threats while displaced at the U.S-Mexico border. They are afraid for their lives and are functionally homeless in Nogales, in part because they have faced housing discrimination on account of their sexual orientation. Their request for humanitarian parole has been completely ignored without a single response by CBP to date.

IV. The Florence Project and Arizona Justice for Our Neighbors demand that the Agencies give appropriate attention to humanitarian parole applications.

Humanitarian parole requests must be responded to and adjudicated in a timely and meaningful manner. Further, each denial must include articulated reasons in writing sufficient to allow a reviewing court to determine whether the reasons for the denial were “facially legitimate and bona fide.”¹¹ A complete lack of response clearly does not meet even this low standard. Further, cursory responses such as those stating a request is not approved “at this time” or that a decision was made “on a case-by-case basis” fail to show that Border Patrol “in fact exercised” its discretion.¹²

Without written policy explaining the criteria employed in adjudicating humanitarian parole applications, it is impossible to determine whether the decisions are consistent with the law.¹³ We therefore demand that CBP issue and publicize written criteria to be used when Border Patrol considers a request for humanitarian parole.

¹¹ *Jean*, 727 F.2d at 977.

¹² *Id.* at 978-79.

¹³ *Kwock v. White*, 253 U.S. 454, 464 (1920) (“It is the province of the courts . . . to prevent abuse of this extraordinary power, and this is possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment.”).

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Accordingly, we call upon the Agencies to take the following specific actions:

1. **Issue clear, written guidance** describing the criteria being used to consider humanitarian parole requests.
2. **Publicize local procedures** so that both *pro se* and represented applicants may navigate the process. Such guidance should include (1) the identity of the individual within the local agency responsible for adjudication, and (2) a procedure through which unrepresented individuals may present their requests in person through the Nogales port-of-entry and Tucson Sector. All policies and procedures should be updated at least quarterly.
3. **Timely adjudicate** pending requests for humanitarian parole. Specifically,
 - a. immediately adjudicate all currently pending humanitarian parole requests that have been pending for more than 48 hours;
 - b. make and communicate decisions on future humanitarian parole requests marked “urgent” or “emergency” within no more than 48 hours after filing;
 - c. for all other humanitarian parole requests, provide a written acknowledgement of receipt within 48 hours after submission and provide a substantive decision within five days (120 hours); and
 - d. communicate with the applicant and/or their representative regarding any processing delays.
4. **Meaningfully adjudicate** all humanitarian parole requests based on the criteria for eligibility outlined in the statute and governing regulations. When a request is denied, clearly articulate in writing the reasons for the denial to the representative or to the individual in a language that the applicant can understand. Where additional information is required on a given request, contact the applicant within 48 hours clearly noting the information required.
5. **Track and report**, at least quarterly, the number of humanitarian parole applications received and adjudicated at the Nogales Port-of-Entry and Tucson Sector, noting *pro se* and represented applicants.

V. Conclusion

Immigration officials have tremendous power over the lives of those lawfully applying for humanitarian parole. As the Supreme Court has said, the power of these officials “is a power to be administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race.”¹⁴ The minimum processes outlined above must be implemented immediately because the

¹⁴ *Kwock*, 253 U.S. at 464.


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asylum process has been unavailable to people arriving at the southern border for nearly two years, and humanitarian parole is the only mechanism currently in place to protect the most vulnerable.

Thank you for your attention to this very important matter. We await your response detailing the measures the Agencies plan to take to ensure a lawful, reasonable, and humane humanitarian parole process. As we have been over the past many months, the Florence Project and AZJFON stand anxious to cooperate on implementing practical solutions to this crisis.

Respectfully,

Heather Robles



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cc:

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timothy.quinn@cbp.dhs.gov

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Humanitarian Response Advocate Sigrid Gonzalez, sigrid.gonzalez@cbp.dhs.gov

EXHIBIT A

From: [URSU, KELLY](#)
To: [Chelsea Sachau](#)
Cc: [Noah Schramm](#); [ARELLANO, BONNIE J](#)
Subject: RE: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant
Date: Friday, September 10, 2021 2:41:40 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

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Good afternoon Ms. Sachua,

I am not an approver of humanitarian paroles and do not always know the details of how or why a request was approved or not. I do know every request we receive is reviewed on an individual basis and current policy is a factor when considering any waiver or parole. At this time there has been additional review of new requests outside the agreed upon processes (Huisha-Huisha and Title 42 Consortium) as we are awaiting further guidance from DHS regarding the reimplementation of MPP. We hope to have more information on that in the near future.

As for a criteria for humanitarian parole requests, no such guidance exists because it is case-by-case. I would recommend, although not required, the more documentation provided the better. That gives a better understanding of the situation.

Hope this helps.

Have a great weekend!

Thank you,

Kelly Ursu
Program Manager
Tucson Field Office
U.S. Customs and Border Protection
520-407-2369 office

From: Chelsea Sachau <csachau@firrp.org>
Sent: Friday, September 10, 2021 10:55 AM
To: URSU, KELLY [REDACTED] <[\[REDACTED\]@cbp.dhs.gov](mailto:[REDACTED]@cbp.dhs.gov)>
Cc: Noah Schramm <noschramm@firrp.org>; ARELLANO, BONNIE J [REDACTED] <[\[REDACTED\]@CBP.DHS.gov](mailto:[REDACTED]@CBP.DHS.gov)>
Subject: RE: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant

Dear Ms. Ursu,

Thank you for your email response. I can appreciate the incredible stress you must be under while managing both your own and Bonnie's responsibilities at this time, so I appreciate your email following up on this matter.

Could you please provide information on why this request was not approved? It would be helpful for myself and other attorneys to understand CBP's criteria for evaluating these requests for exemption from Title 42.

Sincerely,
Chelsea

Chelsea Sachau, Esq.

Equal Justice Works Fellow, sponsored by State Farm

Adult Program - Border Action Team

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Florence Immigrant & Refugee Rights Project

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From: URSU, KELLY <[REDACTED]@cbp.dhs.gov>

Sent: Wednesday, September 8, 2021 2:28 PM

To: Chelsea Sachau <csachau@firrp.org>

Cc: Noah Schramm <noschramm@firrp.org>

Subject: RE: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant

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Good afternoon Ms. Sachau,

Thank you for your patience while we processed your request. Our office has reviewed all

information provided and at this time this request is not approved.

Thank you,

Kelly Ursu
Program Manager
Tucson Field Office
U.S. Customs and Border Protection
520-407-2369 office

From: Chelsea Sachau <csachau@firrp.org>
Sent: Thursday, September 2, 2021 11:50 AM
To: URSU, KELLY [REDACTED] <[\[REDACTED\]@cbp.dhs.gov](mailto:[REDACTED]@cbp.dhs.gov)>
Cc: Noah Schramm <noschramm@firrp.org>; ARELLANO, BONNIE J <[\[REDACTED\]@CBP.DHS.gov](mailto:[REDACTED]@CBP.DHS.gov)>
Subject: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant

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Dear Program Manager Ursu,

Good afternoon. I write to ask for my clients, [REDACTED] and her family, to be considered for an exemption from the CDC Order under Title 42. My clients would have been amenable to receive an exemption from Title 42 under the *Huisha Huisha* abeyance or the Consortium processes had those processes continued. However, now that those processes are no longer accepting new referrals, we'd like to facilitate the processing of my clients now. Specifically, I request that my clients, named below, be granted an exemption under Title 42, placed in Title 8 proceedings, processed into the United States, and be allowed to pursue their case for asylum due to urgent humanitarian considerations.

- [REDACTED], DOB [REDACTED])
 - **Particular vulnerabilities:** late-stage pregnancy; ongoing threats of violence
 - **Additional family members:** [REDACTED] (civil union spouse, age 23), [REDACTED] (daughter, age 3), [REDACTED] ([REDACTED]'s sister, age 19) and [REDACTED] (nephew, [REDACTED]'s son, age 3)
 - **Narrative:** Ms. [REDACTED] and her family are seeking protection in the United States due to threats and persecution from organized crime in Mexico. There are two very young children in the family and Ms. [REDACTED] is into her third trimester of pregnancy (about 8 months pregnant), and without proper medical care. The family has been displaced and continues to be under threat of harm as they have continued to receive threats of violence while waiting at the U.S.-Mexico border.. The indefinite denial of access to asylum puts the entire family in severe vulnerability. As with other similarly situated migrants at the U.S.-Mexico border, this family faces an extraordinarily high risk of kidnapping, extortion, sexual abuse, torture, and death at the hands of organized crime, particularly in Sonora, Mexico,

where humanitarian and legal service providers have encountered and documented innumerable acts of violence. The family plans to live with Mr. [REDACTED]'s cousin, [REDACTED], who resides in [REDACTED], Louisiana and is ready and able to receive them.

Additionally, upon entry into the United States, my clients should not be detained for several reasons, including, among others: lack of negative immigration and/or criminal history for Ms. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED]; Ms. [REDACTED]'s late term pregnancy and need for access to medical care; their status as parents of very young children; and the high rates of COVID-19 in detention that would place them at great health risk if detained. Additionally, a recent [ICE policy directive](#) even advises against the detention of pregnant women, nursing mothers, or postpartum women. For these reasons, we respectfully request that CBP use its discretion to not refer Ms. [REDACTED] and her family to ICE-ERO for detention consideration and instead, release my clients directly from the Port of Entry, like many others through the former Title 42 exemption processes, so that humanitarian service providers can provide shelter, transportation, and other support services.

Based on the aforementioned urgent humanitarian circumstances, Ms. [REDACTED] and her family should be granted an exemption under Title 42, placed in Title 8 proceedings, processed into the United States, and be allowed to pursue their case for asylum. Additionally, upon entry into the United States, my clients should not be considered a priority for detention for the reasons stated above.

Thank you for your consideration of this request, and for your time and attention to this matter.

Sincerely,
Chelsea

Chelsea Sachau, Esq.

Equal Justice Works Fellow, sponsored by State Farm

Adult Program - Border Action Team

Washington State Bar Number: 57401

Pronouns: she/her/ella

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