

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

P.J.E.S.,  
a minor child, by and through  
his father and next friend,  
Mario Escobar Francisco,  
on behalf of himself and  
others similarly situated,

Plaintiffs,

v.

CHAD F. WOLF,  
Acting Secretary of  
Homeland Security, *et al.*,

Defendant.

Civ. Action No. 20-2245 (EGS)

**MEMORANDUM OPINION**

Plaintiff P.J.E.S., a 15-year-old minor from Guatemala who entered the United States as an unaccompanied minor in August 2020, brings this action against Chad F. Wolf in his official capacity as Acting Secretary of Homeland Security and various other federal government officials ("Defendants" or the "Government") for violations of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*; the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 8 U.S.C. § 1232; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*; and the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), 8 U.S.C. § 1231 NOTE.

Pending before the Court are Plaintiff's motion for class

certification ("Pl.'s Cert. Mot."), ECF No. 2<sup>1</sup>, and motion for a classwide preliminary injunction ("Pl.'s Prelim. Inj. Mot."), ECF No. 15. Magistrate Judge Harvey's Report and Recommendation ("R. & R.") recommends that this Court provisionally grant the motion for class certification and grant the motion for preliminary injunction and . See R. & R., ECF No. 65 at 2.

The Government has objected to several of Magistrate Judge Harvey's recommendations. See Gov't's Objs., ECF No. 69. Raising no objections to the R. & R., Plaintiff asks this Court to adopt Magistrate Judge Harvey's recommendations to grant both motions. See Pl.'s Resp. to Pl.'s Objs. ("Pl.'s Resp."), ECF No. 72 at 7. Upon careful consideration of the R. & R., the Government's objections, Plaintiff's response, and the relevant law, the Court hereby **ADOPTS** the R. & R., ECF No. 65, **PROVISIONALLY GRANTS** Plaintiff's (1) Motion to Certify Class, ECF No. 2, and **GRANTS** Plaintiff's (2) Motion for Preliminary Injunction, ECF No. 15.

### **I. Background**

The factual background and procedural history in this case are set forth in the R. & R. See R. & R., ECF No. 65 at 3-15.<sup>2</sup>

---

<sup>1</sup> When citing electronic filings throughout this Opinion, the Court cites to the ECF header page number, not the page number of the filed document.

<sup>2</sup> The Court accepts as true the allegations in the operative complaint for purposes of deciding this motion, and construes them in Plaintiff's favor. See *Baird v. Gotbaum*, 792 F.3d 166,

## A. Factual Background

### 1. Pre-COVID-19 Pandemic

Prior to the current COVID-19 pandemic and pursuant to the TVPRA, unaccompanied children who entered the United States and were nationals of countries that do not share a border with the United States were required to be transferred to the care and custody of the Department of Health and Human Services' ("DHH") Office of Refugee Resettlement ("ORR"), within 72 hours of their detainment, for placement in the "least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(b).

Unaccompanied children from countries that share borders with the United States were initially screened to determine that the unaccompanied child: (1) was not a victim of trafficking; (2) did not have "a credible fear of persecution"; and (3) was "able to make an independent decision" about their admission into the United States. *Id.* § 1232(a)(2)(A). Absent these determinations, the unaccompanied child was also transferred to the care and custody of ORR. *Id.* § 1232(a)(3). These unaccompanied children also had access to "counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking," *id.* § 1232(c)(5); and some were

---

169 n.2 (D.C. Cir. 2015). The Government does not object to Magistrate Judge Harvey's recitation of the alleged facts. See generally, Gov't's Objs., ECF No. 69.

provided "independent child advocates . . . to effectively advocate for the[ir] best interest." *Id.* § 1232(c)(6).

In addition, all unaccompanied children retained their rights under the INA to (1) apply for asylum, *id.* § 1158(a)(1); contest their removal to a country where their "life or freedom would be threatened . . . because of [their] race, religion, nationality, membership in a particular social group, or political opinion," *id.* § 1231(b)(3) ("withholding of removal"); or, pursuant to FARRA, (3) make a case that "he or she would be tortured if removed to the proposed country of removal." *Id.* § 1231 Note.

## **2. COVID-19 Pandemic and CDC Orders**

Since 1893, federal law has provided federal officials with the authority to stem the spread of contagious diseases from foreign countries by prohibiting, "in whole or in part, the introduction of persons and property from such countries." Act of February 15, 1893, ch. 114, § 7, 27 Stat. 449, 452, ECF No. 15-5 at 5 ("1893 Act"). Under current law,

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations

approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

42 U.S.C. § 265 ("Section 265"). In 1966, "the Surgeon General's § 265 authority was transferred" to HHS, which in turn "delegated this authority to the [Centers for Disease Control ("CDC")] in 2001 and [t]he President's functions under § 265 were assigned to the Secretary of HHS in a 2003 executive order." Compl., ECF No. 1 at 13 n.2.

On March 24, 2020, as the COVID-19 virus spread throughout the country, the CDC issued a new regulation, pursuant to Section 265, aiming to "provide[] a procedure for CDC to suspend the introduction of persons from designated countries or places, if required, in the interest of public health." Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes, 85 Fed. Reg. 16559-01, 2020 WL 1330968, (March 24, 2020) ("Interim Rule"). The Interim Rule created Section 71.40 to "enable the CDC Director to suspend the introduction of persons into the United States" and stated, in relevant part,

(b) For purposes of this section:

(1) Introduction into the United States

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.