

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

RASUL ROE, *et al.*,

*Plaintiffs,*

v.

ALEJANDRO MAYORKAS, *et al.*,

*Defendants.*

Case No. 1:22-cv-10808-ADB

HON. J. ALLISON D. BURROUGHS

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFFS' THIRD DISCOVERY MOTION**

Dated: August 2, 2023

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**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

PROCEDURAL BACKGROUND..... 2

LEGAL STANDARD..... 3

ARGUMENT..... 5

    I. Plaintiffs Are Not Entitled to Deliberative Material from Individual Parole Decisions  
    They Claim Not to Challenge and Conceded are Unreviewable. .... 8

        A. The Parole Adjudication Worksheets are Pre-Decisional..... 8

        B. The Parole Adjudication Worksheets Are Deliberative..... 10

        C. Plaintiffs’ Claimed Need Does Not Outweigh the Government’s  
        Interest in Privilege. .... 12

    II. Plaintiffs Are Not Entitled to More Documents. .... 14

        A. Abstract Challenges to Alleged Policies Do Not Entitle Plaintiffs to Extra Records. 14

        B. Deliberative Materials Are Outside the CAR and  
        Need Not be Produced or Logged..... 15

        C. Plaintiffs Are Not Entitled to Meta-Record Discovery..... 16

        D. Moot Claims Warrant Dismissal, Not Discovery. .... 19

CONCLUSION..... 20

## TABLE OF AUTHORITIES

### Cases

<i>Abtew v. U.S. Dep’t of Homeland Sec.</i> , 808 F.3d 895 (D.C. Cir. 2015).....	10, 11, 12
<i>Amadis v. U.S. Dep’t of State</i> , 971 F.3d 364 (D.C. Cir. 2020).....	11
<i>Amanullah v. Nelson</i> , 811 F.2d 1 (1st Cir. 1987).....	13
<i>Atieh v. Riordan</i> , 727 F.3d 73 (1st Cir. 2013).....	3, 14
<i>Blue Mts. Biodiversity Project v. Jeffries</i> , 2023 U.S. App. LEXIS 16771 (9th Cir. July 3, 2023).....	16
<i>Camp v. Pitts</i> , 411 U.S. 138 (1973).....	4
<i>Citizens to Pres. Overton Park, Inc. v. Volpe</i> , 401 U.S. 402 (1971).....	4
<i>Fla. Power &amp; Light Co. v. Lorion</i> , 470 U.S. 729 (1985).....	3, 5
<i>Harris v. Univ. of Mass. Lowell</i> , 43 F.4th 187 (1st Cir. 2022).....	20
<i>Housatonic River Initiative v. U.S. EPA</i> , No. 22-1398, --- F. 4th ---, 2023 U.S. App. LEXIS 18977 (1st Cir. July 25, 2023).....	4
<i>Hubbard v. Potter</i> , 247 F.R.D. 27 (D.D.C. 2008).....	18
<i>Int’l Jr. Coll. of Bus. &amp; Tech., Inc. v. Duncan</i> , 802 F.3d 99 (1st Cir. 2015).....	4, 15
<i>James Lee Constr., Inc. v. Gov’t Empl. Ins. Co.</i> , 339 F.R.D. 562 (D. Mont. 2021).....	18
<i>Kinuthia v. Biden</i> , No. 21-11684-NMG, 2022 U.S. Dist. LEXIS 225674 (D. Mass. Nov. 9, 2022).....	20
<i>Kinuthia v. Biden</i> , No. 21-11684-NMG, 2023 U.S. Dist. LEXIS 39482 (D. Mass. Mar. 9, 2023).....	20
<i>Kleindienst v. Mandel</i> , 408 U.S. 753 (1972).....	13
<i>S.C. Coastal Conserv. League v. U.S. Army Corps of Eng’rs</i> , 611 F. Supp. 3d 136 (D.S.C. 2020).....	4, 15
<i>Lujan v. Nat’l Wildlife Fed’n</i> , 497 U.S. 871 (1990).....	14
<i>Mamigonian v. Biggs</i> , 710 F.3d 936 (9th Cir. 2013) .....	20
<i>Meixian Ye v. Kelly</i> , 2017 U.S. Dist. LEXIS 100317 (E.D.N.Y. June 27, 2017) .....	20
<i>Narragansett Indian Tribe v. Pollack</i> , No. 22-2299 (RC), 2023 U.S. Dist. LEXIS 129611 (D.D.C. July 27, 2023) .....	17

*NLRB v. Sears, Roebuck & Co.*,  
 421 U.S. 132 (1975)..... 8, 13

*Norton v. S. Utah Wilderness, All.*, 542 U.S. 55 (2004) ..... 5, 7, 14, 19

*Oceana, Inc. v. Pritzker*,  
 217 F. Supp. 3d 310 (D.D.C. 2016)..... 4, 15

*Oceana, Inc. v. Ross*,  
 920 F.3d 855 (D.C. Cir. 2019)..... 3, 5, 15, 16

*Olsen v. United States*,  
 414 F.3d 144 (1st Cir. 2005)..... 3, 4

*Patel v. Garland*,  
 142 S. Ct. 1614 (2022)..... 20

*Providence Journal Co. v. U.S. Dep’t of Army*,  
 981 F.2d 552 (1st Cir. 1992)..... 9, 10

*Renegotiation Bd. v. Grumman Aircraft Eng’g Corp.*,  
 421 U.S. 168 (1975)..... 11

*Senate of P.R. v. U.S. Dep’t of Justice*,  
 823 F.2d 574 (D.C. Cir. 1987)..... 10

*Stalcup v. CIA*,  
 768 F.3d 65 (1st Cir. 2014)..... 8

*Texaco P.R., Inc. v. Dep’t of Consumer Affairs*,  
 60 F.3d 867 (1st Cir. 1995)..... 8

*Town of Norfolk v. U.S. Army Corps of Eng’rs*,  
 968 F.2d 1438 (1st Cir. 1992)..... 4, 8, 16

*Trump v. Hawaii*,  
 138 S. Ct. 2392 (2018)..... 13

*U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*,  
 141 S. Ct. 777 (2021)..... passim

*Vidal v. Duke*,  
 No. 16-CV-4756, 2017 U.S. Dist. LEXIS 232438 (E.D.N.Y. Oct. 17, 2017)..... 18

*Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*,  
 5 F.4th 997 (9th Cir. 2021) ..... 15

*Worth v. Jackson*,  
 451 F.3d 854 (D.C. Cir. 2006)..... 14

Statutes

5 U.S.C. § 701(a) ..... 5

8 U.S.C. § 1182(d)(5)(A)..... 1, 5

8 U.S.C. § 1252(a)(2)(B)(ii) ..... 5, 13

## INTRODUCTION

Plaintiffs in this case are Afghan nationals and their U.S.-based family members and friends who had their humanitarian parole requests denied or were sent notices of continued parole processing eligibility. In relevant part, Plaintiffs alleged their denials were based on a new, secret “categorical rule” to deny parole to all Afghans in Afghanistan. Compl. ¶¶ 69, 188, 192. On April 28, 2023, the Court granted Defendants’ motion to dismiss, except as to the alleged delay claims and the “alleged policy of categorically denying or administratively closing applications for all beneficiaries remaining in Afghanistan[.]” Opinion at 29 (ECF #69) (“Op.”). The Court found the alleged “categorical policy” challengeable under the APA, assuming the alleged policy exists. *See id.* The Court ordered production of certified administrative records (“CARs”) to determine if any such alleged policy existed, records as to alleged delays, and Plaintiffs’ own records. *Id.* at 36-38.

Having received the CARs, which reflect USCIS’s response to an evolving situation and shows that no such “categorical” denial policy existed, Plaintiffs—for a third time—demand extra-record and meta-record discovery, as well as privileged materials. Pls.’ Memorandum (“Mem.”), ECF #91. In so doing, Plaintiffs reverse their earlier positions, and seek broad discovery on delay claims that are moot, as all Form I-131s have been decided. Mem. 19. Based on the moot delay claims, they demand so-called “limited” “targeted discovery” sweeping “staffing levels at relevant times; the pace of adjudications; competing agency priorities; the propriety of the agency’s [alleged] inaction under the circumstances; the agency’s decision and ability to more quickly adjudicate HP applicants from other countries (e.g., Ukraine) and why; *and so on.*” Mem. 19 (emphasis added). This third bid for discovery into USCIS’s (and/or DHS’s) resources, manpower, priorities, and discretionary 8 U.S.C. § 1182(d)(5)(A) authority uses as it relates to Ukraine as well as Afghanistan, implies this case is little more than a thin veneer to pursue roving discovery into the Government’s use of parole, all under the guise of APA “record review.” It should fail.

### PROCEDURAL BACKGROUND

This is Plaintiffs' third discovery motion in this case. On May 25, 2022, Plaintiffs filed their pseudonymous Complaint (ECF #1), which the Court liberally construed to challenge an "alleged policy of categorically denying or administratively closing applications for all beneficiaries remaining in Afghanistan." Op. 29. Soon after, Plaintiffs filed their first discovery motion, requesting an order to produce records by June 24, 2022. ECF #26 at 6. When the Court discovered Plaintiffs were withholding their identities from Defendants and yet moved to compel anyway, the Court suspended briefing on that first motion. June 9 Tr. 5:17-6:11; 9:21-10:6.

On July 11, 2022, Defendants filed a motion to dismiss, which was argued on August 2, 2022. ECF #41, #46. On November 4, 2022, Plaintiffs filed a second discovery motion which, like the third, demanded broad discovery into "standard[s] applied to such applications and others similarly situated, including materials reflecting the consideration or adoption of policies regarding USCIS's treatment of humanitarian parole applications filed by Afghan nationals since August of 2021;... and the timing of adjudications of Afghan humanitarian parole applications, including the decisions to stop adjudicating the applications and to deprioritize cases." ECF #48 at 6.

However, on April 28, 2023, the Court granted Defendants' motion to dismiss, except as to Plaintiffs' APA challenge to "the alleged policy of categorically denying or administratively closing applications for all beneficiaries remaining in Afghanistan" (Op. at 29, 36), and the alleged delay claims. *Id.* at 36-37. The Court nominally granted the second discovery motion, though the Court did not grant the extra-record or the meta-record discovery that Plaintiffs demanded. *Id.* The Court ordered production of twenty-three individual records, as well as USCIS's record of "the alleged new policy [of] denying or administratively closing all parole applications for beneficiaries remaining in Afghanistan" (*id.* at 29, 36-38), to include documents on "the pace of adjudications of Afghan humanitarian parole applications." *Id.*

Defendants produced the twenty-four CARs on May 19, 2023; voluntarily produced privilege logs for the redactions in USCIS's CAR on June 2, 2023; and for the individual CARs on June 8, and the records and certifications with the Court under seal on June 9, 2023. ECF #79. On June 15, 2023, nearly a month after production, Plaintiffs sent a letter claiming documents were missing from USCIS's CAR, and that they were entitled to discovery and privileged documents as a result. ECF #92-1. After review, Defendants produced two additional documents that were inadvertently omitted from USCIS's CAR under the expedited schedule. ECF #92-2. Thus, on June 27, 2023, Defendants reproduced, recertified, and refiled a corrected CAR to include those two documents. ECF #85. The same day, Defendants also sent Plaintiffs a detailed reply explaining why certain documents were excluded from the CAR. ECF #92-2. On July 19, 2023, per the Court's scheduling order, Plaintiffs filed their third discovery motion, yet again opting to delay resolving this case in a third bid to pursue discovery. Fundamentally, all three motions are the same: all demand extensive discovery. ECF #26, #48, #49, #91, #92, #92-1.

### LEGAL STANDARD

Those seeking to augment the administrative record bear a heavy burden. Review under the APA "involves neither discovery nor trial." *Atieh v. Riordan*, 727 F.3d 73, 76 (1st Cir. 2013). When a CAR is "compiled and made available, reflecting the actions, contentions, and reasoning of those involved[.]" *Olsen v. United States*, 414 F.3d 144, 155 (1st Cir. 2005), the Court is to review that record. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) ("The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court."). Agency CARs are entitled to presumptions of regularity. *Oceana, Inc. v. Ross*, 920 F.3d 855, 865 (D.C. Cir. 2019).

"When reviewing agency decisions, we do not allow supplementation of the administrative record without specific evidence (i.e., a 'strong showing') of the agency's 'bad faith or improper

behavior.” *Int’l Jr. Coll. of Bus. & Tech., Inc. v. Duncan*, 802 F.3d 99, 114 (1st Cir. 2015) (quoting *Town of Norfolk v. U.S. Army Corps of Eng’rs*, 968 F.2d 1438, 1458 (1st Cir. 1992)). Even then, supplementation is discretionary, “the district court ‘may’ (although it is not required to) supplement the record where there is a ‘strong showing of bad faith or improper behavior’ by agency decision makers.” *Olsen*, 414 F.3d at 155 (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971)). “Alternatively, supplementation of the record may be permissible where there is a ‘failure to explain administrative action as to frustrate effective judicial review.’” *Id.* at 155-56 (quoting *Camp v. Pitts*, 411 U.S. 138, 142 (1973)). Just last week, the First Circuit published an opinion reaffirming its long line of precedent that supplementation of CARs in record review cases is the exception, not the rule. *Housatonic River Initiative v. U.S. EPA*, No. 22-1398, --- F. 4th ---, 2023 U.S. App. LEXIS 18977, at \*60 (1st Cir. July 25, 2023).

Completion, unlike supplementation, does not seek discovery, but to “complete” the record with specific documents clearly shown to have been considered by the agency during the challenged action, but omitted from the CAR. “Where a party is attempting to include documents considered by the agency, no showing of bad faith is required and a plaintiff must only present clear evidence, which means a strong, substantial or prima facie showing that the record is incomplete.” *S.C. Coastal Conserv. League v. U.S. Army Corps of Eng’rs*, 611 F. Supp. 3d 136, 142 (D.S.C. 2020) (internal marks and citations omitted). That party must “both: (1) identify reasonable, non-speculative grounds for the belief that the materials were considered by the agency but not included in the record; and (2) identify the allegedly omitted materials with sufficient specificity.” *Id.* “[M]erely proffering broad categories of documents and data that are ‘likely’ to exist as a result of other documents that are included in the administrative record” is insufficient to meet that burden. *Oceana, Inc. v. Pritzker*, 217 F. Supp. 3d 310, 316-17 (D.D.C.



2016), *aff'd*, 920 F.3d at 865. In any event, if the CAR is found inadequate, “the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.” *Lorion*, 470 U.S. at 744.

### ARGUMENT

At this point, Plaintiffs’ track record is clear: this case was always about discovery. ECF #26, #48, #49, #91, #92, #92-1. Indeed, as the Court cannot set aside nonexistent policies or compel already-issued decisions, Plaintiffs seek discovery into USCIS’s use of 8 U.S.C. § 1182(d)(5)(A) parole discretion writ large, though neither the APA nor the INA permit such programmatic challenges. 5 U.S.C. §§ 701(a), 702, 704, 706(1), 8 U.S.C. §§ 1182(d)(5)(A), 1252(a)(2)(B)(ii); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). As before, Plaintiffs’ third discovery motion’s purpose is not to support underlying claims, but to fish for claims they lack.

As explained herein, the CAR shows the “alleged policy of categorically denying or administratively closing applications for all beneficiaries remaining in Afghanistan”—the single “alleged policy” claim the Court did not dismiss—is without factual support. As the Court has already ruled that granting humanitarian parole only in “extreme cases” did not “conflict with statutory...mandates” (Op. 30), the absence of any “alleged policy of categorically denying or administratively closing applications for all beneficiaries remaining in Afghanistan” dooms Plaintiffs’ case. Accordingly, Plaintiffs retreat behind vague euphemisms, such as “the challenged change in policy” (Mem. 3, 9, 10), “the agency’s November 2021 policy” (Mem. 10), “the November policy change” (Mem. 11, 12), “the November policy guidance” (Mem. 11), “the new policy” (Mem. 12, 13, 17), “this dramatic change in policy” (Mem. 17), “the November humanitarian policy related to Afghans in Afghanistan” (Mem. 13), or just “the policy change” (Mem. 17), but never identify any “categorical rule refusing to approve... parole... for Afghan nationals located in Afghanistan.” Compl. ¶ 188. Consequently, Plaintiffs’ third motion for free-

ranging discovery is untethered to the Complaint or the bounds of APA review, and ultimately seeks broad programmatic discovery into USCIS's administration of § 1182(d)(5)(A) authority.

But Plaintiffs' rhetoric aside, the CAR shows USCIS consistently exercised its discretion to find ways to *expand* parole availability – specifically for Afghans:

Until the recent situation in Afghanistan, USCIS generally denied all requests for parole for beneficiaries who were in countries with no functioning U.S. embassy or consulate. The rationale is that a conditional approval of parole would not enable the beneficiary to leave the country and enter another country for full processing, and USCIS could not predict how long (months or years) it might take the beneficiary to get to a third country, if at all, and whether the beneficiary would still be eligible for parole at that time. This policy was changed in response to the Afghan crisis with the belief that it could help those who might be eligible for parole to make the difficult decision on whether to leave Afghanistan. Approximately 75% of Afghan parole beneficiaries are in Afghanistan. Rather than denying all requests for beneficiaries in Afghanistan, USCIS is closing/suspending the request for those preliminarily found eligible and will continue to process the request only if notified that the beneficiary is in a third country.

USCIS-604 (memorandum (Mar. 21, 2022), emphasis added); USCIS-621 (draft briefing (Feb. 2022), similar). Further, in response to the influx of parole requests for Afghan beneficiaries, USCIS relaxed traditional evidentiary burdens for protection-based claims. USCIS-597; USCIS-603<sup>1</sup> (implemented USCIS-286, USCIS-451). Additionally, USCIS discretionarily “broaden[ed] eligibility if the evidence shows widespread targeting of the group for serious harm [as opposed to individualized threats], such as a systematic or pervasive effort to impose serious harm against the group.” USCIS-592 (implemented: USCIS-286). In November 2021, USCIS also announced “strong positive factors” to be weighed by adjudicators specifically related to Afghan beneficiaries. USCIS-622 (referencing USCIS-33). In fact, the “strong positive factors” language had no precedent in any pre-existing generally-applicable guidance document; it emerged in the

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<sup>1</sup> “Historically, USCIS exercised discretion to approve cases based solely on protection needs only if the petitioner provided credible third-party evidence.... IRAD has put forward for clearance an adjustment to this policy that would allow for approval with evidence other than credible third-party evidence.”

November 2021 Afghan-specific § 1182(d)(5)(A) parole guidance. *Id.* (“On November 5, 2021, USCIS announced... strong positive factors that USCIS would consider when reviewing parole requests filed on behalf of Afghan[s.]”); *compare* USCIS-33 (Interim Guidance (Nov. 2021)) *with* USCIS-405-07 (Training Module (2019)). The CAR is clear that USCIS discretionarily (and repeatedly) extended special solicitude to Afghans.

But Plaintiffs pay little heed to the documents in the CAR, except as needed to cherry-pick fragments of sentences from November 2021 interim guidelines that they take out of context. Mem. 16. Also, Plaintiffs entirely ignore guidance issued in December 2021 (USCIS-17-29), April 2022 (USCIS-592; implemented: USCIS-3-13), and October 2022 (USCIS-423-33)—which might have mooted their alleged “categorical rule” claims, even if a purported “deny-all-Afghans” policy had any support. The CAR also shows that consular processing is, was, and has been a longstanding procedural step in the parole process for those outside of the United States. *E.g.*, USCIS-368 (2019 USCIS Training Module, “Beneficiaries must... appear for an appointment with the consular section...”); USCIS-168 (Humanitarian Affairs Branch (HAB) Procedures Manual 2017, same). This was as true for Syrian beneficiaries in 2013 as it is today. USCIS-755.<sup>2</sup> Plaintiffs ignore this evidence, too.

Because the CAR undermines Plaintiffs’ allegations of a categorical “deny-all-Afghans” policy,<sup>3</sup> and with no individual decisions left outstanding, Plaintiffs’ quest for discovery is unsupportable. ECF #91. Notably, Plaintiffs seek privileged material from the individual adjudications that they vigorously denied challenging previously (ECF #44), as well as broad brush

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<sup>2</sup> “The U.S. Embassy in Afghanistan has suspended operations,... and therefore individuals need to travel to a third country to complete the screening and vetting requirements before they can be approved for humanitarian parole... USCIS ha[s] faced similar circumstances during the Syrian conflict and other recent similar conflicts w[h]ere individuals sought humanitarian parole to exit their country.” (emphasis added).

<sup>3</sup> Indeed, the Moe group was notified that their applications were eligible for continued processing once they get to a country with a U.S. consular presence. MALIA MOE-136; MARWA MOE-141; MEDINA MOE-127.

discovery, including on the alleged “delay” claims that are clearly moot. Plaintiffs have not carried their heavy burden of showing entitlement to extra-record discovery in this record-review case.

**I. Plaintiffs Are Not Entitled to Deliberative Material from Individual Parole Decisions They Claim Not to Challenge and Conceded are Unreviewable.**

The deliberative process privilege “protects the internal deliberations of an agency... to prevent ‘injury to the quality of agency decisions.’” *Town of Norfolk*, 968 F.2d at 1458 (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)). As such, the privilege covers “documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 785 (2021) (quoting *Sears*, 421 U.S. at 150); see *Stalcup v. CIA*, 768 F.3d 65, 70 (1st Cir. 2014) (explaining deliberative documents reflect “the give-and-take of the consultative process.”). To fall within the privilege, the information must be both “pre-decisional” and “deliberative.” *Id.* “Documents are ‘pre-decisional’ if they were generated before the agency’s final decision on the matter, and they are ‘deliberative’ if they were prepared to help the agency formulate its position.” *Sierra Club*, 141 S. Ct. at 786. Still, deliberative process privilege is nonetheless a qualified privilege, and plaintiffs may overcome it by showing that the competing interests weigh in favor of disclosure. *Texaco P.R., Inc. v. Dep’t of Consumer Affairs*, 60 F.3d 867, 885 (1st Cir. 1995).

**A. The Parole Adjudication Worksheets are Pre-Decisional.**

In Plaintiffs’ third discovery motion, Plaintiffs seek to compel the unredacted production of USCIS’s first-line adjudicator’s “reasoning for determining whether a statutory basis for parole exists and whether discretion should be favorably exercised[,]” because Plaintiffs claim the Parole Adjudication Worksheets (PAWs) are “the post hoc *explanation* for the reason each officer made their decision.” Mem. 6. Thus, Plaintiffs claim the privilege does not apply because the PAW is not temporally “pre-decisional.” *Id.* To arrive at that conclusion, Plaintiffs misrepresent the CAR.

The CARs are replete with evidence that PAWs—as well as other background checks—are completed *before* supervisory review and concurrence, and supervisory review occurs *before* decisions are issued. *E.g.*, AAZAR-DOE-619 (Dec. 2, 2021, PAW sent to supervisor); AAZAR DOE-620 (Dec. 3, 2021 supervisory review); AAZAR DOE-609 (Dec. 3, 2021 decision); ALIMA DOE-618 (“Remarks: ...11/17/2021: Case assigned to officer HW for PP24.... 12/02/2021: Pet & Ben security checks completed. PAW and Denial Notice uploaded. Case forwarded to supervisor. HW 12/3/2021: Concur with denial decision DS 12/03/2021: Denial notice mailed. EM”); ALI DOE-633 (same). The sequencing is consistent with the HAB Procedures Manual, which provides, “[the] officer must document his or her decision on a parole request on the [PAW]” and “officers must complete a [PAW] for each individual for whom a petitioner requests parole, .... Once the [PAW] is completed, the officer places a copy... for supervisory review and concurrence.” USCIS-93. It further states that while “[s]upervisory review is not intended to be a re-adjudication of the officer’s decision[.]” supervisors still “[r]eview all evidence submitted by the petitioner and all evidence gathered by the officer” and ensure the “decision is legally sufficient, consistent with agency policy and guidance, and is based on evidence in the record.” USCIS-99-100. Only after review, “the supervisor dates and signs the [PAW], [and] signs the decision notices[.]” USCIS-100. The PAWs precede the decisions all Plaintiffs received. *See* citations at *infra* nn.12, 13. Moreover, the PAWs are not one-time worksheets filled out in a single sitting, they are updated as the case progresses through the adjudicatory process. *E.g.*, USCIS-88 (“The officer must complete the PAW in CAMINO representing the findings up to the issuance of the RFE.”).

Accordingly, the PAW is “pre-decisional” because it was generated “before the agency’s final decision on the matter[.]” *Sierra Club*, 141 S. Ct. at 786. The question is whether the PAW “precedes, in temporal sequence, the ‘decision’ to which it relates.” *Providence Journal Co. v.*

*U.S. Dep't of Army*, 981 F.2d 552, 557 (1st Cir. 1992) (quoting *Senate of P.R. v. U.S. Dep't of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987)). The CARs are clear that the PAW is generated before decisions are issued.

**B. The Parole Adjudication Worksheets Are Deliberative.**

Plaintiffs next claim the PAWs are not “deliberative.” They first argue that “Defendants contend that supervisors are the true decision makers. This only undercuts their reliance on the deliberative process privilege.” Mem. 7. Well-established case law says otherwise. *Providence Journal*, 981 F.2d at 557 (a document is predecisional if “its author prepared the document for the purpose of assisting the agency official charged with making the agency decision”). The PAW contains a first-line officer’s recommended decision, which must then undergo supervisory review and concurrence before the supervisor can issue the decision. USCIS-99-100. This is textbook deliberative process, and Justice Kavanaugh’s opinion in *Abteu v. U.S. Dep't of Homeland Sec.*, 808 F.3d 895, 899 (D.C. Cir. 2015) is squarely on point: “[a] recommendation to a supervisor on a matter pending before the supervisor is a classic example of a deliberative document.” Until the supervisor concurs with the PAW, the outcome is subject to change and a decision cannot be issued. USCIS-100 (“Parole requests often involve difficult issues and decisions are not always easily reached; therefore, supervisors should be available to officers for consultation during the adjudication process.... Once the supervisor has concurred with the officer’s decision, the supervisor dates and signs the [PAW], [and] signs the decision notices....”). The PAW is generated within a scheme that “specifically contemplates further review by the agency” before a decision is issued, *Sierra Club*, 141 S. Ct. at 787, and is thus deliberative. Plaintiffs’ first argument fails.

Second, Plaintiffs argue “Defendants’ assertion that the adjudicating officer’s analysis is a ‘pre-decisional and deliberative recommendation to the supervisor’ misrepresents the adjudicators’ role in the decision-making process as set forth in USCIS’s own Manual[,]” Mem.

7, to support their contention that “[t]he deliberative process privilege does not shield documents that simply state or explain a decision the Government has already made.” Mem. 8. But Plaintiffs misconstrue the CAR. The HAB Procedures Manual explains “[t]he officer must document his or her decision on a parole request on the [PAW]. Use of the PAW ensures that adjudicating officers clearly and consistently document the relevant facts of the case and their analysis in reaching a parole decision” and “[o]nce the [PAW] is completed, the officer places a copy... for supervisory review and concurrence.” USCIS-93. “All decisions... are subject to 100% supervisory review.” USCIS-99. While “supervisor[s] should generally defer to the officer’s decision[,]” “a supervisor may need to return a case for several reasons[,]” including where “the supervisor determines the officer’s decision is legally sufficient, but the supervisor determines the case should be decided differently....” USCIS-100. The Court should review the CAR itself—USCIS-93-95, 99-100—rather than rely on Plaintiffs’ misrepresentations. The CAR is clear that PAWs are not treated as final, but as worksheets “prepared by lower-level staff and sent to the [] decisionmakers for approval.” *Sierra Club*, 141 S. Ct. at 788. Plaintiffs’ second argument therefore fails.

Third, Plaintiffs argue the PAW is not “deliberative” because the PAW “became the agency’s formal decision upon supervisor review and approval.” Mem. 8. But supervisory concurrence does not transform the PAW into the final decision, “[t]o the contrary, the Supreme Court has held that the deliberative-process privilege protects recommendations that are approved or disapproved without explanation.” *Amadis v. U.S. Dep’t of State*, 971 F.3d 364, 370 (D.C. Cir. 2020) (citing *Renegotiation Bd. v. Grumman Aircraft Eng’g Corp.*, 421 U.S. 168, 184 (1975)); *Abteu*, 808 F.3d at 899 (“Abteu argues that even if the Assessment had been pre-decisional at one time, the [] supervisor adopted it as the ‘final decision.’ That is incorrect. The Department publicly explained its final decision through a Referral Notice. That Referral Notice represented the final

decision.”). Nor does the supervisor’s signature on both the PAW and the ultimate decision strip the PAW of its deliberative nature. *Abteu*, 808 F.3d at 899 (“Abteu responds that the supervisor who made the final decision initialed the Assessment to Refer. But initialing alone does not transform the Assessment into the Department’s final decision.”). The final decisions are the notices that all Plaintiffs received, which explain the reasons their parole requests were granted (Roes), found eligible for continued processing in a country with a U.S. embassy or consular presence (Moes), or denied (Boes, Noes, and Does).<sup>4</sup> *Id.* The decision letters, not the PAWs, carry legal effect. *Sierra Club*, 141 S. Ct. at 787 (“While we have identified a decision’s ‘real operative effect’ as an indication of its finality, that reference is to the legal, not practical, consequences that flow from an agency’s action.”). Indeed, the Court has already ruled that these “letters satisfy the Policy Manual’s requirement that the adjudicator provide ‘reason(s) for denial[.]’” Op. at 31-32. Plaintiffs are not entitled to more, and their third argument thus fails for these reasons.

**C. Plaintiffs’ Claimed Need Does Not Outweigh the Government’s Interest in Privilege.**

Plaintiffs’ last argument—as to forced disclosure of the privileged PAWs—is that their “need for the information outweighs any potential interest by Defendants in non-disclosure.” Mem. 9-10. Plaintiffs claim the redacted information “strikes at the very heart of the merits of Plaintiffs’ claims” because it is “evidence that goes *directly* to what policy was applied to Afghan HP applicants, including the impact of the agency’s November 2021 policy in precluding the grant of applications on behalf of Afghans.” Mem. at 10.

Previously, Plaintiffs were adamant they were “not claim[ing] a right to judicial review of individual parole decisions on the merits” (ECF #44 at 14), and that they were “explicitly clear that they are not seeking review of their individual parole determinations.” *Id.* at 12. Indeed,

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<sup>4</sup> CAR citations at *infra* nn.12, 13.



Plaintiffs conceded 8 U.S.C. § 1252(a)(2)(B)(ii) “precludes direct challenges to determinations made on individual petition[.]” Op. 14. To be sure, § 1252(a)(2)(B)(ii) reflects Congress’s choice to largely foreclose judicial review for discretionary relief and to strip the deliberative process privilege from deliberations ahead of reaching discretionary § 1182(d)(5)(A) decisions entirely undermines § 1252(a)(2)(B)(ii). Yet Plaintiffs effectively ask the Court to look behind these decisions to determine whether the Court can look behind these decisions. and to ignore a clear statutory command in § 1252(a)(2)(B)(ii) and unmistakable binding precedent, *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972), *Amanullah v. Nelson*, 811 F.2d 1 (1st Cir. 1987), *Trump v. Hawaii*, 138 S. Ct. 2392, 2419 (2018). The Court should decline the invitation.

In any event, Plaintiffs have not shown a need for the privileged information, and Defendants have a substantial interest in maintaining the privilege. First, Defendants have an institutional interest in maintaining the candid nature of the deliberations contained in the PAW, as parole decisions “involve difficult issues and decisions are not always easily reached” (USCIS-100), making open communication all the more important. *Sears*, 421 U.S. at 150 (“experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances... to the detriment of the decisionmaking process.” (internal marks omitted)). Second, the CARs are sufficient for the Court to resolve the case. While Plaintiffs ignore the CAR in their third bid for discovery, the Court need only review the CAR to see Defendants were judicious in asserting privilege. *See, e.g.*, USCIS-611-12 (waiving privilege over recommendations for addressing Afghan protection needs); USCIS-628-32 (waiving privilege over deliberative discussions regarding looser evidentiary guidance); USCIS-721-22, 743-46 (waiving privilege over preparatory materials for Secretary Mayorkas’s Senate testimony). Plaintiffs simply desire to intrude upon and superintend the use of § 1182(d)(5)(A) parole on

micro- and macro-scales—including as to other applicants, and other processes (*e.g.*, Ukraine)—neither of which the APA, the INA, or binding precedent permit, and it certainly does not outweigh the interest in maintaining the privilege.

## **II. Plaintiffs Are Not Entitled to More Documents.**

### **A. Abstract Challenges to Alleged Policies Do Not Entitle Plaintiffs to Extra Records.**

In APA cases, “the relevant inquiry” is “whether the administrative record sufficiently supports the agency’s decision.” *Atieh*, 727 F.3d at 76-77. Here, the Court liberally construed the Complaint to challenge an “alleged policy of categorically denying or administratively closing applications for all beneficiaries remaining in Afghanistan.” Op. 29. While no such categorical denial policy ever existed, in order to meet the Court’s order, Defendants produced a general record “detail[ing] the USCIS internal procedures for adjudicating requests for parole for urgent humanitarian reasons.” ECF #85-1, ¶ 4. Plaintiffs now argue that although their Complaint challenged only alleged policies—and while the allegedly delayed decisions have all been issued—they are entitled to an unending record about all Afghans (and Ukrainians) vis-à-vis § 1182(d)(5)(A) to search for something concrete and discrete to challenge. Mem. 11-13, 17-19.

This broad discovery demand is emblematic of a programmatic challenge that the APA does not permit. *S. Utah Wilderness All.*, 542 U.S. at 64 (“Under the terms of the APA, respondent must direct its attack against some particular ‘agency action’ that causes it harm.” (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 891 (1990))). Though Plaintiffs distance themselves now from the Complaint, they challenged “a categorical rule refusing to approve Afghan humanitarian parole applications for Afghan nationals located in Afghanistan.” Compl. ¶¶ 188, 193. But the CAR does not support Plaintiffs’ speculative “categorical rule” allegations.

What’s more, policies that exist only in speculation cause no injuries, and courts cannot opine on the legality of non-existing policies. *See Worth v. Jackson*, 451 F.3d 854, 861 (D.C. Cir.

2006). The CAR contains the guidance that *did* exist, which is what the Court ordered – no more, no less. Unsubstantiated speculation does not confer standing, much less an entitlement to broad, free-ranging discovery. “Consistent with the cases or controversies requirement, the APA does not give federal courts general supervisory authority over executive agencies, but only over cases in which ‘[a] person [has] suffer[ed] legal wrong because of agency action, or [is] adversely affected or aggrieved by agency action.’” *Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*, 5 F.4th 997, 1011 (9th Cir. 2021) (quoting 5 U.S.C. § 702). A “categorical rule” that exists only in Plaintiffs’ Complaint is not “agency action.” In any event, Plaintiffs have not even clearly alleged any bad faith or improper behavior, much less made the “strong showing” necessary for extra-record discovery. *Int’l Jr. Coll. of Bus. & Tech.*, 802 F.3d at 114.

Additionally, Plaintiffs’ third discovery motion falls far short of establishing that “completion” (as opposed to supplementation) is warranted here. Completion requires “clear evidence” of incompleteness and Plaintiffs must “both: (1) identify reasonable, non-speculative grounds for the belief that the materials were considered by the agency but not included in the record; and (2) identify the allegedly omitted materials with sufficient specificity.” *S.C. Coastal Conserv. League*, 611 F. Supp. 3d at 142. Baldly claiming “there must be more” (Mem. 17) is entirely insufficient to meet that burden of proof. *Oceana, Inc. v. Pritzker*, 217 F. Supp. 3d at 316-17, *aff’d.*, 920 F.3d 855, 865 (D.C. Cir. 2019).<sup>5</sup> Plaintiffs’ third motion should be denied.

**B. Deliberative Materials Are Outside the CAR And Need Not be Produced or Logged.**

Plaintiffs next claim the CAR is incomplete because it excludes privileged materials, and argue that they are owed a privilege log, if not the privileged material itself. Mem. 13-15. Not so.

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<sup>5</sup> Notably, Plaintiffs also allege incompleteness on a belief that deliberative documents—such as “suggestions that USCIS received from DHS headquarters or from other agencies or sub-agencies”, underlying “rationales”, and “any alternatives”—must exist. Mem. 17. But Plaintiffs challenge a “categorical rule” (Compl. ¶ 188) that is without support in the CAR and “alleged policies” lack actual “alternatives,” “suggestions,” or “rationales.” Plaintiffs are not entitled to deliberations on actual guidance that the Complaint does not challenge.

Privileged materials are not part of the CAR. *Town of Norfolk*, 968 F.2d at 1458 (affirming exclusion of privileged materials from the record). Defendants are not required to log documents that are outside the CAR. Both circuit courts to have addressed the issue agree: predecisional and deliberative documents “are not part of the administrative record to begin with,” and therefore “are not required to be placed on a privilege log.” *Blue Mts. Biodiversity Project v. Jeffries*, No. 22-35857, --- F. 4th ---, 2023 U.S. App. LEXIS 16771, at \*8-9 (9th Cir. July 3, 2023) (quoting *Oceana, Inc. v. Ross*, 920 F.3d at 865). There is no need to log documents that are not part of the CAR.

Nevertheless, Defendants have already detailed the reason why certain documents were excluded from the CAR. ECF #92-2. In their motion, Plaintiffs challenge mainly the exclusion of a “white paper” from the National Security Council (NSC)—a non-party agency that does not adjudicate parole petitions—and a draft DHS response thereto, arguing that the white paper was relevant. Mem. 13. But Defendants thoroughly explained that the two documents were withheld primarily for deliberative process privilege (ECF #92-2),<sup>6</sup> an assertion Plaintiffs do not contest. Mem. 11-13. Plaintiffs also neglect to mention that the summary of the NSC’s proposals were included in the record. USCIS-697-98. Plaintiffs’ misrepresentations undermine their argument.

### **C. Plaintiffs Are Not Entitled to Meta-Record Discovery.**

Plaintiffs next claim the CAR *must* be incomplete—and thus, they are entitled to unprecedented meta-record discovery—because Defendants promptly corrected the USCIS CAR to add two additional documents that were inadvertently omitted initially under the expedited schedule. Mem. 15. However, a timely correction is far from a smoking gun. The Court ordered

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<sup>6</sup> “Both documents are deliberative and not part of the administrative record. The white paper was a proposal from the National Security Council about incorporating Afghans outside of Afghanistan into Operation Allies Welcome, which was circulated for interagency commentary and response, including from HAB. The “DHS Response to the NSC White Paper” is a deliberative, pre-decisional draft with comments identifying points for further discussion. *See* USCIS-691.”

production of twenty-four CARs in twenty-one days, and the quick correction of an inadvertent omission of less than thirty pages across twenty-four CARs (totaling over 8,000 pages) is a voluntary action that “provides no occasion to question [the agency’s] good faith or to presume the record incomplete.” *E.g.*, *Narragansett Indian Tribe v. Pollack*, No. 22-2299 (RC), 2023 U.S. Dist. LEXIS 129611, at \*31-32 (D.D.C. July 27, 2023). Moreover, neither document added supports Plaintiffs’ bald allegations. In fact, they support Defendants’ positions. USCIS-732-39, USCIS-768-85.

Yet Plaintiffs argue that “Defendants’ conduct... and the deficiencies in the produced record, amply justify targeted discovery into how Defendants compiled the administrative record[.]” Mem. 15-16.<sup>7</sup> As a threshold matter, Defendants’ position and argument has always been that Plaintiffs fail to identify any Afghan averse discrete agency policy change<sup>8</sup>—indeed, Plaintiffs still fail to do so—and that Plaintiffs cast their subjective impressions of the process as new categorical policies.<sup>9</sup> Defendants produced what the Court asked for, a CAR “relevant to changes in the standards applied to applications from Afghan nationals remaining in Afghanistan and the pace of adjudications of Afghan humanitarian parole applications.” Op. 38. Moreover, Plaintiffs’ request for discovery about USCIS’s compilation of the CAR—including, presumably,

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<sup>7</sup> Plaintiffs demand “the reasons why already-issued approvals would have to be withdrawn.” Mem. 17. First, this pertains to *none* of the Plaintiffs. Second, the reasons appear multiple times in the CAR. USCIS-22, USCIS-495, USCIS-508, USCIS-699-700, USCIS-911-14. USCIS “conditionally approved approximately 80 requests for parole for Afghan nationals in August 2021. Some of these beneficiaries were able to board evacuation flights, but many were not. USCIS will generally honor the prior conditional approval for these cases if the beneficiaries are able to continue processing their parole requests outside of Afghanistan within one year of approval and comply with all vetting and medical requirements, unless new derogatory information is found.” USCIS-22. Those who were able to board flights were vetted at U.S. “lily pads”, but no analogue then existed in September 2021 for those who did not. USCIS-911. Hence, the reason for the withdrawals and re-approvals once vetting was completed.

<sup>8</sup> ECF No. 52 at 26:7-12 (Defendants stating that Plaintiffs’ “claim that new standards suddenly came into existence sometime in November 2021, but they don’t allege how that’s any different than the standards that apply in July 2021”); ECF No. 55 at 17 (“Defendants are tasked with compiling a record tied to no specific decision, but rather a broad record of USCIS’s § 1182(d)(5)(A) parole authority usage since August 2021.”).

<sup>9</sup> *E.g.*, Aug. 2 Tr. 10:14-20 (“... plaintiffs point to the sometimes absence of [RFEs] or a [NOID,] notwithstanding that at least one group... of plaintiffs has received [RFEs] or [NOIDs,] and then claim suddenly that there’s a new policy demanding that [RFEs or NOIDs] are never issued in parole case[s].”).

attorney-client materials—is not supported by a *single* case citation in which it has been ordered. Mem. 15-17.<sup>10</sup> Courts to have addressed the issue in record-review contexts have declined meta-record discovery requests, *e.g.*, *Hubbard v. Potter*, 247 F.R.D. 27, 30 (D.D.C. 2008), consistent with courts’ disfavor for “discovery on discovery” in civil practice. *James Lee Constr., Inc. v. Gov’t Empl. Ins. Co.*, 339 F.R.D. 562, 574 (D. Mont. 2021). No discovery is warranted.

Plaintiffs next demand discovery because the “Parole Requests for Afghan Nationals Interim Policies and Procedures,” (Nov. 2021, USCIS-31-42), “set forth new, more restrictive, eligibility criteria specific to Afghans, with the direction that applicants ‘generally will be denied.’” Mem. 16. Plaintiffs declare that the cherry-picked sentence fragment “generally will be denied” is a smoking gun, that this is “precisely what Plaintiffs alleged in their Complaint.” *Id.* But it is not: the Complaint alleged “a categorical rule refusing to approve Afghan humanitarian parole applications for Afghan nationals located in Afghanistan[,]” and is the one “alleged policy” claim left. Op. 26-27 (quoting Compl. ¶¶ 187–88). An alleged “categorical rule refusing to... parole... Afghan nationals located in Afghanistan” is clearly dissimilar from guidance that—in full context—merely observes that “for Afghan nationals in Afghanistan, parole requests based on protection needs, without other factors, such as the beneficiary’s falling into one of the categories of Afghan nationals prioritized by the interagency, family reunification, or urgent medical needs, generally will be denied.” *Compare* USCIS-33,<sup>11</sup> *with* Mem. 16 (omitting the underlined).

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<sup>10</sup> Plaintiffs overrepresent *Vidal v. Duke*, No. 16-CV-4756, 2017 U.S. Dist. LEXIS 232438, at \*19 (E.D.N.Y. Oct. 17, 2017). In context, *Vidal* theorized that “limited discovery may be authorized as to the completeness of the administrative record” when there is “clear evidence that the record omits relevant materials” and “a strong suggestion that the record before the court is not complete.” *Id.* (internal marks and citations omitted). Plaintiffs here have neither.

<sup>11</sup> As noted by the November and December 2021 Interim Policies and Procedures for Parole Requests for Afghan Nationals, “It may be difficult to assess eligibility based purely on protection needs while an individual is still in Afghanistan, as the adjudicator will not know when or how the beneficiary will leave Afghanistan, where the beneficiary will be once outside of Afghanistan, or the protection that may be available to the beneficiary in that location.” USCIS-19, USCIS-33.

Understandably, Plaintiffs distance themselves from the Complaint, as the Court already dismissed their claim as to Afghans outside of Afghanistan by differentiating Plaintiffs' alleged "categorical policy" for "all" cases from a generalized tack of paroling only in "extreme cases." Op. 30 ("this [alleged 'extreme cases'] policy does not appear to conflict with statutory... mandates requiring consideration of applications on an individual basis."). Regardless, the "Interim Policies and Procedures (Nov. 2021)" *expanded* parole specifically for Afghans, including by, *inter alia*, suggesting that familial relationships with U.S. citizens or LPRs should be considered "strong positive factors" for "assessing urgent humanitarian reasons, significant public benefit, *and* the exercise of discretion" when no such "strong positive factors" were articulated under the extant guidance for everyone else. *Compare* USCIS-33 (emphasis added), *with* USCIS-405-07 (Training Module (2019), "targeted harm protection cases may overlap with issues related to family unity... that may also present positive discretionary factors" considerable as a "general discretionary factor[]" after urgent humanitarian reasons shown). Plaintiffs' belated rewriting of the Complaint is a tacit admission the CAR scuttles the "alleged policy" claim, as well as their broad discovery expedition.

#### **D. Moot Claims Warrant Dismissal, Not Discovery.**

Lastly, Plaintiffs claim they "are entitled to discovery on their delay and mandamus claims" because the sweeping discovery is necessary "to properly determine whether the delay in adjudicating Plaintiffs' applications was reasonable." Mem. 17, 19. Tellingly, Plaintiffs use the past tense "was," because all Plaintiffs received decisions. Plaintiffs' demand for discovery on clearly moot claims of alleged delay highlights the frailty of the alleged "categorical rule" claims.

Courts cannot compel performance of already-complete acts, so performance of the "delayed" act renders claims to compel action moot. *S. Utah Wilderness All.*, 542 U.S. at 68. "Whether raised under the [Mandamus and Venue Act], APA, or both, courts routinely declare

comparable delay-based claims moot after USCIS processes the once-pending applications.” *Kinuthia v. Biden*, No. 21-11684-NMG, 2022 U.S. Dist. LEXIS 225674, at \*16-17 (D. Mass. Nov. 9, 2022) (collecting cases), *R&R adoption noted*, 2023 U.S. Dist. LEXIS 39482, at \*2 (D. Mass. Mar. 9, 2023); *see also Mamigonian v. Biggs*, 710 F.3d 936, 942 (9th Cir. 2013) (ruling “mandamus request was mooted when...USCIS finally rendered a decision”), *overruled in part on other grounds, Patel v. Garland*, 142 S. Ct. 1614, 1621 n.1 (2022). Moot claims are ripe for dismissal, not discovery. *Harris v. Univ. of Mass. Lowell*, 43 F.4th 187, 192 (1st Cir. 2022).

Here, USCIS has acted on all Plaintiffs’ parole requests. The Roes’ requests were granted, the Moes’ requests were found eligible for continued processing,<sup>12</sup> and the Boes, Noes, and Does’ requests were denied.<sup>13</sup> While the Moes have yet to complete parole processing, USCIS has acted on the requests, and the Moes must complete processing in a country with a U.S. consular presence. As there is nothing left for USCIS to do until that happens, “there is no role for the Court.” *Meixian Ye v. Kelly*, 2017 U.S. Dist. LEXIS 100317, at \*4 (E.D.N.Y. June 27, 2017). As such, the issuance of the decisions “extinguished any immediate and real effect that the challenged” delay might have had while the decisions remained pending. *Harris*, 43 F.4th at 192. The Court must “continue to evaluate its own jurisdiction as the case proceeds,” including whether the delay claims remain live. Op. 19. And regardless, USCIS’s CAR contains extensive evidence of its resources, prioritizations, staffing, and other efforts to address the unprecedented deluge in applications. No discovery would be warranted, even if the delay claims were live.

### CONCLUSION

For the above reasons, Plaintiffs’ third discovery motion is meritless and should be denied.

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<sup>12</sup> MALIA MOE-136; MARWA MOE-141; MEDINA MOE-127.

<sup>13</sup> ALIMA DOE-629; ABDUL DOE-606; AFSHANEH DOE-646; AFsoon DOE-600; AAZAR DOE-609; ALI DOE-637; AMIR DOE-604; BADI BOE-185; BAHAR BOE-172; BAHARAK BOE-169; BAKTASH BOE-124; BARAKAT BOE-158; BASIM BOE-144; BASIR BOE-121; BENESH BOE-142; BURHAN BOE-127; NABI NOE-114; NAHID NOE-110; NAJI NOE-123; NASER NOE-118.



Dated: August 2, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

DATED: August 2, 2023

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District of Massachusetts  
 Corrected Privilege Log for USCIS Record (Updated Pagination)

Begin Bates	End Bates	Privilege	Privilege Description
USCIS-0000003	USCIS-0000013	Law Enforcement	USCIS Page 9: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners/beneficiaries whether they have been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.
USCIS-0000017	USCIS-0000029	Law Enforcement	USCIS Page 24-25: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners/beneficiaries whether they have been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.
USCIS-0000031	USCIS-0000042	Law Enforcement	USCIS Page 38: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners/beneficiaries whether they have been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.
USCIS-0000048	USCIS-0000144	Law Enforcement	USCIS Pages 92, 111-13, 117-25, 125-28: Law Enforcement Privileged content includes sections on (1) Derogatory Information and Fraud, (2) Background and Security Checks, and (3) Fraud and National Security collectively describe investigative process when petitions include derogatory information that raises national security and/or fraud concerns. Disclosure of these vetting instructions would compromise investigative techniques and processes by alerting potential subjects to the investigative process.
USCIS-0000145	USCIS-0000221	Law Enforcement	USCIS Pages 188, 196-200, 203-05 - Law Enforcement Privilege. Redacted content includes sections on (1) Derogatory Information and Fraud, (2) Background and Security Checks, and (3) Fraud and National Security collectively describe investigative process when petitions include derogatory information that raises national security and/or fraud concerns. Disclosure of these vetting instructions would compromise investigative techniques and processes by alerting potential subjects to the investigative process.
USCIS-0000423	USCIS-0000433	Law Enforcement	USCIS Page 430: Law Enforcement Privilege - Redacted section on instructions for Potential Derogatory Information identifies persecutor and national security indicators. The disclosure of these indicators would allow petitioners and/or beneficiaries to withhold or selectively not disclose critical information and frustrate the investigative process.
USCIS-0000471	USCIS-0000474	Attorney-Client; Deliberative Process	USCIS Page 472-73: Attorney-Client/ Deliberative Process privilege for April 13, 2022 email exchange reflecting internal deliberations between OCC agency counsel A. Kent, (IRAD Chief Ruppel, and IRAD Policy Officer S. Schoener) over potential litigation risk associated with changes in language included on conditional approval notices. The correspondence is also pre-decisional and deliberative because it includes OCC attorney A. Kent's candid opinions and recommended changes to the proposed draft notice based on her legal views for IRAD Policy Officer Schoener's consideration.
USCIS-0000490	USCIS-0000502	Law Enforcement	USCIS Page 497-98: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners or beneficiaries whether their application has been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.
USCIS-0000516	USCIS-0000527	Law Enforcement	USCIS Page 522-23: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners or beneficiaries whether their application has been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.
USCIS-0000528	USCIS-0000539	Law Enforcement	USCIS Page 535: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners or beneficiaries whether their application has been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.
USCIS-0000541	USCIS-0000551	Law Enforcement	USCIS Page 547-48: Law Enforcement Privilege - Vetting section describes investigative process when petitions include derogatory information that raises national security concerns. Disclosure of these vetting instructions given to adjudicators would tend to reveal to petitioners or beneficiaries whether their application has been flagged as potential NS concerns, and as such would compromise investigative techniques and processes by tipping off potential subjects.

District of Massachusetts  
 Corrected Privilege Log for USCIS Record (Updated Pagination)

Begin Bates	End Bates	Privilege	Privilege Description
USCIS-00000552	USCIS-00000553	Deliberative Process	USCIS Deliberative Process Privilege. Comments and edits to September 10, 2021 version of the draft Parole Request Notice from then IRAD Chief (Joanna Ruppel), offering her own thoughts and opinions regarding revisions to parole request notice form in terms of how revisions to consular processing are accurately described.
USCIS-00000589	USCIS-00000591	Deliberative Process	USCIS Deliberative Process Privilege for May 12, 2022 email from then IRAD Chief Joanna Ruppel to RAO leadership including Ruppel's own thoughts and opinions regarding outreach to State Dept. senior leadership over pending decisions on P-1 referrals of parolees and expressing Ruppel's views on possible resolutions.
USCIS-00000592	USCIS-00000594	Deliberative Process	USCIS Deliberative Process Privilege. May 12, 2022 Afghan Parole Update relays legal advice from agency counsel regarding litigation risk associated with changing title and language within parole notices issued to beneficiaries. The relevant passage reflects weighing and consideration of cost/benefits and legal risks while also referring to legal strategy in other class action litigation.
USCIS-00000595	USCIS-00000596	Attorney-Client; Deliberative Process	USCIS Deliberative Process /Attorney-Client Privilege: Page 595: April 13, 2022 Email from IRAD Chief to colleagues noting revisions to the attached "Discussion points for Afghan Parole updated 04.13.2022" document made by the HAB Chief based on legal advice given to her by USCIS' Office of Chief Counsel.
USCIS-00000597	USCIS-00000598	Attorney-Client; Deliberative Process	USCIS Page 597: Attorney-Client + Deliberative Process - the redacted information includes suggested revisions to a draft new notice by IRAD to be issued to those in locations without consular services but who appear facially eligible for parole authorization. The recommended changes include those made on the advice of USCIS's Office of Chief Counsel (OCC) and explains OCC's legal reasoning and identifications of potential legal risks. USCIS Page 598: Deliberative Process - redacted information in para. 4 is a proposal from IRAD regarding processing of Form I-290Bs for broader USCIS consideration. Para. 5 contains redacted overview of internal and inter-agency deliberations as to methodology for handling referrals to USRAP for certain Afghan beneficiaries. Para. 6 contains IRAD's recommendations concerning how best to handle incoming inquiries in light of the volume of parole inquiries.
USCIS-00000601	USCIS-00000606	Deliberative Process	USCIS Page 602: Deliberative Process - the content redacted is two IRAD proposals (alternatives) appearing in March 24, 2022 "discussion points" document prepared by IRAD Chief Ruppel concerning two proposed courses of action for further discussion. The redacted recommendations pertain to handling of cases in Afghanistan and Ukraine where there is no U.S. Embassy or Consulate, above which "requires further discussion" in red text is noted.
USCIS-00000634	USCIS-00000641	Deliberative Process	USCIS Deliberative Process Privilege. Page 365: Email dated Nov. 23, 2021 from then-IRAD Chief (Joanna Ruppel) to USCIS Director Ur Jaddou and others offering Ruppel's own thoughts and opinions regarding the advisability of a proposal for USCIS cooperation with CARE, and expressing Ruppel's views regarding the costs/benefits and risks of that proposal on HAB for consideration by Director Jaddou.
USCIS-00000646	USCIS-00000655	Deliberative Process	USCIS Page 646-47: Nov. 23, 2021 email from IRAD Chief Ruppel to USCIS Dir. Jaddou and others including proposals and ideas regarding discussions with senior leadership, including deliberative content reflecting internal deliberations over pending decisions on beneficiary interviews, exceptions, and departures.
USCIS-00000679	USCIS-00000681	Law Enforcement	USCIS Page 697-98: Law Enforcement Privilege/Personally Identifiable Information - Section withheld is LEP/sensitive PII information containing biographical and professional information regarding a specific, non plaintiff beneficiary's position as an Afghan National Army intelligence officer and military advisor. The release of this information could jeopardize the discussed individual beneficiary's privacy and safety.
USCIS-00000682	USCIS-00000690	Attorney-Client; Deliberative Process	USCIS Deliberative Process Privilege. Email dated Oct. 25, 2021 from then IRAD Policy Officer Sarah Schoener to then IRAD Chief Joanna Ruppel and others offering Schoener's own thoughts and opinions regarding edits to Afghan parole guidance and decision letters in light of inter-agency priorities and CDC equities. Attorney-Client privilege for Oct. 25, 2021 email exchange between then IRAD Chief Joanna Ruppel, then OCC agency counsel Hunter Hammill, and IRAD leadership reflecting Ruppel's own thoughts and opinions in responding to agency counsel's advice over medical screening requirements in light of CDC equities. Attorney-Client privilege. Email dated Oct. 19, 2021 from IRAD Policy Branch Chief Sarah Schoener to agency counsel (USCIS-OCC) discussing Schoener's own thoughts and opinions regarding interim guidance and interagency discussions regarding eligibility and vetting, seeking feedback from legal advisors.
USCIS-00000696	USCIS-00000698	Deliberative Process	USCIS Page 697: Deliberative Process Privilege - though the whole document is a summary of deliberative discussions, the redacted content is summary of HHS, USAID, and DHS's reactions to DOS's unredacted, deliberative recommendation concerning the appropriate processes for those already evacuated from Afghanistan before August 31, 2021.

District of Massachusetts  
 Corrected Privilege Log for USCIS Record (Updated Pagination)

Begin Bates	End Bates	Privilege	Privilege Description
USCIS-00000699	USCIS-00000701	Deliberative Process	USCIS Page 699: Deliberative Process Privilege - remarks from HAB Chief John "Wally" Bird, in an email dated October 1, 2021, asking for a policy SOP to be drafted and providing his opinions on improvements/clarifications that he would like to see in such a document.
USCIS-00000702	USCIS-00000704	Deliberative Process	USCIS Pages 702-03: Deliberative Process Privilege. Though the chain is deliberative, the redacted content is part of the email chain between a HAB adjudicator and HAB Chief Wally Bird and IRAD Chief Ruppel containing their internal deliberations on a parole determination on a specific, non-plaintiff's parole application, and reflects the group's internal deliberations over the outcome of that individual's parole request.
USCIS-00000706	USCIS-00000706	Deliberative Process	USCIS Page 706: Deliberative Process Privilege: 9/7/21 email from lower-level contractor-employee containing a recommendation she discussed with HAB Chief Wally Bird concerning her views as to the best means of keeping senior management apprised of the number of cases filed in USCIS databases.
USCIS-00000709	USCIS-00000712	Deliberative Process	USCIS Page 709: Deliberative content reflecting IRAD Chief Ruppel's proposals and opinions regarding how to handle cases where vaccinations might not be available.
USCIS-00000838	USCIS-00000845	Deliberative Process	USCIS Page 813: 11/1/21 email from USCIS officer Delgado to USCIS Dir. Jaddou outlining Delgado's opinions and asking for Dir. Jaddou's input over the public messaging regarding adjudicatory prioritization in public-facing documents.
USCIS-00000876	USCIS-00000877	Attorney-Client; Deliberative Process	USCIS Page 876: Deliberative Process/Attorney-Client Privilege - Email between DHS HQ and CDC reflecting DHS - Office of General Counsel's proposed edits and recommendations to CDC regarding the CDC's proposed medical instructions for Afghans entering the United States and offering their legal expertise regarding risks and limitations of CDC's proposal.
USCIS-00000886	USCIS-00000887	Attorney-Client	USCIS Page 886: Attorney-Client Privilege: Email communication between IRAD Policy Branch Chief Sarah Schoener and USCIS attorney A. Kent seeking OCC's legal advice regarding the contemplated implementation of medical safeguards for parolees from Afghanistan.
USCIS-00000888	USCIS-00000890	Deliberative Process	USCIS Page 889: Deliberative Process - 9/14/21 email from John Lafferty, Senior Counselor to the Director of USCIS, noting to Dir. Jaddou and others that USCIS is being asked by DHS to draft out certain processes and including sketches for what those SOPs should contain.
USCIS-00000896	USCIS-00000905	Attorney-Client; Deliberative Process	USCIS Page 896: Deliberative Process/ Attorney-Client Privilege - Nov. 10, 2021 email from IRAD Chief Ruppel to IRAD Policy Officer S. Schoener and OCC attorney A. Kent recapping legal discussion between DHS Office of General Counsel (DHS-OGC) and USCIS Office of Chief Counsel (USCIS-OCC) concerning the CDC's proposed medical requirements and any potential effects of the CDC's proposal on parole.
USCIS-00000906	USCIS-00000908	Law Enforcement	Page 906 -Law Enforcement Privilege - 9/15/21 email from M. Lenkowsky, Special Assistant to USCIS-RAIO, identifying needs with respect to collecting information/data points to increase the effectiveness of LE/security vetting procedures.
USCIS-00000909	USCIS-00000913	Deliberative Process	USCIS Page 910: 9/15/21 email from IRAD Chief Ruppel to Amy Graddon, Acting Division Chief of DOS's Visa Office, Field Operations, Immigration and Employment, concerning proposed updates to government forms and requesting DOS's input. The email also discusses proposed medical/vaccination requirements for parolees as well as possible conditions of parole. USCIS Page 910-11: Deliberative Process Privilege - 9/14/21 email from IRAD Chief Ruppel to Amy Graddon discussing the status of deliberative discussions between another USCIS sub-component and the U.S. Department of State concerning the proposed use of DOS vetting processes.
USCIS-00000936	USCIS-00000938	Deliberative Process	USCIS Page 937: Deliberative Process Privilege - 2/7/22 email from USCIS Dir. Jaddou to IRAD Chief Ruppel requesting a talking points memorandum to facilitate her discussions with the DHS Secretary and to allow USCIS Dir. Jaddou to relay IRAD's listed proposals/recommendations in the deliberations between Jaddou and Mayorkas.
USCIS-00000944	USCIS-00000951	Deliberative Process	USCIS Pages 946-50: Deliberative Process Privilege. Email discussion dated 12/7-12/8/21 between USCIS Dir. Jaddou and Senior Counselor John Lafferty setting a discussion agenda to further discuss a deliberative, pre-decisional proposal regarding whether and how to send USCIS staff overseas for parole interviews for Afghans.
USCIS-00000954	USCIS-00000955	Deliberative Process	USCIS Page 954: Deliberative Process - 10/18/21 email from IRAD Chief Ruppel to HAB Chief Wally Bird, and others, reflecting the deliberations between Ruppel and USCIS Dir. Jaddou concerning a proposal about how to best make use of USCIS adjudicatory resources in relation to parole requests.
USCIS-00000956	USCIS-00000958	Deliberative Process	Page 957-58: 10/15/2021 email from IRAD Chief Ruppel to USCIS Dir. Jaddou and others concerning recommendations in relation to the CDC's proposed medical screening and her opinions on what a possible "Afghan parole program" might look like if created.
USCIS-00000966	USCIS-00000972	Deliberative Process	Page 968: 8/24/21 email from IRAD Chief Ruppel to USCIS Dir. Jaddou and others concerning Ruppel's recommendations as to how USCIS Dir. Jaddou should brief DHS leadership on the demands on IRAD/HAB's resources ahead of DHS's call w/ Sen. Casey on parole.
USCIS-00000975	USCIS-00000986	Deliberative Process	Page 983-84: 8/13/21 email from IRAD Chief Ruppel to Brandon Farquet, Acting Chief of USCIS-Office of Legislative Affairs, discussing Ruppel's opinions on the capacity of the U.S. Mission in Afghanistan to carry on with parole processing and offering her recommendations to USCIS-OLA on messaging.