

From: Darrow, Joseph A. (CIV) <Joseph.A.Darrow@usdoj.gov>

Sent: Tuesday, May 9, 2023 7:32 PM

To: James Percival <James.Percival@myfloridalegal.com>; Ryan, Erin T. (CIV) <Erin.T.Ryan@usdoj.gov>; Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>

Cc: Joseph Hart <Joseph.Hart@myfloridalegal.com>; Anita Patel <Anita.Patel@myfloridalegal.com>; John Guard <John.Guard@myfloridalegal.com>; Natalie Christmas <Natalie.Christmas@myfloridalegal.com>

Subject: RE: FL v. U.S. - 3:21-cv-1066 (N.D. Fla.)

Hi Jimmy,

We hope you all have been well too.

We looked into this, and DHS has informed us that the activity referenced in those media reports is occurring pursuant to the policy described in the May 19, 2022 memorandum from Chief Raul Ortiz, "Noncitizen Releases from U.S. Border Patrol Custody," which we produced in discovery and which your colleague questioned Ortiz about in his deposition (Exhibit 3).

Best,

Joe

Joseph A. Darrow
Trial Attorney
Office of Immigration Litigation
U.S. Department of Justice
Liberty Square Building
450 5th Street, NW
Washington, DC 20530-0001
Mobile:
joseph.a.darrow@usdoj.gov

From: James Percival <James.Percival@myfloridalegal.com>
Sent: Tuesday, May 9, 2023 11:51 AM
To: Darrow, Joseph A. (CIV) <Joseph.A.Darrow@usdoj.gov>; Ryan, Erin T. (CIV) <Erin.T.Ryan@usdoj.gov>; Fudim, Elissa P. (CIV) <Elissa.P.Fudim@usdoj.gov>
Cc: Joseph Hart <Joseph.Hart@myfloridalegal.com>; Anita Patel <Anita.Patel@myfloridalegal.com>; John Guard <John.Guard@myfloridalegal.com>; Natalie Christmas <Natalie.Christmas@myfloridalegal.com>
Subject: [EXTERNAL] FL v. U.S. - 3:21-cv-1066 (N.D. Fla.)

Hi all,

I hope you are well and have enjoyed some rest since our trial.

As you know, the Court vacated DHS's Parole + ATD policy and remanded to the agency for "further proceedings consistent with this Opinion and Order." *See* Doc. 157 at 108. That Order found the Parole + ATD policy contrary to law, arbitrary and capricious, and subject to notice and comment.

The reason I am writing is to seek an update on those "further proceedings." We are not aware of any new release policy published in the Federal Register for notice and comment since the Court ruled. As such, we do not believe that DHS could have promulgated any new release policy applicable to Border Patrol that is "consistent with" the Court's order. Based on DHS's representations at trial, that would leave Orders of Recognizance under Section 1226(a) as the only release mechanism available to Border Patrol to deal with periods of high border traffic.

According to media reports, Border Patrol decided last night that it will begin something called "'safe' street releases of migrants to communities across [the] border." <https://twitter.com/BillFOXLA/status/1655918436835368962>. Can you please confirm that all such releases by Border Patrol will be under Section 1226(a) following the initiation of removal proceedings?

If you cannot provide that confirmation, please provide a copy of the policy Border Patrol plans to rely on for these releases.

Please get back to us by Thursday COB.

Thank you,

Jimmy



James H. Percival
Chief of Staff
Office of the Attorney General
PL-01 The Capitol | Tallahassee, FL 32399-1050
Tel.: (850) 414-3300
E-mail: james.percival@myfloridalegal.com

