UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:25-cv-23665-JB

PEDRO BELLO-RUBIO, *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as the United States Secretary of the Department Homeland Security (DHS), *et al.*,

Defendant.
_____/

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

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I. INTRODUCTION

This case is brought by and on behalf of Cuban nationals who sought refuge in the United States after the termination of the "wet-foot/dry-foot" policy.[1] Every member of the proposed class is a native and citizen of Cuba. Every class member arrived in the United States by land between ports-of-entry ("POE"), and was apprehended by the Department of Homeland Security ("DHS" or "the Department") and taken into immigration custody within 24 hours of their arrival in the United States. Prior to releasing each class member from custody, the Department assigned them a respective alien registration number ("A#"), and served every class member a Notice to Appear ("NTA"), thereby commenced removal proceedings under 8 U. S. C. § 1229a against every plaintiff. See *Perez-Sanchez* v. *U. S. Att'y Gen.*, 935 F. 3d 1148, 1154 (CA11 2019) ("Congress intended for service of an NTA—not filing—to operate as the point of commencement for removal proceedings").

Following service of these NTAs for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, every member of the proposed class in this case was released from immigration custody by DHS, pursuant to the Department's own volition, without being given any documentation of parole out of custody under § 1182(d)(5)(A), and are being treated as if they had not been paroled out of custody. Instead, the Department released every class member and is subjecting them to ongoing unlawful "custody" pursuant to Form I-220A, Order(s) of Release on Recognizance, under the purported auspices of § 1226(a). See *Clements* v. *Fla.*, 59 F. 4th 1204, 1213 (CA11 2023) ("non-citizens released on supervision while awaiting a final decision in their immigration proceedings are deemed to be 'in custody' for purposes of habeas corpus") (citing *Romero* v. *Sec'y, DHS*, 20 F. 4th 1374, 1379 (CA11 2021). That occurred despite the fact that every member of the proposed class was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and was thus only eligible to be released from the defendant's custody via parole under 8 U.S.C. § 1182(d)(5). See *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) ("The only exception permitting the release of aliens detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), is the parole authority provided by section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A).") (citing *Jennings* v.

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[1] See *Statement by Secretary Johnson on the Continued Normalization of our Migration Relationship with Cuba*, January 12, 2017. Available at: https://www.dhs.gov/archive/news/2017/01/12/statement-secretary-johnson-continued-normalization-our-migration-relationship-cuba.

Rodriguez, 583 U. S. 281, 300 (2018)).

Therefore, the plaintiffs bring this action (D.E. 22, First Amended Complaint) on their own behalf, and on behalf of all other Cuban nationals similarly situated (the proposed class), seeking:

a. Habeas relief from their ongoing unlawful custody. (D.E. 22, pp. 151-52, Count I, Habeas Relief);

b. Declaratory relief under the Administrative Procedure Act (APA) ruling that they were paroled out of custody pursuant to § 1182(d)(5)(A) without the proper documentation, as is required by 8 CFR § 235.1(h)(2). (D.E. 22, p. 153, Count II, Declaratory Relief Regarding Unlawful Withholding of Parole Documentation); and

c. Related injunctive relief under the APA to effectuate the Court's declaration of law in their pursuit of permanent residence under the Cuban Refugee Adjustment Act. (D.E. 22, p. 154, Count III, Injunctive Relief Regarding Unlawful Withholding of Parole Documentation).

II. PROPOSED CLASS DEFINITION

The plaintiffs respectfully move this Court to certify the following class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), and in the alternative, under the All-Writs Act:

All Cuban nationals currently present in the United States:

(1) who were "applicants for admission" under 8 U. S. C. § 1225(a)(1) at the time of their last physical arrival in the United States;

(2) who were taken into DHS custody (in the form of physical detention or confinement) within 24 hours of their last physical arrival in the United States;

(3) who, prior to their subsequent release from physical DHS custody, were subjected to the commencement of direct removal proceedings under § 1229a against them via service of a notice to appear under § 1229(a);

(4) who were thereafter enlarged or released from physical DHS custody, by DHS of its own volition, into the United States pending a final determination of inadmissibility by an immigration judge in removal proceedings under § 1229a;

(5) who were not, and have not been, provided with documentation of parole under § 1182(d)(5)(A), and who are being treated as not having been paroled at the time of their release from physical DHS custody;

(6) who were released from physical DHS custody under, and remain subject to, an order

> of release on recognizance purporting to have been issued under the auspices of § 1226(a); and
>
> (7) who were not processed for expedited removal under § 1225(b)(1), contiguous return under § 1225(b)(2)(C), or reinstatement of removal under § 1231(a)(5), or processed as unaccompanied alien children under 6 U. S. C. § 279 & 8 U. S. C. § 1232, during and between the time of their last physical arrival in the United States and their subsequent release from physical DHS custody as described above; and
>
> (8) who have not departed from the United States since their release from physical DHS custody.

(D.E. 22, Amended Complaint, pp. 148-49).

The proposed class meets the requirements of the Fed. R. Civ. P. 23(a) and (b). First, the class is sufficiently numerous, currently consisting of 992 named plaintiffs and hundreds of thousands of similarly situated potential class-members, making joinder impracticable. Second, all class members suffer the same injury: unlawful and ongoing subjection to Form I-220A, Order(s) of Release on Recognizance, under the purported auspices of 8 U. S. C. § 1226(a)—when they were subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and were thus only eligible to be released from the defendant's custody via a parole under 8 U.S.C. § 1182(d)(5)—and failure by the defendants to provide class members with evidence of their parole out of physical custody, as required by 8 CFR § 235.1(h)(2). Therefore, the class raises common questions that will generate common answers. Third, the class representatives' (designated herein) legal claims are typical of those whom they seek to represent. Fourth, the class representatives and their experienced counsel will fairly and adequately protect the class's interests and will vigorously prosecute the action on behalf of the class.

Furthermore, certification of the proposed class is warranted under Rule 23(b)(2) because the defendants have acted or refused to act on grounds that apply generally to the class, by improperly subjecting class members to I-220A, Order(s) of Release on Recognizance, under the purported auspices of 8 U. S. C. § 1226(a), and by failing to provide the proposed class members with evidence of their parole out of physical custody as required by 8 CFR § 235.1(h)(2). The class members' claims are not dependent on the facts regarding their underlying immigration law claims—either in removal proceedings under § 1229a or before U.S. Citizenship and Immigration Services (USCIS)—or any other individualized determinations. The defendants' challenged actions and practices apply to all proposed class members as a whole by virtue of their class

membership, without regard to the individual circumstances of their underlying immigration proceedings or any other immaterial differences among them.

Therefore, the Court should grant class certification under Rule 23(a), (b)(2), appoint the named plaintiffs designated herein as Class Representatives, and appoint the undersigned as Class Counsel.

III. STATEMENT OF FACTS

A. Proposed Class Representatives

Of the 992 named plaintiffs (D.E. 22, Amended Complaint, ¶ 25, pp. 46-134; D.E. 22, Exhibit A), the named plaintiffs # 1, 4, 12, 15, and 31, are herein designated as the proposed class representatives:

Plaintiff # 1, Pedro Bello-Rubio, is a native and citizen of Cuba. He currently resides in Miami, Florida. He arrived in the United States by land between ports-of-entry (POE) on April 1, 2022, at or near San Luis, Arizona. Within 24 hours of his arrival in the United States, he was apprehended by the Department, inspected under 8 U.S.C. § 1225(b)(1), and was placed into immigration custody. He was assigned the alien registration number ("A#") of A[redacted]. Following the service of his NTA for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, he was released from physical immigration custody by the Department of Homeland Security, of its own volition, without being given any documentation of his parole from custody under § 1182(d)(5)(A), and is being treated as he has not been paroled out of custody. Instead, upon his release from physical DHS custody, he was given the Form I-220A, Order of Release on Recognizance, issued under the purported auspices of 8 U.S.C. § 1226(a) which limits his liberty in various ways. **Appx., Vol. 1, Ex. 1, pp. 1-8.**

Plaintiff # 4, Lismary Lopez-Quintero, is a native and citizen of Cuba. She currently resides in Hialeah, Florida. She arrived in the United States by land between ports-of-entry (POE) on October 25, 2021, at or near San Luis, Arizona. Within 24 hours of her arrival in the United States, she was apprehended by the Department, inspected under 8 U.S.C. § 1225(b)(1), and was placed into immigration custody. She was assigned the alien registration number ("A#") of A[redacted]. Following the service of her NTA for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, she was released from physical immigration custody by the Department of

Homeland Security, of its own volition, without being given any documentation of her parole from custody under § 1182(d)(5)(A), and is being treated as she has not been paroled out of custody. Instead, upon her release from physical DHS custody, she was given the Form I-220A, Order of Release on Recognizance, issued under the purported auspices of 8 U.S.C. § 1226(a) which limits her liberty in various ways. **Appx., Vol. 1, Ex. 4, pp. 34-47.**

Plaintiff # 12, Delys Duran-Pero, is a native and citizen of Cuba. He currently resides in Groves, Texas. He arrived in the United States by land between ports-of-entry (POE) on June 26, 2022, at or near Eagle Pass, Texas. Within 24 hours of his arrival in the United States, he was apprehended by the Department, inspected under 8 U.S.C. § 1225(b)(1), and was placed into immigration custody. He was assigned the alien registration number ("A#") of A[redacted]. Following the service of his NTA for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, he was released from physical immigration custody by the Department of Homeland Security, of its own volition, without being given any documentation of his parole from custody under § 1182(d)(5)(A), and is being treated as he has not been paroled out of custody. Instead, upon his release from physical DHS custody, he was given the Form I-220A, Order of Release on Recognizance, issued under the purported auspices of 8 U.S.C. § 1226(a) which limits his liberty in various ways. **Appx., Vol. 1, Ex. 12, pp. 140-154.**

Plaintiff # 15, Rafael Mendez-Rodriguez, is a native and citizen of Cuba. He currently resides in Brandon, Florida. He arrived in the United States by land between ports-of-entry (POE) on February 27, 2022, at or near Del Rio, Texas. Within 24 hours of his arrival in the United States, he was apprehended by the Department, inspected under 8 U.S.C. § 1225(b)(1), and was placed into immigration custody. He was assigned the alien registration number ("A#") of A[redacted]-[redacted]. Following the service of his NTA for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, he was released from physical immigration custody by the Department of Homeland Security, of its own volition, without being given any documentation of his parole from custody under § 1182(d)(5)(A), and is being treated as he has not been paroled out of custody. Instead, upon his release from physical DHS custody, he was given the Form I-220A, Order of Release on Recognizance, issued under the purported auspices of 8 U.S.C. § 1226(a) which limits his liberty in various ways. **Appx., Vol. 1, Ex. 15, pp. 191-205.**

Plaintiff # 31, Maria Caridad Diaz-Pacheco, is a native and citizen of Cuba. She currently

resides in Miami, Florida. She arrived in the United States by land between ports-of-entry (POE) on April 13, 2019, at or near El Paso, Texas. Within 24 hours of her arrival in the United States, she was apprehended by the Department, inspected under 8 U.S.C. § 1225(b)(1), and was placed into immigration custody. She was assigned the alien registration number ("A#") of A[redacted] Following the service of her NTA for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, she was released from physical immigration custody by the Department of Homeland Security, of its own volition, without being given any documentation of her parole from custody under § 1182(d)(5)(A), and is being treated as she has not been paroled out of custody. Instead, upon her release from DHS custody, she was given the Form I-220A, Order of Release on Recognizance, issued under the purported auspices of 8 U.S.C. § 1226(a) which limits her liberty in various ways. **Appx., Vol. 2, Ex. 31, pp. 85-99.**

All other named plaintiffs are natives and citizens of Cuba. They currently reside in the city and state as noted in the Amended Complaint. (D.E. 22, Amended Complaint, ¶ 25, pp. 46-134; D.E. 22, Exhibit A). Every named plaintiff in this case was assigned their respective alien registration numbers ("A#") as noted in the Amended Complaint. *Id.* Every named plaintiff arrived in the United States by land between ports-of-entry (POE) on or about the date noted in Amended Complaint. *Id.* Every plaintiff was apprehended by the Department, inspected under 8 U.S.C. § 1225(b)(1), and was placed into immigration custody, within 24 hours of their arrival in the United States. Prior to their release from physical immigration custody, removal proceedings under 8 U. S. C. § 1229a were commenced against every plaintiff via service of a notice to appear (NTA) under § 1229(a). Following the service of her NTA for full removal proceedings under 8 U. S. C. §§ 1229(a) & 1229a, every plaintiff was released from immigration custody by the Department of Homeland Security, of its own volition, without being given any documentation of their parole from custody under § 1182(d)(5)(A), and is being treated as not having been paroled out of custody. Instead, upon their release from physical DHS custody, every plaintiff was given the Form I-220A, Order of Release on Recognizance, issued under the purported auspices of 8 U.S.C. § 1226(a) which limits their liberty in various ways. In order to facilitate the adjudication of this motion, while not overburdening the Court with thousands of pages of exhibits, the undersigned hereby attach the supporting documentation of these facts for the first hundred named plaintiffs #1-100 as Appendices Volumes 1-5. *See* **Appx., Vol. 1, 2, 3, 4, 5** (named plaintiffs #1-100).

IV. ARGUMENT

A. Legal Standard for Class Certification

A plaintiff whose suit satisfies the requirements of Fed. R. Civ. P. 23 has a "categorical" right "to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). To certify a class action, the putative class must satisfy "the four requirements listed in Rule 23(a), and the requirements listed in any of Rule 23(b)(1), (2), or (3)." *Karhu v. Vital Pharm., Inc.*, 621 F. App'x 945, 946 (CA11 2015) (citing *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (CA11 2012)); *see also Fitzpatrick v. General Mills, Inc.*, 635 F.3d 1279, 1282 (CA11 2011) ("[T]he putative class must meet each of the four requirements specified in [Rule] 23(a), as well as at least one of the three requirements set forth in [Rule] 23(b).").

"Under Rule 23(a), every putative class first must satisfy the prerequisites of numerosity, commonality, typicality, and adequacy of representation." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (CA11 2009) (quoting Fed. R. Civ. P. 23(a); *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1187-88 (CA11 2003) (internal quotation marks omitted)). Under Rule 23(b)(2), class certification is appropriate if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

"The burden of establishing these requirements is on the plaintiff who seeks to certify the suit as a class action." *Heaven v. Trust Co. Bank*, 118 F.3d 735, 737 (CA11 1997); *see also Rutstein v. Avis Rent-A-Car Systems, Inc.*, 211 F.3d 1228, 1233 (CA11 2000). The moving party "must affirmatively demonstrate his compliance" with the class certification requirements. *Comcast Corp v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). A district court must conduct a rigorous analysis of the Rule 23 prerequisites before certifying a class." *Vega*, 564 F.3d at 1266.

B. The Class Meets the Four Requirements of Rule 23(a).

i. The Proposed Class Satisfies the Numerosity Requirement.

The proposed class satisfies the requirement that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). While there is no fixed rule, generally a

class size less than twenty-one is inadequate, while a class size of more than forty is adequate. *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 489-90 (S.D. Fla. 2003) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (CA11 1986). However, what constitutes numerosity depends on the specific facts of each case, and the Court may consider geographic dispersion of the class members and judicial economy in its determination. *Id.* (*citing Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986)). Furthermore, the numerosity requirement is also relaxed where petitioners only seek injunctive or declaratory relief. *See Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (CA4 1975) ("Where the only relief sought for the class is injunctive and declaratory in nature, even speculative and conclusory representations as to the size of the class suffice… .") (internal quotations omitted) (citation omitted).

The numerosity requirement is easily met here because the 992 named plaintiffs, all who meet the proposed class definition, represent a sufficient number under Fed. R. Civ. P. 23(a)(1) on their own, thus making joinder impracticable. While the true number of class members cannot be readily determined without confirmation or discovery from the defendants, the Court can readily infer that numerosity exists, beyond the proposed class representatives and named plaintiffs, from DHS' own publicly available data. According to U.S Customs and Border Protection (CBP), between 2022-2025 (FYTD), 342,167 Cuban nationals (comprised of both single adults and family units) have been encountered entering the United States by U.S. Border Patrol, *i.e.*, between official ports-of-entry, that were processed under Title 8 (for removal proceedings under 8 U.S.C. § 1229a). *See* **Exhibit A** – U.S. Customs and Border Protection Encounters, Southwest Land Border, 2022-2025 (FYTD).

Additionally, according to the Semiannual Reports to Congress on Cuban Compliance with the Migration Accords, the Department of State (via collection by U.S. Customs and Border Protection) reported the numbers of Cuban nationals arriving at the Southwestern border (the October 2019 report) during the 2017-2019 fiscal years, which shows the following numbers:

Location	**FY 2017 Total**	**FY 2018 Total**	**FYTD 2019**
SW Ports of Entry	15,461	7,097	18,047
SW Between Ports of Entry	**240**	**123**	**9,989**

See **Exhibit B** – Semiannual Report to Congress, October 2019.

Therefore, we know that the 992 named plaintiffs represent a tiny portion of the potential class members who sought refuge in the United States since the termination of "wet-foot/dry-foot" policy on January 12, 2017, who meet the proposed class definition. The true number of potential class members numbers hundreds of thousands of similarly situated individuals, such that the 992 named plaintiffs class members are "merely the floor for this numerosity inquiry[.]" *Reid v. Donelan*, 297 F.R.D. 185, 189 (D. Mass. 2014), *reversed on other grounds*, 819 F.3d 486 (1st Cir. 2016); *see also R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 368 (S.D.N.Y. 2019) (finding joinder impracticable for certain immigrants applying for legal status in part because "[n]ew members regularly and continuously join the proposed class as their SIJ status petitions are adjudicated."). As such, the proposed class is sufficiently numerous.

ii. The Proposed Class Satisfies the Commonality Requirement.

Commonality is satisfied where "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2); *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (CA11 2009) ("Under the Rule 23(a)(2) commonality requirement, a class action must involve issues that are susceptible to class-wide proof."). At bottom, "[c]ommonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (citation omitted). The common contention of injury "must be of such a nature that it is capable of class wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "What matters to class certification … is … the capacity of a class wide proceeding to general common answers apt to drive the resolution of the litigation." *Id.* (citation omitted). "[W]here plaintiffs allege widespread wrongdoing by a defendant . . . a uniform policy or practice that affects all class members" satisfies that requirement. *Thorpe v. Dist. of Columbia*, 303 F.R.D. 120, 145 (D.D.C 2014).

Here, all 992 named plaintiffs have identified a common injury: unlawful and ongoing subjection to I-220A, Order(s) of Release on Recognizance, under the purported auspices of 8 U. S. C. § 1226(a)—when they were subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and were thus only eligible to be released from the defendant's custody via a parole under 8 U.S.C. § 1182(d)(5)—and the defendants' failure to provide them with evidence of their

parole under § 1182(d)(5) out of physical custody as required by 8 CFR § 235.1(h)(2).

And in addition to this common injury, numerous questions are common to the proposed class: whether the proposed class was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) at the time they were released from immigration custody; whether their I-220A Order(s) of Release on Recognizance, under the purported auspices of 8 U. S. C. § 1226(a), are illegal; whether parole under § 1182(d)(5) was the only lawful basis to release the proposed class members; whether under 8 CFR § 235.1(h)(2), the defendants have a mandatory, nondiscretionary obligation to provide evidence of parole to persons who have been paroled from their custody into the United States; and whether the defendants failed to provide the plaintiffs and the class members with evidence of their parole out of physical custody as required by 8 CFR § 235.1(h)(2), given that § 1182(d)(5) is the only lawful explanation for the class members release from DHS custody, by DHS of its own volition, notwithstanding the illegal characterization of the release paperwork given to them by the defendants. Any one of these common issues, standing alone, is enough to satisfy Rule 23(a)(2)'s permissive standard. See *Howard v. Liquidity Servs., Inc.*, 332 F.R.D. 68, 82 (D.D.C 2017) (even a single common issue will do). Given these common questions, "factual differences among the claims of the putative class members do no defeat certification." *Cooper v. S. Co.*, 390 F.3d 695, 714 (CA11 2004), *overruled on other grounds by Ash v. Tyson Foods, Inc.* 546 U.S. 454, 457 (2006).

And the determination of these legal question will "resolve an issue that is central to the validity" of each and every class member's injury. *Dukes*, 564 U.S. at 350. Should the Court agree that class members are unlawfully subjected to I-220A, Order(s) of Release on Recognizance, under the purported auspices of 8 U. S. C. § 1226(a) and that the defendants' have failed to provide them with evidence of their parole under § 1182(d)(5) out of physical custody as required by 8 CFR § 235.1(h)(2), all class members will benefit from the requested relief, which includes habeas, declaratory, and injunctive relief.

iii. The Proposed Class Satisfies the Typicality Requirement.

The typicality requirement is centered on the relationship between the proposed class representatives and the other members of the class, and ensures that the interests of the of the named plaintiffs are the same as those of the class. *Ibrahim v. Acosta*, 326 F.R.D. 696, 700 (S.D. Fla. 2018) (citing *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1275 (11th Cir. 2009). This analysis

turns on "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named class plaintiffs, and whether other class members have been injured by the same course of conduct." *In re checking Account Overdraft Litig.*, 286 F.R.D. 645, 653 (S.D. Fla. 2012). "A sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla. 2004).

Commonality and typicality tend to overlap, as each looks to the nature of the claims presented in the case, and whether the proposed class members and the proposed class representatives and other named plaintiffs are similarly situated with respect to those claims. *Dukes*, 564 U.S. at 349 n.5 ("Both [commonality and typicality] service as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence."). Thus, in *Ibrahim*, having already discussed the questions of law and fact common to the class, the court had no trouble concluding that the typicality requirement was met for the same reasons—with virtually no additional discussion. See *Ibrahim*, 326 F.R.D. at 700 (citing *Dukes*).

Here, typicality is satisfied for largely the same reasons that commonality is satisfied. Each proposed class member (including the proposed class representatives and all other named plaintiffs), face the same principal injury, caused by the same defendant, based on the same erroneous interpretation of the governing statutes and regulations. Additionally, each proposed class member (including the proposed class representatives and all other named plaintiffs) is in the same material procedural posture, and have the same material factual history, as is relevant to the class-wide claims for relief. E.g., *Armstrong v. Davis*, 275 F.3d 849, 869 (CA9 2001) (typicality requirement is satisfied when "the cause of the injury is the same—here, the Board's discriminatory policy and practice."). The proposed class representatives and other named plaintiffs thus share an identical interest with the proposed class members in invalidating the defendants' illegal practices, and the Court should find the typicality requirement met.

iv. The Proposed Class Satisfies the Adequacy Requirement.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the

interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy depends on the resolution of two questions: "(1) whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation and . . . (2) whether plaintiffs have interests antagonistic to those of the rest of the class." *See Cheney*, 213 F.R.D. at 496 (quoting *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726 (CA11 1987).

The proposed class representatives will fairly and adequately protect the interests of the proposed class and all of the other named plaintiffs. The proposed class representatives and named plaintiffs do not seek any unique or additional benefit from this litigation that may make their interests different from or adverse to those of absent class members. Instead, proposed class representatives and named plaintiffs aim to secure the same relief—habeas, declaratory, and injunctive relief—that will protect their interests and the interests of the entire class from the defendants' illegal and unlawful actions. Nor do the proposed class representatives and named plaintiffs seek financial gain at the cost of absent class members' rights.

Proposed class counsel, meanwhile, includes experienced attorneys with extensive experience in immigration cases, federal litigation, and class action litigation. See **Exhibit C** – Declaration of Mark Prada, Esq.; **Exhibit D** – Declaration of Anthony Dominguez, Esq.; **Exhibit E** – Declaration of Claudia Canizares, Esq.

C. The Proposed Class Satisfies the Requirements of Rule 23(b)(2).

Class certification is warranted under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a while." Fed. R. Civ. P. 23(b)(2). "The critical inquiry is whether the class members have suffered a common injury that may properly be addressed by class-wide injunctive or equitable relief." *Ibrahim*, 326 F.R.D. at 701 (citing *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (CA11 1983)); *Dukes*, 564 U.S. at 360 ("the key to the (b)(2) class is 'the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'") (citation omitted).

This action falls squarely within the category of cases contemplated by Rule 23(b)(2). The agency's erroneous interpretations of the governing statutes and regulations effects all members of the proposed class. All proposed class members share a common injury, and the defendants

have acted on common grounds as to the proposed class members to cause that injury. "Further, the class-wide [habeas, declaratory, and] injunctive relief that my potentially be awarded in this action would address the common injuries shared by the class members." *Ibrahim*, 326 F.R.D. at 702; see also *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1199 (S.D. Fla. 2020) ("Because ICE's actions and inactions apply to the class generally, the Court determines that Rule 23(b)(2)'s requirements are satisfied."). A determination that the defendants' actions are unlawful would "resolve an issue that is central to the validity of each one of the [class members'] claims in one stroke." *Dukes*, 564 U.S. at 350. Accordingly, Rule 23(b)(2) is satisfied.

D. Class Certification is Appropriate for the Plaintiffs' Habeas Claims.

Every circuit court to address the issue have found that habeas petitioners can litigate common claims through a class action under Fed. R. Civ. P. 23 or similar procedure available at equity, *i.e.*, through the All-Writs Act, 28 U.S.C. § 1651. See, e.g., *U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125–26 (CA2 1974); *Bijeol v. Benson*, 513 F.2d 965, 967 (CA7 1975); *Williams v. Richardson*, 481 F.2d 358, 361 (CA8 1973); *Mead v. Parker*, 464 F.2d 1108, 1112–13 (CA9 1972); *Napier v. Gertrude*, 542 F.2d 825, 827 & n.5 (CA10 1976); *LoBue v. Christopher*, 82 F.3d 1081, 1085 (D.C. Cir. 1996).

Additionally, precedent exists in both this Circuit and this District for both certified habeas classes and considering class habeas cases on the merits. *St. Jules v. Savage*, 512 F.2d 881, 882 (5th Cir. 1975) (reversing dismissal and remanding where district court held that each petitioner's challenge had to be "considering individually" because those inmates "present a single constitutional challenge") (precedential under *Bonner* v. *City of Prichard, Ala.*, 661 F. 2d 1206, 1207 (CA11 1981) (en banc)); see also *Ibrahim*, 326 F.R.D. at 699, 701-02; *Gayle*, 614 F. Supp. 3d at 1196-1200, 1208 (certifying class action habeas for "all civil immigration detained individuals" as to the conditions of confinement claim and granting injunctive relief).

E. 8 U.S.C. § 1252(f) Does Not Prohibit the Court from Granting Classwide Declaratory, Injunctive, and Habeas Relief.

1. The Court can grant classwide habeas, declaratory, and injunctive relief despite the existence of the remedy limitation found at 8 U.S.C. § 1252(f)(1), and that provision does not prevent the Court for certifying the proposed class in this case. That section states:

> Regardless of the nature of the action or claim or the identity of the party or parties brining the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f)(1).

This section is narrow, only affecting the availability of remedies, while not barring claims outright. *Biden v. Texas*, 597 U.S. 785, 798 (2022) ("[S]ection 1252(f)(1) withdraws a district court's "jurisdiction or authority" to grant a particular form of relief. It does not deprive the lower courts of all subject matter jurisdiction over claims brought under sections 1221 through 1232 of the INA."). In fact, it is merely a nonjurisdictional claim processing rule. *Id.* ("Section 1252(f)(1) deprives courts of the power to issue a specific category of remedies: those that 'enjoin or restrain the operation of ' the relevant sections of the statute. A limitation on subject matter jurisdiction, by contrast, restricts a court's 'power to adjudicate a case.' ") (citation omitted); *id.* at 801 ("In short, we see no basis for the conclusion that section 1252(f)(1) concerns subject matter jurisdiction.")

2. The meaning of this bar is generally understood to "prohibit[] federal courts from granting classwide injunctive relief." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481-82 (1999); see also *Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018). However, "[t]he plain language of § 1252(f) only strips courts of the 'jurisdiction or authority to *enjoin* or *restrain*,'" and "[n]either term encompasses declaratory relief." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 200 (D.D.C. 2020) (quoting 8 U.S.C. § 1252(f)(1)) (emphasis added); accord *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem* (*RAICES*), No. CV 25-306 (RDM), — F. Supp. 3d —, 2025 WL 1825431, at *20 (D.D.C. July 2, 2025), appeal filed, No. 25-5243 (CADC July 3, 2025) ("Here, Defendants candidly concede that the D.C. Circuit rejected their capacious reading of § 1252(f)(1) in *Make the Road New York*, where the court held that § 1252(f)(1) 'prohibits only injunctions' and 'does not proscribe the issuance of a declaratory judgment,' 962 F.3d at 635."); see also *Coal. for Humane Immigrant Rts. v. Noem*, — F. Supp. 3d —, No. 25-CV-872 (JMC), 2025 WL 2192986, at *13 & n. 6 (D.D.C. Aug. 1, 2025), appeal filed, No. 25-5289 (CADC Aug. 11, 2025) ("[B]oth the Fifth

Circuit and numerous district courts, including in this District, have held that section 1252(f)(1) does not bar a remedy of vacatur under APA section 706.") (cases collected at n. 16).

And, to be sure, the Supreme Court has repeatedly recognized that distinction. See e.g., *Biden*, 595 U.S. at 800; *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (opinion of Alito, J., joined by Roberts, C.J., and Kavanaugh, J.) (explaining that § 1252(f)(1) did not eliminate "jurisdiction to entertain the plaintiff's request for declaratory relief."); accord *RAICES*, — F. Supp. 3d —, 2025 WL 1825431, at *20–21 ("It bears note, however, that six Supreme Court justices have expressed the same view, albeit in separate opinions in different cases.") (discussing cases).

Additionally, Rule 23(b)(2) permits a class action where "final injunctive relief **or** corresponding declaratory relief is appropriate respecting the class as a whole . . ." Fed. R. Civ. P. 23(b)(2) (emphasis added). Rule 23(b)(2) "does not require that both forms of relief be sought, and a class action seeking solely declaratory relief may be certified." 7AA Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1775 (3d ed. 2025); see also *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) ("Rule 23(b)(2) applies only when a single injunction **or** declaratory judgment would provide relief to each member of the class.") (emphasis added). Thus, § 1252(f) does not impede the Court from granting declaratory relief under Count II (D.E. 22, p. 153, Count II, Declaratory Relief Regarding Unlawful Withholding of Parole Documentation).

3. Notwithstanding the availability of the declaratory relief the plaintiffs and proposed class seeks § 1252(f)(1) does not bar their request for injunctive relief (D.E. 22, p. 154, Count III, Injunctive Relief Regarding Unlawful Withholding of Parole Documentation), because the plaintiffs and proposed class do not seek to enjoin "the operation of the provisions of part IV of this subchapter[.]" 8 U.S.C. § 1252(f)(1).

Chapter IV of the INA specifically includes §§ 231–244 [8 U.S.C. §§ 1221–1254a]. Here, the plaintiffs and proposed class members were detained and subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), subject only to release from custody via parole under § 1182(d)(5)(A). However, upon their release from DHS custody, DHS failed to provide each and every class member documentation of their parole under §1182(d)(5)(A), documentation which is required by operation of 8 CFR § 235.1(h)(2). Therefore, as it relates to the request for injunctive relief (D.E. 22, p. 154, Count III), the plaintiffs and proposed class merely seek to enforce a regulation regarding the implementation of a grant of parole under § 1182(d)(5)(A)—parole which

was already granted—which creates a mandatory, nondiscretionary obligation under 8 CFR § 235.1(h)(2) to provide evidence of parole to people who have already been paroled out of custody into the United States. Seeking to enforce the operation of that regulation, or even § 1182(d)(5)(A) itself,[2] does not fall within Chapter IV of the INA, and thus the injunctive relief requested herein is outside the scope of § 1252(f)(1). And to be sure, "even when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations." *Kurapati v. U.S. Bureau of Citizenship and Immigration Services*, 775 F.3d 1255, 1262 (CA11 2014).

4. Additionally, it is clear that § 1252(f)(1) does not preclude classwide habeas relief. See *Rodriguez v. Marin*, 909 F.3d 242, 256 (CA9 2018) ("Section 1252(f)(1) also does not bar the habeas class action because it lacks a clear statement repealing the court's habeas jurisdiction.") (citation omitted); *Hamama v. Adducci*, 912 F.3d 869, 879 (CA6 2018) (noting, in class action, that "there is nothing barring a class from seeking a traditional writ of habeas corpus (which is distinct from injunctive relief[])]" (citing *Jennings v. Rodriguez*, 583 U.S. 281, 324 (2018) (Thomas, J., concurring in part and concurring in judgment))); *Malam v. Adducci*, 475 F. Supp. 3d 721, 743 (E.D. Mich. 2020), amended, 2020 WL 4818894 (E.D. Mich. Aug. 19, 2020) (certifying habeas subclass); see also *Ibrahim*, 326 F.R.D. at 699, 701-02 (certifying habeas class); *Gayle*, 614 F. Supp. 3d at 1196-1200, 1208 (certifying habeas class).

Further, the Supreme Court has also considered several class habeas actions on the merits. See, e.g., *Johnson v. Guzman Chavez*, 594 U.S. 523, 532-33 (2021) (Virginia-wide class of detainees); *Nielsen v. Preap*, 586 U.S. 392, 400-01 (2019) (California-wide and Western District of Washington-wide classes); *Jennings*, 583 U.S. at 290 (Central District of California-wide class). Given the considerable equitable authority in habeas, courts have not hesitated to certify habeas classes—and grant classwide habeas relief—where the government has acted beyond its authority as to a group of detained immigrants. See, e.g., *J.A.V. v. Trump*, 349 F.R.D. 152, 155-56, 160

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[2] To be clear, Count III seeks to enforce the operation of the regulation at 8 CFR § 235.1(h)(2), not any action under 8 U. S. C. § 1182(d)(5) or any other statute. Under the plantiffs' theory of the case, they were already paroled in the past when DHS released them from its physical custody. See *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted."). Thus, in no way does Count III seek to "enjoin or restrain the operation of [any] provisio[n]," § 1252(f)(1), of Title 8.

(S.D. Tex. 2025); *G.F.F. v. Trump*, 348 F.R.D. 586, 588-89 (S.D.N.Y. 2025).

The reason this is so is because habeas is a common law, not an equitable or injunctive, remedy. Under Count I, the First Amended Complaint asserts that "the plaintiffs and the class members are entitled to a writ (or writs) of habeas corpus immediately releasing them from their orders of release on recognizance, and declaring that they were paroled out of custody, thereby making them subject only to lawful conditions of parole under § 1182(d)(5) and its implementing regulations." (D.E. 22, p. 152 ¶ 116.) The plaintiffs' and the class members' ongoing subjection to orders of release on recognizance under the purported auspices of 8 U. S. C. § 1226(a) amounts to custody cognizable in habeas under 28 U. S. C. §§ 2241, et seq. See *Clements* v. *Fla.*, 59 F. 4th 1204, 1213 (CA11 2023) ("non-citizens released on supervision while awaiting a final decision in their immigration proceedings are deemed to be 'in custody' for purposes of habeas corpus") (citing *Romero* v. *Sec'y, DHS*, 20 F. 4th 1374, 1379 (CA11 2021); and *United States ex rel. Marcello* v. *Dist. Dir. of INS, New Orleans*, 634 F. 2d 964, 971 & n. 11 (5th Cir. 1981) (precedential under *Bonner* v. *City of Prichard, Ala.*, 661 F. 2d 1206, 1207 (CA11 1981) (en banc))); accord *Hensley* v. *Mun. Ct.*, 411 U. S. 345 (1973) (holding that "a person released on his own recognizance is 'in custody' within the meaning of the federal habeas corpus statute"); *Foster* v. *Gilbert*, 264 F. Supp. 209, 211–12 (S.D. Fla. 1967) ("the petitioner, having been released from arrest in the custody of his attorney, . . . is enough to constitute 'custody' ").

It is true that, in addition to immediate release from custody, "[d]eclaratory and injunctive relief are proper habeas remedies," *Mayorga* v. *Meade*, No. 24-cv-22131-BLOOM/Elfenbein, 2024 WL 4298815, at *2 (S.D. Fla. Sept. 26, 2024) (citations omitted); accord *Carafas* v. *LaVallee*, 391 U. S. 234, 239 (1968) ("[T]he statute does not limit the relief that may be granted to discharge of the applicant from physical custody."); *id.* ("The 1966 amendments to the habeas corpus statute seem specifically to contemplate the possibility of **relief other than immediate release** from physical custody.") (emphasis added). However, importantly, an order of release from custody is **not** an injunctive remedy. *Preiser* v. *Rodriguez*, 411 U. S. 475, 484 (1973) ("It is clear . . . from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to **secure release** from illegal custody.") (emphasis added); compare *Dep't of Homeland Sec.* v. *Thuraissigiam*, 591 U. S. 103, 118 (2020) ("Such relief might fit an injunction or writ of mandamus—which tellingly, his petition also requested, *id.*, at 33—but that relief falls outside the

scope of the common-law habeas writ."); *id.* ("the historic role of habeas is to **secure release** from custody") (emphasis added); see also *Wilkinson* v. *Dotson*, 544 U. S. 74, 79–80 (2005) (contrasting "an otherwise proper injunction" from "**immediate release or a shorter period of incarceration**") (emphasis added); *Munaf* v. *Geren*, 553 U. S. 674, 692 (2008) (contrasting "request[ing] an injunction" from "**seek[ing] 'release'** ") (emphasis added); contrast *Garland* v. *Aleman Gonzalez*, 596 U. S. 543, 551 (2022) (addressing "injunctions requiring the Government to provide bond hearings"). Thus, § 1252(f)(1) does not impede the Court from granting habeas relief under Count I because that cause of action does not seek any form of injunctive relief, as it merely seeks the core habeas relief of immediate release from unlawful custody.

V. THE COURT SHOULD DESIGNATE PLAINTIFFS' COUNSEL AS CLASS COUNSEL

Upon certifying the class, the Court must also appoint class counsel. Fed. R. Civ. P. 23(c)(1)(B); 23(g). Rule 23(g) requires the Court to consider the following four factors: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). The Court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

The plaintiffs' counsel satisfies all four criteria. The plaintiffs are jointly represented by Prada Dominguez, PLLC and Canizares Law Group, LLC. Counsel from these firms are experienced federal litigators, including specific experience with class action litigation, and experienced immigration attorneys, well-versed in the representing Cuban nationals in all forms of immigration matters. *See* **Exhibits C-E** – Declarations of Proposed Class Counsel.

As reflected in the complaint filed this matter (D.E. 22, Amended Complaint), the plaintiffs' counsel have already devoted substantial time investigating the factual and legal issues in this case, and will continue to do so throughout the pendency of the litigation. *Ibrahim*, 326 F.R.D. at 702 ("In consideration of the above factors, and the substantial efforts they have undertaken in this litigation to date, the Court finds it appropriate to appoint counsel for named Plaintiffs as class counsel in this action.").

VI. CONCLUSION

Accordingly, The Court should certify the proposed class under Rule 23(a) and 23(b)(2), appoint the individual plaintiffs named herein as Class Representatives, and appoint the undersigned as Class Counsel.

Respectfully submitted,

Dated: October 14, 2025

s/ Anthony Richard Dominguez
Fla. Bar No. 1002234
s/ Mark Andrew Prada
Fla. Bar No. 91997
s/ Maitte Barrientos
Fla. Bar No. 1010180
Prada Dominguez, PLLC
12940 SW 128th St. Ste. 203.
Miami, FL 33186
o. 786.703.2061
adominguez@pradadominguez.com
mprada@pradadominguez.com
maitte@pradadominguez.com

s/ Claudia Canizares
Fla. Bar No. 98308
Canizares Law Group, LLC
8360 W. Flagler Street, Suite 200
Miami, FL 33144
o. 305.680.0036
claudia@abogadadeinmigracion.us

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by e-mail, pursuant to consent in writing under Fed. R. Civ. P. 5(b)(2)(E), on October 14, 2025, on all counsel or parties of record on the Service List below.

Dated: October 14, 2025

s/ Anthony Richard Dominguez
Fla. Bar No. 1002234
Prada Dominguez, PLLC

Counsel for Plaintiffs

Service List

Natalie Diaz
Assistant U.S. Attorney
Florida Bar No. 85834
E-mail: Natalie.Diaz@usdoj.gov
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Telephone: (305) 961-9306
Attorney for Defendants