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.*,

Defendants.
_____/

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO STAY PROCEEDINGS

The plaintiffs, by and through the undersigned, hereby oppose the defendant's motion to stay these proceedings (D.E. 26).

Background

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 served every class member a Notice to Appear ("NTA"), thereby commenced removal proceedings un-

[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.

der 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. *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), pursuing three causes of action:

I. Habeas relief in the form of immediate release from their ongoing unlawful custody (D.E. 22, pp. 151-52, Count I, Habeas Relief);

II. 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

III. 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).

The second and third counts are in aid of the principal habeas claim under Count I.

The prompt resolution of this case is important for two reasons. First, the injuries they are suffering affects the ability of this population of refugees fleeing a totalitarian communist dictatorship to seek permanent residence under the Cuban Refugee Adjustment Act. See *Matter of Mesa*, 12 I. & N. Dec. 432, 434–45 (Dep. Assoc. Comm'r 1967) ("The purpose of the Act upon which these applications are based is to provide a ready means to permit certain Cuban refugees in the United States to adjust to permanent resident status," such that a "major objective of this opportunity for adjustment of status was, therefore, to aid in these refugees' resettlement by enhancing their opportunity to qualify for employment here and in turn reduce the Government's expenditures in their behalf.") (footnote omitted).

Second, a new urgency has emerged as a consequence of the Department of Homeland Security's unlawful practice of mis-papering parole releases under § 1182(d)(5)(A) as purported releases on recognizance. Earlier this year, the Department announced new policies whereby it would pursue expedited removal in a new, broadened fashion. *Coalition for Humane Immigrant Rights* v. *Noem* (*CHIR*), — F. Supp. 3d —, No. 25-CV-872 (JMC), 2025 WL 2192986, at *9–*10 (D.D.C. Aug. 1, 2025), appeal filed, No. 25-5289 (CADC Aug. 11, 2025). Cuban nationals who would qualify as class members under this case have sought individualized habeas

relief from unlawful applications of expedited removal against them, but have faced difficult jurisdictional issues in those challenges. See, *e. g.*, *Chaviano* v. *Bondi*, No. 25-22451-CIV, 2025 WL 1744349, at *1 (S.D. Fla. June 23, 2025), appeal pending, No. 25-12153 (CA11); and *Quintero* v. *Field Off. Dir. of Miami ICE Field Off.*, No. 25-cv-22428-CMA, ECF No. 25 (S.D. Fla. June 23, 2025), vacated on mootness grounds, No. 25-12147, 2025 WL 2589756 (CA11 Sept. 5, 2025).

However, the relief requested here—recognition of having been paroled—would have the additional benefit of providing an arguable defense to unlawful expedited removal because people who have been paroled into the United States cannot be subjected to expedited removal. *CHIR*, 2025 WL 2192986, at *21–*30; *id.*, at *22 ("the Designation Provision forbids the expedited removal of noncitizens who have been, at any point in time, paroled"); *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019).

Argument

The core of this case is the resolution of Count I's habeas claim, with the additional claims simply being in aid of Count I to provide a more complete form of relief to the plaintiffs and the putative class. In response, the defendants ask this Court to surrender its jurisdiction to the Court of Appeals. *Miccosukee Tribe of Indians of Fla.* v. *S. Fla. Water Mgmt. Dist.*, 559 F. 3d 1191, 1196 (CA11 2009) ("To the extent jurisdiction was 'surrendered' to any court, . . . it was surrendered to this Court, the same one that would decide any appeal from any final judgment in the stayed case, if the proceedings had not been stayed.") (citation omitted). There are three reasons why the Court should deny the defendant's motion, and proceed to adjudicate (and grant) the plaintiffs' Motion for Class Certification and Appointment of Class Counsel (D.E. 24), and their Motion for Order to Show Cause and for Enlarged Briefing Page Limits (D.E. 25).

1. While it is generally true that "district courts ordinarily have authority to issue stays, where such a stay would be a proper exercise of discretion," *Ryan* v. *Gonzales*, 568 U. S. 57, 73 (2013) (cleaned up), background principles in habeas statutes do "circumscribe their discretion," *Rhines* v. *Weber*, 544 U. S. 269, 276 (2005). For example, both the habeas statutes, 28 U. S. C. § 2243 ("The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."), and 28 U. S. C. § 1657(a) ("court[s] shall expedite the consideration of any action brought under chapter 153 . . . of this title") require prompt resolution of habeas cases. "Stay and abeyance, if employed too frequently, has the potential to undermine," *Rhine*, 544 U. S., at 277, these statutes' goals of prompt resolution, and thus "stay and abeyance should be available only in limited circumstances," *id.*

The plaintiffs have presented two motions before the Court that they believe can take this case through final judgment: their motion for class certification (D.E. 24), and their motion for an order to show cause (D.E. 25). Meanwhile, the consolidated Eleventh Circuit cases noted by the defendants (and which the undersigned are litigating as well), are petitions for review from orders of removal, and are set for oral argument on December 12, 2025.

While the consolidated Eleventh Circuit cases may bear on the ultimate merits decision presented by this case, they have absolutely nothing to do with the motion for class certification (D.E. 24) that is pending. As for the motion for order to show cause, the plaintiffs request that the defendants be ordered to file a return within 90 days of the Court's order. (D.E. 25). If granted today, that would put the defendants deadline in the middle of January, more than a month after the oral argument to be held in the Eleventh Circuit. Of course, the defendants still have an opportunity to respond, so the deadline would be later than that. Denying a stay of this action now would not preclude the defendants from requesting an extension of their return dead-

line in the future depending upon the circumstances come January. Managing this case in that fashion would further, rather than "undermine," *Rhine*, 544 U. S., at 277, the goals of 28 U. S. C. §§ 2243 & 1657(a).

2. As noted above, there is a strong humanitarian background reason for denying a stay of this action. Earlier this year, the Department of Homeland Security announced new policies whereby it would pursue expedited removal in a new, broadened fashion. *Coalition for Humane Immigrant Rights* v. *Noem* (*CHIR*), — F. Supp. 3d —, No. 25-CV-872 (JMC), 2025 WL 2192986, at *9–*10 (D.D.C. Aug. 1, 2025), appeal filed, No. 25-5289 (CADC Aug. 11, 2025). This includes the dismissal of removal proceedings before a neutral immigration judge attended by full due process, followed by arrest and the commencement of expedited removal proceedings which result in automatic deportation without any judge or trial. See 8 U. S. C. § 1225(b)(1); 8 CFR §§ 235.3(b)(2)(i) & (ii). Cuban nationals who would qualify as class members under this case have sought individualized habeas relief from unlawful applications of expedited removal against them, but have faced difficult jurisdictional issues in those challenges. See, *e. g.*, *Chaviano* v. *Bondi*, No. 25-22451-CIV, 2025 WL 1744349, at *1 (S.D. Fla. June 23, 2025), appeal pending, No. 25-12153 (CA11); and *Quintero* v. *Field Off. Dir. of Miami ICE Field Off.*, No. 25-cv-22428-CMA, ECF No. 25 (S.D. Fla. June 23, 2025), vacated on mootness grounds, No. 25-12147, 2025 WL 2589756 (CA11 Sept. 5, 2025).

News reports have illustrated the seriousness of this situation, and the terror it has been causing the Cuban immigrant community, including the named plaintiffs here and the putative class they seek to represent. See Llanos, J., Florida Phoenix, *Cuban man tries to strangle himself following arrest in Miami immigration court: Arrests after dismissal of immigration pro-*

ceedings ramping up nationwide (May 30, 2025);[2] Villareal, A., The Guardian, *She fled Cuba for asylum – then was snatched from a US immigration courtroom* (July 26, 2025);[3] Taylor, I., CBS News, *Video shows ICE detaining Cuban immigrant after Miami court asylum hearing* (June 18, 2025).[4]

However, the relief requested here—recognition of having been paroled—would have the additional benefit of providing an arguable defense to unlawful expedited removal because people who have been paroled into the United States cannot be subjected to expedited removal. *CHIR*, 2025 WL 2192986, at *21–*30; *id.*, at *22 ("the Designation Provision forbids the expedited removal of noncitizens who have been, at any point in time, paroled"); *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019). These circumstances counsel in favor of a denial of the defendants' motion.

3. The defendants' motion for a stay in this case stands in stark contrast to how it has litigated a different, but very similar case before this Court — *Echazabal-Verdecia* v. *Noem*, No. 25-cv-22335-JB (S.D. Fla.). That case is also a putative class action seeking to resolve the same parole issue presented by this case, albeit with **different and distinct** theories of law and causes of action, and no motions having been filed by the plaintiff there. But the government never sought a stay of that case, instead choosing to litigate a motion to dismiss through full briefing. This suggests that the defendants' true concern here is not efficiency, but rather some other matter.

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[2] Available at: https://floridaphoenix.com/2025/05/30/cuban-man-tries-to-strangle-himself-following-arrest-in-miami-immigration-court/ (accessed Oct. 15, 2025).

[3] Available at: https://www.theguardian.com/us-news/2025/jul/26/cuba-asylum-seeker-ice-courtroom (accessed Oct. 15, 2025).

[4] Available at: https://www.cbsnews.com/miami/news/video-shows-ice-detaining-cuban-immigrant-after-miami-court-asylum-hearing/ (accessed Oct. 15, 2025).

Conclusion

For the foregoing reasons, the Court should deny the defendants' motion for a stay of these proceedings (D.E. 26).

Respectfully submitted,

Dated: October 15, 2025

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