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' RESPONSE TO PLAINTIFFS' MOTION FOR ALL-WRITS ACT INJUNCTION**

Defendants, Kristi Noem, Secretary of Homeland Security, *et al.*, hereby respond to Plaintiffs' Motion for All-Writs Act Injunction (ECF No. 38).

## INTRODUCTION

Plaintiffs are Cuban nationals who entered the United States after the termination of the parole policy for Cuban nationals that was implemented under 8 U.S.C. § 1225(b)(1)(F). *See* Am. Compl. (ECF No. 22). Plaintiffs were apprehended by the Department of Homeland Security but released from custody rather than kept in detention. *Id.*

Plaintiffs' Amended Complaint (ECF No. 22) presents three counts. In Count I, Habeas Corpus, Plaintiffs request that the Court declare that their release from custody after entering the United States was a humanitarian parole under 8 U.S.C. § 1182(d)(5) rather than a release on recognizance under 8 U.S.C.§ 1226(a)(2)(B). The distinction matters to plaintiffs because under the Cuban Adjustment Act (CAA), "[a]ny alien who is a native or citizen of Cuba and who has been inspected or admitted *or paroled* into the United States . . . may be adjusted . . . to that of an

alien lawfully admitted for permanent residence." CAA § 1, Public Law 89-732 (emphasis added). An alien who is released on his own recognizance under 8 U.S.C. § 1226(a) does *not* meet the CAA's parole requirement. *See Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748-49 (BIA 2023); *accord Matter of Roque-Izada*, 29 I&N Dec. 106, 108 (BIA 2025) (reaffirming *Matter of Cabrera-Fernandez*). Plaintiffs suggest that their releases on recognizance were a mere "mis-papering [of] parole releases under § 1182(d)(5)(A)" (ECF No. 1 at 40), but there is simply no basis for that assertion. The decision to grant humanitarian parole to an alien lies in the sole discretion of the Secretary of Homeland Security, to be granted only, "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[1] 8 U.S.C. § 1182(d)(5)(A).

In Counts II and III, Plaintiffs allege Defendants failed to provide them with evidence of parole out of physical custody as required by 8 C.F.R. § 235.1(h)(2), thus entitling them to declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1).

Defendants have moved to dismiss Plaintiffs' Amended Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. *See* ECF No. 39. As explained in Defendants' Motion to Dismiss, 8 U.S.C. § 1226(e) and 8 U.S.C. § 1252(a)(2)(B)(ii) preclude subject matter jurisdiction over Plaintiff's claims concerning their nature of their release from detention.

On November 4, 2025, Plaintiffs filed their Motion for All Writs Act Injunction (ECF No. 38). The Motion seeks an injunction under 28 U.S.C. § 1651(a), requiring Defendants to (1) immediately release one named-plaintiff, Adrian Duran-Matos, from physical custody and (2)

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[1] Although 8 U.S.C. § 1182(d)(5)(A) specifies that the Attorney General may grant humanitarian parole, that authority now is vested in the Secretary of Homeland Security and her designees. *See* 6 U.S.C. §§ 202(4), 552(d), 557; 8 C.F.R. § 212.5(a).

provide all the purported class-members with a pre-detention custody hearing prior to re-detaining any of them. As demonstrated below, Plaintiffs are not entitled to the extraordinary relief they seek.

The All Writs Act provides no substantive jurisdiction on its own. Instead, it authorizes a court to issue orders necessary to protect the jurisdiction it already has, derived from another source. As demonstrated in Defendants' Motion to Dismiss (ECF No. 39) and further below, the Court lacks subject matter jurisdiction over the habeas and equitable claims in Plaintiffs' Amended Complaint. The Court lacks jurisdiction to review DHS's decision to release an alien on recognizance (*see* 8 U.S.C. §§ 1226(e) and 1252(a)(2)(B)(ii)). And the Court has no authority to grant humanitarian parole (*see* 8 U.S.C. § 1182(d)(5)(A)), much less to grant such relief on a class-wide basis (*see* 8 U.S.C. § 1252(f)(1)). Therefore, there is no jurisdiction for the Court to "protect" by issuance of an All Writs Act injunction.

Even if the Court *did* have jurisdiction over the claims in Plaintiffs' Amended Complaint, relief under the All Writs Act is precluded where, as here, other, adequate relief is available at law. The availability of a preliminary injunction or temporary restraining order under Fed. R. Civ. P. 65, Plaintiff Duran-Matos's ability to challenge detention determinations in Immigration Court and then before the Board of Immigration Appeals, and the availability of habeas corpus under 28 U.S.C. § 2241 all render unavailable and inappropriate the injunctive relief Plaintiffs seek under the All Writs Act.

Even setting aside the fact that there is no jurisdiction for the Court to protect, and the availability of other remedies at law, Plaintiffs also fail to establish that the integrity of the Court's proceedings on their purported claims is threatened in the absence of an injunction. Plaintiff Duran Matos' detention in no way affects the Court's ability to determine whether members of the

purported class of Plaintiffs were allegedly paroled on humanitarian grounds or properly released on recognizance, and, if warranted, "releasing" Plaintiffs from the Orders of recognizance . Nor are pre-detention hearings for all members of the purported class necessary for the Court to resolve Plaintiffs' claim that Defendants have unreasonably withheld evidence of their alleged humanitarian parole in violation of the APA. Neither Plaintiff Duran Matos' detention nor the lack of pre-detention hearings poses any threat to the Court's ability to address Plaintiffs' claims. There is, therefore, no basis for an injunction under the All Writs Act.

For all of the foregoing reasons, the Court should deny Plaintiffs' Motion for an All Writs Act Injunction.

## ARGUMENT

### I. There is No Matter Within the Court's Jurisdiction to be Protected by an All Writs Act Injunction.

The All Writs Act provides courts the authority to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Congress granted this power to allow courts "to protect the jurisdiction they already have, derived from some other source." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099 (11th Cir. 2004). The All Writs Act provides a "residual source of authority to issue writs that are not otherwise covered by statute" and is an "extraordinary remedy that . . . is essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law." *Id.* at 1100 (internal quotes and citations omitted).

The Eleventh Circuit has observed that there are two kinds of situations in which a court may exercise its jurisdiction under the Act: (1) a court may use the Act to direct action by another court whose proceedings are subject to appellate review by the court issuing the order; and (2) to "directly protect the issuing court's own proceedings and judgments." *Rohe v. Wells Fargo Bank,*

*N.A.*, 988 F.3d 1256, 1264 (11th Cir. 2021). Plaintiffs here ask the Court to exercise its authority to grant relief in the second situation, purportedly to protect the Court's jurisdiction over the three Counts in their Amended Complaint (ECF No. 22). As such, the Court should first determine whether it actually has the jurisdiction Plaintiffs seek to "protect."

An All Writs Act injunction is predicated upon the existence of a "matter upon which a district court has jurisdiction . . . the integrity of which is being threatened." *Id.* at 1265 (quoting *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004)). "It is a basic precondition to a court's issuing such an order that there be some other matter over which the court has jurisdiction—some other proceeding in that court or some order or judgment previously made by that court—and that the All Writs Act order serve to protect that proceeding, order, or judgment from some threat to its integrity." *Id.* at 1266. If the Court lacks jurisdiction over the claims in Plaintiffs' Amended Complaint, there is nothing in need of protection and the All Writs Act provides no basis for relief.

Plaintiffs argue that the Court has jurisdiction to hear their purported habeas claim concerning the nature of their release from detention under 28 U.S.C. § 2241. Plaintiffs argue that the Court has jurisdiction over their claim that Defendants have unreasonably withheld evidence of their humanitarian parole in violation of 8 C.F.R. § 235.1(h)(2), under the Declaratory Judgment Act, 28 U. S. C. §§ 2201–02, and the APA, 5 U. S. C. §§ 701, *et seq*. As demonstrated in Respondents' Motion to Dismiss, however, this Court lacks subject matter jurisdiction over any of the purported claims in Plaintiffs' First Amended Complaint. *See* ECF No. 39.

Review of DHS' decision to release Plaintiffs from detention on recognizance under § 1226(a)(2)(B), instead of granting humanitarian parole under § 1182(d)(5)(A), is prohibited by 8 U.S.C. § 1226(e). That section provides,

> [t]he 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). The foregoing section "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)). Plaintiffs' claims here ask the Court to nullify DHS's discretionary decision to release on recognizance, a matter for which judicial review is prohibited by § 1226(e).

The Court also lacks jurisdiction because 8 U.S.C. § 1252(a)(2)(B)(ii) strips the Court of jurisdiction over any "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). Section 1226(a) allows DHS discretion to release aliens from detention on their own recognizance. The release of aliens on humanitarian parole is also discretionary. *See* 8 U.S.C. § 1182(d)(5)(A) ("The Secretary of Homeland Security may, . . . in his discretion parole into the United States temporarily under such conditions as 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. . ."). Given DHS's discretion on these matters, § 1252(a)(2)(B)(ii) prohibits the Court from reviewing DHS's decisions to release Plaintiffs on recognizance.

The Court does not have the authority to treat a Plaintiff's releases on recognizance under 8 U.S.C. § 1226(a)(2)(B) as humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Under the statute, DHS has exclusive jurisdiction to grant humanitarian parole. 8 U.S.C. § 1182(d)(5)(A). The Secretary of Homeland Security may exercise her discretion on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* There is no evidence that DHS made

such a determination in any Plaintiff's case. Instead, as Plaintiffs acknowledge, DHS relied solely on 8 U.S.C. § 1226(a) to release them from detention on their own recognizance. The Court lacks jurisdiction to review those decisions.

Finally, 8 U.S.C. § 1252(f)(1) bars the Court from entering the class-wide injunctive relief Plaintiffs seek. Section 1252(f)(1) reads:

> (f) Limit on injunctive **relief**
> (1) In general
> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of [**8** U.S.C. §§ 1221-31] ... other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

The Supreme Court has held that, "[b]y its plain terms, and even by its title, that provision is nothing more or less than a limit on injunctive relief. It prohibits federal courts from granting classwide injunctive relief against the operation of [8 U.S.C.] §§ 1221-31 . . .." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481-82 (1999). As the Supreme Court held in *Reno*, § 1252(f)(1) "unambiguously strips federal courts of jurisdiction to enter class-wide injunctive relief" upon habeas claims like those asserted here. *See Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018).

For the foregoing reasons, and those set forth in Defendants' Motion to Dismiss, which Defendants hereby incorporate by reference, there is no jurisdiction for the Court to protect by issuing an All Writs Act injunction. The Court should deny Plaintiffs' Motion for an All Writs Act accordingly.

## II. Relief Under the All Writs Act is Unavailable Where, as Here, There are Other, Adequate Remedies Provided by Law.

Even if subject matter jurisdiction were not lacking over Plaintiffs' claims, their Motion would be subject to denial because other, adequate remedies exist to provide the relief they seek. The Eleventh Circuit has "[made] clear that where the relief sought is in essence a preliminary injunction, the All Writs Act is not available because other, adequate remedies at law exist, namely Fed.R.Civ.P. 65, which provides for temporary restraining orders and preliminary injunctions." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1229 (11th Cir. 2005) (citing *Fla. Med. Ass'n v. U.S. Dep't of Health, Educ. & Welfare*, 601 F.2d 199, 202–03 (5th Cir.1979) and *Klay*, 376 F.3d at 1101 n.13)).

A "textbook" example of a preliminary injunction is one issued "to preserve the status quo and prevent allegedly irreparable injury until the court had the opportunity to decide whether to issue a permanent injunction." *Klay*, 376 F.3d at 1101 n.13. That is precisely what Plaintiffs' Motion seeks here – without attempting to satisfy the requirements of Rule 65. The Eleventh Circuit has repeatedly observed that the All Writs Act does not provide an avenue for plaintiffs to circumvent the requirements for preliminary injunctive relief. *See Schiavo*, 403 F.3d at 1229; *see also Fla. Med. Ass'n*, 601 F.2d at 202 (the All Writs Act "does not authorize a district court to promulgate an ad hoc procedural code").

Not only does the availability of a temporary restraining order or preliminary injunction under Rule 65 preclude relief under the All Writs Act, so too does an immigration detainee's ability to challenge "determinations relating to bond, parole, or detention of an alien" before the Board of Immigration Appeals as provided in 8 C.F.R. § 1003.1(b)(7). Plaintiff Duran Matos has not sought a bond hearing before the Immigration Court, let alone challenged any resulting detention determination to the BIA.

Similarly, the ability to seek release from custody under the habeas statute, 28 U.S.C. § 2241, also precludes an All Writs Act injunction. *See Clinton v. Goldsmith*, 526 U.S. 529, n.11 (1999) (recognizing that resort to the All Writs Act is unjustified given the availability of alternate remedies, including a habeas corpus petition, to a servicemember demanding to be kept on the rolls despite disciplinary sanctions). "Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Pennsylvania Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 43 (1985). The availability of the foregoing remedies warrants denial of Plaintiffs' Motion insofar as it challenges Mr. Duran-Matos's detention.

## III. Plaintiffs Fail to Establish That Plaintiff Duran-Matos' Detention or the Lack of Pre-Detention Hearings Threaten the Integrity of the Proceedings.

Finally, Plaintiffs' Motion fails to demonstrate that Plaintiff Duran-Matos's continued detention or the absence of an order requiring pre-detention hearings for the remaining class members threatens the integrity of the Court's proceedings. Plaintiffs argue that if Mr. Duran-Matos remains in physical custody, the purported class's habeas claim would become moot as to him. *See* ECF No. 38 at 6. But then Plaintiffs themselves go on to explain how this action could proceed "whether [Mr. Duran-Matos] is detained or free from the defendants' physical custody," and that if the Court were to rule in Plaintiffs' favor, Plaintiff Duran-Matos would become prima facie eligible to adjust his status to that of a Lawful Permanent Resident. *Id.* at 7. Apart from conclusory allegations of potential mootness, Plaintiffs do not establish any threat to the Court's supposed habeas jurisdiction posed by Plaintiff Duran-Matos' detention.

Plaintiffs argue that an order requiring Defendants to provide a pre-detention custody hearing re-detaining any members of the purported class is needed to "protect the Court's jurisdiction, any potential future judgments as to Count I of the Amended Complaint for all named-

plaintiff class members, and the integrity of these proceedings." *Id.* at 8. That, however, is not so. As with their demand for Plaintiff Duran Matos' release from physical custody, Plaintiffs acknowledge that these proceedings could continue regardless of a particular Plaintiff's detention status and that a future judgment regarding the character of their original release from DHS custody would apply "whether he is detained or free from the defendants' physical custody." *Id.* at 7. Thus, the lack of pre-detention hearings does not in any way threaten the integrity of the Court's proceedings.

Moreover, the issuance of an order preventing re-detention without a hearing would run contrary to the Immigration and Nationality Act (INA) and regulations promulgated thereunder, which allow DHS to revoke an alien's release by DHS at any time. As Plaintiffs acknowledge, DHS "has the authority to revoke a noncitizen's release on bond or parole 'at any time,' even if that individual has previously been released." *Id.* at 9 (citations omitted). Plaintiffs are mistaken in suggesting that this authority is limited to instances where there is a change in the alien's circumstances. The INA and regulations promulgated thereunder do not require DHS to demonstrate a change of circumstances to justify an alien's re-detention where DHS ordered the alien's release. If an alien has been released by DHS on "conditional parole" or an order of release on recognizance under INA § 236(a)(2)(B), DHS may "at any time . . . revoke a bond or parole . . . re-arrest [the] alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). *See also* 8 C.F.R. § 236.1(c)(9) ("When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time…in which event the alien may be taken into physical custody and detained."). Only where DHS revokes an alien's release by an immigration judge—a circumstance not at issue in this case—must it demonstrate changed circumstances. *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981).

## CONCLUSION

For the foregoing reasons, Defendants respectfully submit that Plaintiffs' Motion for an All Writs Act Injunction should be denied.

Respectfully submitted,

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