UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-23665-JB

Pedro BELLO-RUBIO, *et al.*,

Plaintiff,

v.

KRISTI NOEM, in her official Capacity as Secretary of Homeland Security, *et al.*,

Defendants.

_____/

DEFENDANTS' MOTION TO DISMISS FIRST AMENDED CLASS ACTION PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Kristi Noem, in her official capacity as Secretary of Homeland Security, *et al.*, ("Defendants"), by and through the undersigned counsel, respectfully moves to dismiss Pedro Bello-Rubio, *et al.*, ("Plaintiffs") putative First Amended Class Action Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Amended Petition") for the reasons explained below.

Plaintiffs raise three counts in their Amended Petition. In Count I, Habeas Corpus, Plaintiffs request that the Court release them from their Form I-220A, Order of Release on Recognizance ("release on recognizance" or "conditional parole") under 8 U.S.C.§ 1226(a)(2)(B) and declare that their release was a humanitarian parole under 8 U.S.C. § 1182(d)(5). In Counts II and III, Plaintiffs allege Defendants have unreasonably withheld evidence of their humanitarian parole under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1).

All counts should be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Section 1252(a)(2)(B)(ii) strips the Court of jurisdiction over any claim challenging the Department of Homeland Security's ("DHS") discretionary decision to release Plaintiffs with a release on recognizance and its discretionary decision to decline to release Plaintiffs with a humanitarian parole. Similarly, the Court lacks jurisdiction under 8 U.S.C. § 1226(e) to review DHS's discretionary decision to release Plaintiffs from detention with a release

on recognizance.

Moreover, venue in the Southern District of Florida is improper under Federal Rule of Civil Procedure 12(b)(3) as to the Plaintiffs that are subject to a release on recognizance overseen by Immigration and Custom Enforcement ("ICE") offices located outside of the district.

Should the Court find that § 1252(a)(2)(B)(ii) does not strip jurisdiction, and that venue is proper, dismissal is warranted as to each of the three counts. Specifically, as to Count I, Habeas Corpus, should be denied because: (1) Plaintiffs are not "in custody" because their claims do not fall within the collateral conditions exception; and (2) As to the Plaintiffs whose release on recognizance is overseen by DHS officials outside the Southern District of Florida, the Amended Petition was not filed in their district of oversight and does not name the ICE official that exercises legal control over their release on recognizance.

Additionally, Count I for Habeas Corpus and Counts II and III for Unlawful Withholding of Parole Documentation under the APA should be dismissed for failure to state a claim for which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) because humanitarian parole was not unreasonably withheld. Contrary to Plaintiffs' assertions, the application of the procedural regularity doctrine does not find that Plaintiffs are entitled to constructive humanitarian parole, especially because their prior release was based on the interpretation of the law at the time. Moreover, all of the cases on which Plaintiffs rely are factually distinguishable. Importantly, some of them even predate enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), which contains controlling provisions regarding parole. Finally, Plaintiffs' assertions ignore several federal Circuit Courts of Appeals decisions that have held that an order of release on recognizance is not equivalent to a humanitarian parole.

Accordingly, the Court should dismiss Plaintiffs' Amended Petition.

I. FACTUAL BACKGROUND

Plaintiffs are nine-hundred ninety-two (992) natives and citizens of Cuba who arrived in the United States. *See* (ECF No. 22 at ¶ 16). They entered the United States without being admitted or paroled, in violation of the Immigration and Nationality Act ("INA") § 212 (a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *See e.g.*, (ECF No. 24-1 at 6, 16, 31, 42, and 50). Plaintiffs were released from immigration detention with an order of release on recognizance under § 1226(a). *See* (ECF No. 22 at ¶ 21). They were not released with a humanitarian parole.

On September 19, 2025, several years after Plaintiffs' release from detention, the Board of

Immigration Appeals ("Board") decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yahure Hurtado*, the Board clarified that aliens who entered the United States without inspection, such as Plaintiffs, are considered applicants for admission, and when they are not subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A), they fall under the "catchall" mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 217-19 (explaining what aliens are subject to mandatory detention under § 1225).

The Board noted this was the first time this issue had been brought on appeal and acknowledged that, historically, aliens that entered without inspection, such as Plaintiffs, routinely received bond hearings. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 225, n.3 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us.").

II. STATUTORY BACKGROUND

A. Applicants for admission under 8 U.S.C. § 1225(a)(1).

According to § 1225(a)(1), an alien "present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." The same statutory provision also treats as an "applicant for admission" any alien "who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

B. Applicants for admission are subject to mandatory detention under § 1225(b).

> [Section] 1225(b) applies primarily to aliens seeking entry into the United States ("applicants for admission" in the language of the statute). Section 1225(b) divides these applicants into two categories. First, certain aliens claiming a credible fear of persecution under §1225(b)(1) "shall be detained for further consideration of the application for asylum." §1225(b)(1)(B)(ii). Second, aliens falling within the scope of §1225(b)(2) "shall be detained for a [removal] proceeding." §1225(b)(2)(A).
>
> Read most naturally, §§1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for "further consideration of the application for asylum," and §1225(b)(2) aliens are in turn detained for "[removal] proceeding[s]." Once those proceedings end, detention under §1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention.

Jennings v. Rodriguez, 583 U.S. 281, 297 (2018) (quotations in original); *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1277 (N.D. Fla. 2023) (Stating that "§1225(b) requires detention of applicants for admission at the Southwest Border and that DHS may not release these aliens under §1226(a).").

C. The only lawful avenue for release for those subject to mandatory detention is humanitarian parole under § 1182(d)(5)(A).

> Regardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on parole "for urgent humanitarian reasons or significant public benefit." § 1182(d)(5)(A); see also 8 C.F.R. §§ 212.5(b), 235.3 (2017). Such parole, however, "shall not be regarded as an admission of the alien." 8 U. S. C. §1182(d)(5)(A). Instead, when the purpose of the parole has been served, "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

Jennings, 583 U.S. at 288 (quotations in original).

D. Humanitarian parole is discretionary and granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

> The Secretary of Homeland Security *may*…in [her] *discretion* parole into the United States temporarily under such conditions as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A) (emphasis added).

"An alien who is paroled under section 1182(d)(5) of this title . . . shall not be considered to have been admitted." *Id.* § 1101(a)(13)(B). Then, "after [the] purpose of [the] parole has been served, [the] alien's status reverts to that which he had at time he was inspected and paroled into United States[.]" *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011) (citing 8 U.S.C. § 1182(d)(5)(A)).

E. An order of release on recognizance under § 1226(a) is a discretionary form of release from immigration detention.

An order of release on recognizance under § 1226(a)(2)(B) is distinct from humanitarian

parole under § 1182(d)(5) and refers to releasing an alien on his own recognizance. *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023) ("The respondents were…released on their own recognizance under section 236 of the INA, 8 U.S.C. § 1226…"). Further, the Form I-220A, Order of Release on Recognizance, is the form used to release individuals, such as Plaintiff, from immigration custody on their own recognizance, otherwise known as "conditional parole," pursuant to § 1226(a)(2)(B).

Specifically, § 1226(a) states:

> § 1226. Apprehension and detention of aliens
>
> (a) Arrest, detention, and release
>
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-
>
> (1) may continue to detain the arrested alien; and
>
> (2) *may* release the alien on-
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole; but
>
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

8 U.S.C. § 1226(a) (emphasis added).

F. Eligibility for adjustment under the Cuban Adjustment Act of 1966.

The Cuban Adjustment Act of 1966 allows Cuban nationals present in the United States to adjust their status to that of lawful permanent residents. Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (codified as amended at 8 U.S.C. § 1255 note); *see also* 8 C.F.R. § 245.2(a)(2)(ii). It applies to a person who is "a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year." Pub. L. No. 89-732, § 1.

G. The Impact of the 2017 termination of "wet-foot/dry foot" on the Cuban Adjustment Act of 1966.

On January 12, 2017, Former Secretary of Homeland Security Johnson announced, "several changes to Department of Homeland Security (DHS) policies and regulations affecting Cuban nationals." U.S. Dep't of Homeland Security., Fact Sheet: Changes to Parole and Expedited

Removal Policies Affecting Cuban Nationals, https://www.dhs.gov/publication/changes-parole-and-expedited-removal-policies-affecting-cuban-nationals

"Specifically, DHS has eliminated a special parole policy for arriving Cuban nationals commonly known as the "wet-foot/dry-foot" policy…". *Id.* "It is now Department policy to consider any requests for such parole in the same manner as parole requests filed by nationals of other countries." *Id.*

Additionally, "DHS… also eliminat[ed] an exemption that previously prevented the use of expedited removal proceedings for Cuban nationals apprehended at ports of entry or near the border." *Id.*

> Specifically, as to humanitarian parole:
>
> The policy commonly known as "wet-foot/dry-foot" generally refers to an understanding under which Cuban migrants traveling to the United States who are intercepted at sea ("wet foot") are returned to Cuba or resettled in a third country, while those who make it to U.S. soil ("dry foot") are able to request parole and, if granted, lawful permanent resident status under the Cuban Adjustment Act.
>
> The former INS established a policy strongly encouraging the parole of Cuban nationals who arrived in the United States so that they could apply for relief under the Cuban Adjustment Act. Secretary Johnson is rescinding this outdated INS policy.
>
> *Id.*

III. ARGUMENT

A. SECTION 1226(e) PRECLUDES SUBJECT MATTER JURISDICTION OVER ALL OF PLAINTIFFS' CLAIMS.

A district court must dismiss an action if the court lacks jurisdiction over the subject matter of the suit. *See* Fed. R. Civ. P. 12(b)(1), 12(h)(3). Plaintiffs challenge to DHS' decision to release Plaintiffs from detention with a release on recognizance under § 1226(a)(2)(B), instead of a humanitarian parole under § 1182(d)(5)(A), cannot be reviewed under § 1226(e).

Section 1226(e) provides:

> The Attorney General's discretionary judgment regarding the application of [§ 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 1226(e).

Section "1226(e) precludes an alien from challenging a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release.'" *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)). Here, Plaintiffs' challenge fall within the purview of § 1226(e) because they are asking the Court to void the release on recognizance, which was a discretionary decision made by DHS. *See Dos Santos v. Meade*, 20-cv-22996-GAYLES, 2020 WL 6565212, 2020 U.S. Dist. LEXIS 208986, at *9 (S.D. Fla. Nov. 9, 2020) (finding that § 1226(e) applied to strip the Court of jurisdiction to review DHS's decision to revoke petitioner's discretionary detention under § 1226(a)).

Thus, all the claims should be dismissed for lack of subject matter jurisdiction under § 1226(e).

B. SECTION 1252(a)(2)(B)(ii) PRECLUDES SUBJECT MATTER JURISDICTION OVER ALL OF PLAINTIFFS' CLAIMS.

Similarly, § 1252(a)(2)(B)(ii) explicitly precludes jurisdiction over any such claims. Section 1252(a)(2)(B)(ii) states "regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—....any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the *discretion* of the Attorney General or the Secretary of Homeland Security..." § 1252(a)(2)(B)(ii) (emphasis added).

By its plain terms, § 1252(a)(2)(B)(ii) strips the court of jurisdiction over any claim challenging DHS' *discretionary decision* to release Plaintiffs on recognizance. As explained above, § 1226(a) allows DHS to exercise its discretion to release certain aliens from detention on their own recognizance. Section 1226(a) ("may release the alien..."). *See Dos Santos*, 2020 U.S. Dist. LEXIS 208986, at *9 ("Because Petitioner was detained through the Attorney General's discretionary authority, see 8 U.S.C. § 1226(a), the Court is without jurisdiction to consider the Petition.").

Further, § 1252(a)(2)(B)(ii) strips the court of jurisdiction over any claim challenging DHS' *discretionary decision and action* to release an alien with a humanitarian parole under § 1182(d)(5)(A). Section 1182(d)(5)(A) unequivocally states that the *discretionary* decision to issue humanitarian parole shall be made on a case-by-case basis. Section 1182(d)(5)(A). Several Courts have found that § 1252(a)(2)(B)(ii) strips them of jurisdiction over DHS' discretionary decision to

not award humanitarian parole. *See Martinez Mayorga v. Meade*, Case No. 24-cv-22131-BLOOM/Elfenbein, 2024 WL 4298815, 2024 U.S. Dist. LEXIS 174421, at *19, *20 (S.D. Fla. Sept. 26, 2024) (concluding that the court lacked jurisdiction under § 1252(a)(2)(B)(ii) to review the "decision to have not granted release through [humanitarian] parole due to the health of Petitioner's mother" as it is a "discretionary" determination...."); *Vazquez Romero v. Garland*, 999 F.3d 656, 665 (9th Cir. 2021) ("We have previously concluded that the jurisdiction-stripping provision of § 1252(a)(2)(B)(ii) applies to discretionary parole decisions under § 1182(d)(5).") (citing *Hassan v. Chertoff*, 593 F.3d 785, 790 (9th Cir. 2010)); *Cf. Dixit ex rel. Ad v. Fairnot*, 2025 U.S. App. LEXIS 15393, at *12, 2025 WL 1733887 (11th. Cir. 2025) (citing *Mejia Rodriguez v. Reno*, 178 F.3d 1139, 1146 (11th Cir. 1999) (quotation omitted) ("the failure to receive relief that is purely discretionary in nature, such as humanitarian parole, does not amount to a deprivation of a liberty interest.").

Notably, in *Alonso-Escobar*, the U.S. Court of Appeals for the Eleventh Circuit found the district court properly dismissed plaintiff's complaint for lack of subject matter jurisdiction where plaintiff "sought a court order requiring the USCIS to grant him parole into the United States so he could apply to adjust his immigration status under the Cuban Adjustment Act." *Alonso-Escobar v. USCIS Field Office Dir.*, 462 Fed. Appx. 933, 934-35 (11th Cir. 2012). It held the district court lacked subject matter jurisdiction under § 1252(a)(2)(B)(ii) because plaintiff effectively "challenged Defendants' discretionary decision not to parole him into the United States." *Id.*

Here, Plaintiffs request the Court overrule DHS's discretion on two combined fronts. First, they ask the Court to void Defendants' discretionary decision to release Plaintiffs on recognizance. Second, they ask the Court to order that DHS, wholesale, instead of on a case-by-case basis, grant Plaintiffs the discretionary humanitarian parole. Plaintiffs' request, effectively, overrides DHS' discretion to review and determine each Plaintiff's unique circumstances to determine if a parole is or was warranted for urgent humanitarian reasons or significant public benefit under § 1182(d)(5)(A).[1]

Thus, as in *Alonso-Escobar*, all claims should be dismissed for lack of subject matter jurisdiction under § 1252(a)(2)(B)(ii).

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[1] A release with an order of recognizance does not preclude an individual from applying for humanitarian parole under § 1182(d)(5)(A). An individual can be released on recognizance and also be granted humanitarian parole.

C. VENUE IS IMPROPER AS TO THE PLAINTIFFS THAT ARE DETAINED OUTSIDE THE SOUTHERN DISTRICT OF FLORIDA OR REPORT TO ICE FIELD OFFICES OUTSIDE THE SOUTHERN DISTRICT OF FLORIDA.

Moreover, the Court should dismiss the claims of Plaintiffs that are detained or report to ICE Field Offices outside the Southern District of Florida for improper venue under Fed.R.Civ.P.12(b)(3). Whether venue is proper "depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws." *Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 55 (2013).

Venue is proper in the following locations: "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

This case involves 992 Plaintiffs that report to various Immigration and Customs Enforcement ("ICE") offices across the United States. *See generally* (ECF No. 22 at 46-134). Some[2] of the 992 Plaintiffs that report to districts outside the Southern District of Florida include:

1. Nestor Yasmani Valle-Rabelo (Plaintiff 21) resides in Louisville, Kentucky, and reports to the Louisville Sub Office. *See* (ECF No. 24-1 at 310, 313).
2. Andy Rangel-Rodriguez (Plaintiff 27) resides in Grimes, Louisiana, and reports to the Des Moines Sub Office. *See* (ECF No. 24-2 at 31, 32).
3. Edgar Avila-Martinez (Plaintiff 29) resides in Traverse City, Michigan, and reports to the Milwaukee Office. *See* (ECF No. 24-2 at 61, 62).
4. Ignacio Carcajal-Coello (Plaintiff 44) resides in Grove City, Ohio, and reports to the Westerville Office. *See* (ECF No. 24-3 at 85, 88).
5. Carlos David Padron-Martin (Plaintiff 50) resides in Arlington, Texas, and reports to the Dallas Office. *See* (ECF No. 24-3 at 85, 88).
6. Danilo Antonio Perez-Fernandez (Plaintiff 50) resides in Omaha, Nebraska, and reports to the Omaha Office. *See* (ECF No. 24-3 at 258, 259).

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[2] Plaintiffs only provided the release on recognizances for the first 100 Plaintiffs. *See* (ECF No. 24-1 through 24-5).

7. Adrian Duran-Matos (Plaintiff 558) resides in Pflugerville, Texas, reported to the San Antonio Office, and is detained in Kanes City, Texas. *See* (ECF No. 38).

As stated in Plaintiffs' Amended Petition, many Plaintiffs reside and report to ICE Field Offices outside the Southern District of Florida. Venue is proper in the districts where they regularly report or reported[3], as required by their orders on release on recognizance. Further, those districts are also where their corresponding ICE Field Office Director, who has authority over the terms of the orders on release on recognizance, reside. As such, venue is improper for the Plaintiffs that report to ICE office outside the Southern District of Florida.

D. SHOULD THE COURT FIND THAT IT HAS JURISDICTION AND THAT VENUE IS PROPER, COUNT I FOR HABEAS CORPUS STILL FAILS.

1. Plaintiffs are not "in custody" because their claims do not fall within the collateral conditions exception.

Even if the Court determines that it has jurisdiction, and venue is proper for all Plaintiffs, it should nevertheless dismiss Count I, Habeas Corpus, because Plaintiffs are not "in custody" for purposes of § 2241. "An individual may seek habeas relief under § 2241 if he is 'in custody' under federal authority, and the Supreme Court has found that the in custody requirement is satisfied where restrictions are placed on a petitioner's freedom of action or movement." *Alvarez v. Holder*, 454 Fed. Appx. 769, 772 (11th Cir. 2011). In *Alvarez*, the Eleventh Circuit found petitioner was "in custody" when he challenged several conditions of his order of supervision ("OSUP") because the OSUP amounted to a collateral consequence of the release. *Alvarez*, 454 Fed. Appx. at 773.

Here, Plaintiffs are not challenging the "collateral conditions" of their release on recognizance, as in the terms of release under *Alvarez*, but rather the nature of the release on recognizance, which they claim is not a release on recognizance at all, but a constructive humanitarian parole. *See France v. Ripa*, 24-cv-24333-ALTMAN, 2025 WL 973532, 2025 U.S. Dist. LEXIS 62142, at *9 (S.D. Fla. Mar. 31, 2025) (finding petitioner "supervised release doesn't present a collateral consequence, since…[petitioner] has never challenged the conditions of his release.").

Moreover, Plaintiffs' habeas claim does not fall within the collateral conditions exception

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[3] Plaintiff # 558, Adrian Duran-Matos, is detained at Karnes County Immigration Processing Center in Karnes City, Texas. *See* (ECF No. 38 at 1).

because there is no injury traceable to the terms of release. *See France*, 2025 U.S. Dist. LEXIS 62142, at *9 (quoting *United States v. Juvenile Male*, 564 U.S. 932, 936 (2011) ("The collateral consequences exception isn't met where there's no longer an 'actual injury traceable' to a petitioner's detention that's 'likely to be redressed by a favorable' judicial decision.").

Notably, even if the Court agreed that Plaintiffs were released with a constructive humanitarian parole instead of a release on recognizance, the conditions associated with humanitarian parole and release on recognizance can be identical or substantially similar. Arguably, the most prevalent restrictive terms of the release on recognizance require that individuals report periodically to ICE offices and attend all immigration hearings. *See e.g.*, (ECF No. 24-1 at 17, 24, 26, 30, 45, 85, 105, 136, 151).[4] Those same restrictions can be imposed on those released with a humanitarian parole, under 8 C.F.R § 212.5(d) (stating that individuals released with humanitarian parole may be required to give "reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so," post bond, and agree to "reasonable conditions (such as periodic reporting of whereabouts")."

Thus, Count I, Habeas Petition, should be denied for lack of subject matter jurisdiction because Plaintiffs are not "in custody" because since their claims do not fall within the collateral conditions exception.

2. The Court should dismiss the habeas claims asserted by Plaintiffs whose release on recognizance is overseen by DHS officials outside the Southern District of Florida because the Amended Petition was not filed in their district of oversight. Further, Defendants are not the ICE official(s) that exercise legal control over their release on recognizance.

With respect to Count I, even if the Court finds that Plaintiffs are in custody, the Court nonetheless should dismiss the claims asserted by Plaintiffs whose release on recognizance is overseen by DHS officials outside the Southern District of Florida and whose claims were not filed in their district of DHS oversight.

The proper respondent in a habeas petition is "not the Attorney General or some other remote supervisory official. *Rumsfeld* v. *Padilla*, 542 U.S. 426, 435 (2004). In habeas cases where physical detention is being challenged, the "default rule is that the proper respondent is the warden

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[4] The terms of release on recognizance vary. Some Plaintiffs were put on an ankle monitor as a term of their release on recognizance. See, e.g., (ECF No. 24-1 at 105, 117, 149, 165, 186).

of the facility where the prisoner is being held." *Id.* However, a habeas petitioner who challenges a form of 'custody' other than present physical confinement may name as respondent the entity or person who exercises legal control with respect to the challenged 'custody.'" *Id.* at 438.

Therefore, the corresponding ICE Field Office Director, who has authority over the orders on release on recognizance, is the proper respondent, not a remote supervisory official as the Defendants.

Relatedly, for "core habeas petitions," "jurisdiction lies in only one district: the district of confinement." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (citing *Rumsfeld* v. *Padilla*, 542 U.S. 426, 443 (2004); *Garcia v. Warden*, 470 F. App'x 735, 736 (11th Cir. 2012) (explaining "jurisdiction for § 2241 petitions lies only in the district of confinement") "The writ of habeas corpus does not act upon the prisoner who seeks relief but upon the person who holds him in what is alleged to be unlawful custody." *Wales v. Whitney*, 114 U.S. 564, 574 (1885).

Here, Plaintiffs maintain they are in unlawful custody because of their "ongoing subjection to orders of release on recognizance." *See* (ECF No. 22 at ¶ 111). However, that "custody" is overseen by the ICE local field offices located in other districts with respects to Plaintiffs located outside the Southern District of Florida. Therefore, their claims must be filed in the districts where those ICE field offices are located. District Courts are not authorized "to employ long-arm statutes to gain jurisdiction over custodians who are outside of their territorial jurisdiction." *Id.* at 445.

Accordingly, the Court should dismiss the Amended Petition.

E. PLAINTIFF'S CLAIMS FOR HABEAS RELIEF (COUNT I) AND UNDER THE APA (COUNTS II AND III) FAIL TO STATE A CLAIM.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. In the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." However, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp.*, 550 U.S. at 545.

The APA authorizes "person suffering legal wrong because of agency action, or adversely

affected or aggrieved by agency action" to bring suit. 5 U.S.C. § 702. Further, it allows courts to "compel agency action unlawfully withheld or unreasonably delayed." § 706(1). "A claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004).

1. Application of the procedural regularity doctrine does not find that Plaintiffs are entitled to constructive humanitarian parole due to DHS's release of Plaintiffs on recognizance.

Plaintiffs maintain that to determine whether a humanitarian parole was issued depends on the "procedural regularity doctrine." (ECF No. 22 at ¶ 91).[5] Specifically, Plaintiffs claim, based on the procedural regularity doctrine, that they are entitled to constructive humanitarian parole because DHS released them even though they were subject to mandatory detention. In other words, they ask this Court to convert their orders of release on recognizance to humanitarian parole. According to Plaintiffs, the determination is, allegedly, made based on "application of law to fact, regardless of what the Government's paperwork reflects." (*Id.*).

To the extent Plaintiffs rely on *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2020) and *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980) to argue that procedural regularity is the test for determining if a constructive humanitarian parole occurred, that reliance is misplaced. *See* (ECF No. 22 at ¶ 91).

The issue in *Quilantan* and *Areguillin* was whether an alien who lacked the necessary documents for admission to the United States, but who an immigration inspector nonetheless "waved through" a port of entry into the United States qualified for adjustment of status. *Matter of Quilantan*, 25 I&N Dec. at 287-88; *Matter of Areguillin*, 17 I&N Dec. at 309-11. The Board concluded in both cases that a procedurally regular entry established that the alien was "inspected and admitted" into the United States. *See Matter of Quilantan*, 25 I&N Dec. at 287-88; *Matter of Areguillin*, 17 I&N Dec. at 309-11.

Critically, and in contrast *Quilantan* and *Areguillin*, there is neither record evidence nor do

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[5] In *Savoury v. United States AG,* the U.S. Court of Appeals for the Eleventh Circuit explained that lawfully admitted under § 1101(a)(20) "means more than admitted in a procedurally regular fashion. It means more than that the right forms were stamped in the right places. It means that the alien's admission to the status was in compliance with the substantive requirements of the law. What is lawful depends on the law and not on administrative inadvertence or error." *Savoury v. United States AG*, 449 F.3d 1307, 1317 (11th Cir. 2006).

Plaintiffs claim they presented themselves at a port of entry; therefore, they could not have made a procedurally regular entry. *See Quilantan*, 25 I&N Dec. at 286, 293 ("the facts were undisputed that the respondent presented herself for inspection"); *Areguillin*, 17 I&N Dec. at 310, 310 n.6 (explaining that the relevant inquiry is whether the alien "presented himself for inspection" at a port of entry). Moreover, neither *Quilantan* nor *Areguillin* suggest that there was any historical practice of construing release from detention under § 1226(a)(2)(B) as a grant of humanitarian parole rather than a release on recognizance.[1] *See Matter of Quilantan*, 25 I&N Dec. at 287-93; *Matter of Areguillin*, 17 I&N Dec. at 309-11.

Importantly, the Board distinguished between procedural regularity and substantive legal requirements, *Matter of Quilantan*, 25 I&N Dec. at 287-93; *Matter of Areguillin*, 17 I&N Dec. at 309-11, and it remains the case that an alien who obtains a procedurally regular but substantively deficient admission does not acquire entitlement to substantive status or become any less an unlawful entrant. *See Mendoza v. Sessions*, 891 F.3d 672, 678-80 (7th Cir. 2018) (agreeing with circuits that have addressed the issue that a procedurally regular entry does not render the alien ineligible for reinstatement or criminal prosecution as an illegal reentrant). Moreover, being granted admission and being granted humanitarian parole are mutually exclusive. *See* U.S.C. § 1101(a)(13)(B)."

Therefore, *Matter of Quilantan* and *Matter of Areguillin* do not aid Plaintiffs' argument that a constructive humanitarian parole occurred.

2. IIRIRA undermines Plaintiffs' outdated cases that, allegedly, applied the procedural regularity doctrine to determine whether a parole occurred.

In their Amended Petition, Plaintiffs rely on *Vitale v. INS*, 463 F.2d 579 (7th Cir. 1972), *Medina Fernandez v. Hartman*, 260 F.2d 569 (9th Cir. 1958), and *Matter of O-*, 16 I&N Dec. 344 (BIA 1977) for support that "whether or not a parole did or did not occur in a given case depends on the application of law to fact." (ECF No. 22 at ¶ 91). However, these cases do not support Plaintiffs' position.

Each of these cases involved a question about the validity of parole because of a lack of law, no clear decision granting parole, or the contents of the parole document itself undermined the grant of parole. *See Vitale*, 463 F.2d at 580-82 (concluding an individual who was previously deported and re-entered without a visa did not effectuate an "entry" but instead was "paroled"

while in custody of the airlines, for the limited purpose of an exclusion proceeding);[6] *Medina Fernandez,* 260 F.2d at 570–73 (9th Cir. 1958) (stating that Spanish sailors could be returned to Mexico and had not been paroled into the United States because the parole papers "just didn't fit the petitioners" and were a sham that "itself negatives" the purpose of a legitimate parole); *Matter of O-*, 16 I&N Dec. 344, 348 (determining the government's action of bringing aliens evacuated from Vietnam qualified as parole).

Unlike in the cases relied upon by Plaintiffs, they are not asking the court to determine whether parole factually occurred. *See Hing Sum v. Holder*, 602 F.3d 1092, 1098 (9th Cir. 2010); *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact).

Further, they are from the 1950s and 1970s predating IIRIRA, which was enacted in 1996. Importantly, IIRIRA added the jurisdiction stripping provisions of § 1252(a)(2)(B)(ii), which precludes courts from reviewing discretionary decisions or actions, and § 1226(e), which states no court may review the Attorney General's action or decision regarding the release of any alien. Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 3009-586, 607 (codifying § 1226(e) and § 1252(a)(2)(B)(ii), respectively). § 1226(e) strips the district court of jurisdiction to void the discretionary release from detention, and § 1252(a)(2)(B)(ii) strips the district court of jurisdiction to overrule DHS' discretionary ability to determine eligibility for humanitarian parole on a case-by-case basis and instead order a wholesale grant of humanitarian parole.

Additionally, IIRIRA amended the parole provision to replace the original 1952 language of, "for emergent reasons or for reasons deemed strictly in the public interest," with the current language specifying on a "case-by-case basis" for "urgent humanitarian reasons" or "significant public benefit.'" Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, 3009-689 (Sept. 30, 1996).[7]

Critically, the addition of the "case-by case" language requires an explicit finding by DHS

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[6] Prior to IIRIRA, an alien awaiting exclusion proceedings could be temporarily 'paroled into the United States' for humanitarian reasons", as was done in the *Vitale* case. *See Bertrand v. Sava*, 684 F.2d 204, 206 (2d Cir. 1982) (describing Attorney General's discretionary power to parole an alien into the United States pending the outcome of exclusion hearings.).

[7] Text available at https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf

that the individual should be allowed to enter the United States for a limited duration for urgent humanitarian reasons or significant public benefit. There is no evidence that DHS made such a determination here. Plaintiffs' argument that the Court should void the release on recognizance *and* replace with humanitarian parole for all 992 Plaintiffs and putative class members undermines the "case-by-case" language inserted by Congress because such finding of constructive parole does not rely on an independent analysis of each Plaintiff and/or putative class member's situation, but instead, on an erroneous finding they are all entitled to humanitarian parole wholesale, implicitly and by default, due to government's a release on recognizance despite being subject to mandatory detention.[8] Lastly, a wholesale grant of humanitarian parole undermines the vast discretion given to DHS to adjudicate parole applications. *See Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (11th Cir. 1985) ("Congress has delegated remarkably broad discretion to executive officials under the [INA], and these grants of statutory authority are nowhere more sweeping than in the context of parole of excludable aliens."). Moreover, DHS has exclusive jurisdiction to grant humanitarian parole. 8 U.S.C. § 1182(d)(5)(A).

Therefore, *Vitale v. INS*, *Medina Fernandez v. Hartman*, and *Matter of O-*, do not aid Plaintiffs' argument that a constructive humanitarian parole occurred.

3. Several federal Courts of Appeals have held that a release on a release on recognizance is not equivalent to a humanitarian parole.

Numerous federal courts have addressed variations of the arguments presented by Plaintiffs

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[8] Plaintiffs assume that if DHS had applied the proper statute, DHS *still* would have released them, but that is far from obvious. The standard for release under § 1226(a) is more permissive than the standard for release under § 1182(d)(5)(A). *See In re Castillo-Padilla*, 25 I. & N. Dec. 257, 259 (BIA 2010) (explaining that unlike a humanitarian parole, which requires a finding of urgent humanitarian reasons or significant public benefit and "under strict conditions defining his or her status", a release on recognizance entails "merely" a release from detention pending a decision on whether the alien is to be removed."). To deem an alien eligible to apply for adjustment of status based on an erroneous initial premise that DHS would have released them had it evaluated release under the correct statute requires the Court to engage in an impermissibly counterfactual exercise well beyond the facts before it. *Cf. Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 589 U.S. 57, 65 (2020) ("[N]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact. Put plainly, the court cannot make the record what it is not." (citations and quotation marks omitted)); *Missouri v. Jenkins*, 495 U.S. 33, 49 (1990) (observing that federal courts may issue nunc pro tunc orders to "reflect the reality" of what has already occurred, but the court "cannot make the record what it is not").

maintaining that a release on recognizance rendered them eligible for adjustment of status because it was equivalent to a humanitarian parole. In each case, the circuit courts have denied relief finding they are inapposite in purpose and history.

Significantly, in *Castillo-Padilla v. United States*, the U.S. Court of Appeals for the Eleventh Circuit addressed the difference in a case where plaintiff, who was released with a conditional parole,[9] argued he was eligible for adjustment under the Cuban Adjustment Act. 417 Fed. Appx. 888, 891 (11th Cir. 2011) ("Castillo-Padilla argues that when he was released from custody on 'conditional parole' he became eligible for an adjustment of status."). The Eleventh Circuit affirmed the BIA's finding that he was ineligible explaining "when Congress uses different language in similar sections, it intends different meanings." *Castillo-Padilla,* 417 Fed. Appx at 891 (citing *DIRECTV, Inc. v. Brown*, 371 F.3d 814, 818 (11th Cir. 2004)). "An alien may be 'paroled into the United States' by the Attorney General temporarily if the parole would serve urgent humanitarian reasons or provide a significant public benefit, *id.* § 1182(d)(5)(A), which contrasts starkly with being released on conditional parole until immigration authorities decide if an alien should be removed from the United States…" *Id.* (quotations omitted) (citation in original).

In *Cruz-Miguel v. Holder*, the U.S. Court of Appeals for the Second Circuit held the "language of the relevant INA provisions makes plain that an alien released on conditional parole pending resolution of ongoing removal proceedings is not thereby 'paroled into the United States' so as to be eligible for adjustment of status under § 1255(a)." 650 F.3d at 193. The Court explained:

> [T]he two parole provisions here at issue—one for "parole into the United States" and the other for release on "conditional parole" . . . serve distinct functions. "Parole into the United States" pursuant to § 1182(d)(5)(A) allows the executive to permit certain aliens "on a case-by-case basis" to enter or remain in this country only for "urgent humanitarian reasons or significant public benefit." While such parole does not grant the alien "admission" to the United States, see 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), it effectively halts removal of the alien until the underlying humanitarian or public benefit purpose is achieved, *cf. id.* § 1182(d)(5)(A) (providing that after purpose of parole has been served, alien's status reverts to that which he had at time he was inspected and paroled into United States, and "thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission"); 8 C.F.R. § 212.5(e)(2)(i) (providing that upon termination of parole, "[a]ny further inspection or hearing shall be conducted

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[9] An order of release on recognizance is also known as a conditional parole. *See* § 1226(a)(2)(B) (explaining the Attorney General may release an alien with a "conditional parole.").

> ... or any order of exclusion, deportation, or removal previously entered shall be executed"). In other words, the United States accepts an alien paroled under § 1182(d)(5)(A) into the country for as long as the humanitarian or public benefit purpose persists. For precisely this reason, "parole into the United States" under § 1182(d)(5)(A) is narrowly circumscribed.
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> By contrast, conditional parole under § 1226(a)(2)(B) does not mean that the alien has been accepted into the country, even temporarily. Much less does conditional parole defer removal. More akin to bail release in criminal cases, conditional parole merely permits an alien to remain at liberty based upon a determination that he poses no risk of danger or flight *while his removal is actively sought. See* 8 C.F.R. § 236.1(c)(8).

Id. at 198.

Similarly, in *Ortega-Cervantes v. Gonzales*, the U.S. Court of Appeals for the Ninth Circuit engaged in a detailed analysis of both statutes and highlighted that § 1226(a) "does not restrict conditional parole to cases involving 'urgent humanitarian reasons or significant public benefit.'" 501 F.3d 1111, 1119 (9th Cir. 2007). Additionally, it specified that "Congress did not view 'conditional parole' as the equivalent of 'parole into the United States' under § 1182(d)(5)(A) and thus as a path to lawful permanent residence under § 1255(a)." *Id.* at 1119.

Lastly, in *Delgado-Sobalvarro v. Attorney Gen. of the U.S.*, the U.S. Court of Appeals for the Third Circuit, in determining that a conditional parole is not equivalent to a humanitarian parole, explained "the history of the statute [adjustment of status under 8 U.S.C. § 1255(a)] suggests that Congress sought to limit the universe of those who could adjust status to aliens whose admission was 'for urgent humanitarian reasons or significant public benefit' as set forth in § 212(d)(5)(A)…'" 625 F.3d 782, 786 (3d Cir. 2010). "To allow aliens released on conditional parole under [INA] § 236, [§ 1226(a)] to adjust status under § 245 [§ 1255] would frustrate Congress's intention to limit eligibility to refugees whose admission provides a public benefit or serves an urgent humanitarian purpose." *Id.* at 787.

For the reasons explained herein, Defendants' Motion to Dismiss First Amended Class Action Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief should be granted.

Respectfully submitted,

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