

**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.

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

**Request for Hearing**

Pursuant to Local Rule 7.1(b)(2), the plaintiffs respectfully request a hearing on the defendants' Motion to Dismiss (D.E. 39). Given the stakes of this case, which is seeking nationwide class certification on issues that affect several 100,000 Cuban migrants in this country, and the several legal issues raised by the defendants' motion, the plaintiffs respectfully submit that oral argument would aid the Court in ruling on the motion. The plaintiffs anticipate that a hearing would require between one to two hours of the Court's time.

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**PLAINTIFFS' OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS FIRST AMENDED CLASS ACTION  
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The plaintiffs, by and through the undersigned, hereby oppose the Defendants' Motion to Dismiss First Amended Class Action Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (D.E. 39) (motion to dismiss) for the following reasons.

**Summary of Argument**

The plaintiffs do not challenge any exercise of the defendants' discretion. The defendants exercised their discretion long ago when they released the plaintiffs from their physical custody on the respective dates applicable to each plaintiff. 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.").

A mere six years after the parole statute was first enacted as part of the Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952), codified as amended at 8 U.S.C. §§ 1101 et seq., the Supreme Court held that parole under 8 U.S.C. § 1182(d)(5)(A) is nothing more than the act of releasing someone from custody. *Id.* ("It was never intended to affect an alien's status . . . ."). To treat the act of release—which occurs after the exercise of discretion **to choose to release**<sup>1</sup>—as anything more than that would be "inconsistent with the congressional mandate, the administrative concept of parole, and the decisions of th[e] [Supreme] Court." *Id.* This concept has long been understood by the courts. *Garcia-Mir v. Smith*, 766 F.2d 1478, 1484 (CA11 1985) ("Ever since they arrived at our border with no claim to entry other than a desire—shared by many throughout the world—to become members of this society, they were properly characterized as excludable aliens and neither parole nor detention has had any effect on their status.") (citing *Leng May Ma*, 357 U.S., at 188).

Rather, the core of the plaintiffs' claims are of a purely legal nature: whether a release from custody without documentation of parole, when parole is the only lawful basis and explanation for such release, is parole as a matter of law notwithstanding the government's mis-papering

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<sup>1</sup> See *Adras v. Nelson*, 917 F.2d 1552, 1556 (CA11 1990) ("the obverse of this grant of authority to the Attorney General to parole an excludable alien is the power to deny such parole") (citations omitted).

of the release—the ancient contest of substance versus form. See *Guerrero-Lasprilla v. Barr*, 589 U. S. 221, 227 (2020) (“ ‘The effect of admitted facts is a question of law’ ”) (quoting *Nelson v. Montgomery Ward & Co.*, 312 U. S. 373, 376 (1941)); see also *Sicar v. Chertoff*, 541 F. 3d 1055, 1060 (CA11 2008) (“This alleged misclassification is an injury in fact,” and “this injury would be redressed by a favorable decision in federal court.”). Further, “[e]ven 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. USCIS*, 775 F. 3d 1255, 1262 (CA11 2014) (citations omitted) (interpreting 8 U. S. C. § 1252(a)(2)(B)(ii)). In sum, there is no exercise of discretion at stake here, and there is no jurisdictional impediment to the Court resolving this case.

As to the defendants’ argument that habeas is not a proper vehicle for this case on grounds of the “in custody” requirement and venue, Supreme Court and Circuit precedent demonstrate that orders of release on recognizance are a form of non-core custody under 28 U. S. C. § 2241, and the immediate custodian rule is inapplicable to non-core custody cases.

Last, the plaintiffs properly state a claim for relief under all three counts of their First Amended Petition (D.E. 22). As to Count I, the plaintiffs are not lawfully subject to release on recognizance or conditional parole under 8 U. S. C. § 1226(a); the defendants do not contest that point about their legal authority (D.E. 39, at 4 § C). As to Counts II and III, the plaintiffs are not arguing that “parole was . . . unreasonably withheld.” (D.E. 39, at 2.) Their position is that they were already paroled at the time of their release, given that parole is nothing more than release from custody. *Leng May Ma*, 357 U. S., at 190. What they are seeking is to enforce a nondiscretionary, procedural regulation for the production of documentation. 8 CFR § 235.1(h). As an analogy, this is a case seeking to compel the production of a receipt for a transaction that has already occurred, as opposed to seeking to compel the transaction in the first place.

#### **Argument and Citations of Authority**

Beginning with jurisdiction, the government makes two facial attacks to the Court’s jurisdiction. “Facial attacks on the complaint require the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion.” *Lawrence v. Dunbar*, 919 F. 2d 1525, 1529 (CA11 1990) (cleaned up).

**I. Section 1226(e) does not bar claims and challenges relating to the agency's detention authority.**

By arguing that “Plaintiffs’ challenge fall[s] 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 the DHS” (D.E. 39, at 7 (citation omitted)), the defendants are rehashing an old argument rejected by the Supreme Court decades ago. *Demore v. Kim*, 538 U. S. 510, 516 (2003) (“The *amicus* argues that respondent is contesting a ‘decision by the Attorney General’ to detain him under § 1226(c), and that, accordingly, no court may set aside that action.”) (citation omitted). “But [the plaintiffs] d[o] not challenge a ‘discretionary judgment’ by the Attorney General or a ‘decision’ that the Attorney General has made regarding his **detention or release.**” *Id.*, at 516–17 (emphasis added). “Rather, [they] challeng[e] the statutory framework that [purportedly] permit[ted]” their release as documented by the government. *Id.*, at 517.

“[W]here a provision precluding review is claimed to bar habeas review, the Court has required a particularly clear statement that such is Congress’ intent.” *Id.* (citing *INS v. St. Cyr*, 533 U. S. 289, 308–09, 298 & 327 (2001)). And “Section 1226(e) contains no explicit provision barring habeas review . . . .” *Id.*<sup>2</sup> Thus, that provision can have no application to Count I of the plaintiffs’ First Amended Petition (D.E. 22, at 151–52) because, as several courts have held, § 1226(e) does not impact habeas jurisdiction. *Al-Siddiqi v. Achim*, 531 F.3d 490, 494 (CA7 2008) (“Because this provision contains no explicit bar to constitutional challenges or habeas review, the Supreme Court has held that habeas review survives.”) (citing *Demore*, 538 U. S., at 516–17); *Saint Fort v. Ashcroft*, 329 F.3d 191, 200–01 (CA1 2003) (discussing *Demore*); *Sierra v. INS*, 258 F.3d 1213, 1218 (CA10 2001) (“We hold that § 1226(e) does not ‘speak[ ] with sufficient clarity to bar jurisdiction pursuant to the general habeas statute.’”) (quoting *St. Cyr*, 533 U. S., at 313); *Abreu v. Rivera*, No. 25-20821-CIV, 2025 WL 2163051, at \*3 (S.D. Fla. May 12, 2025), *report and recommendation adopted*, No. 25-20821-CIV, 2025 WL 2160163 (S.D. Fla. July 30, 2025) (“A Petition for a Writ of Habeas Corpus is the proper procedure for a person

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<sup>2</sup> Concurring in part, Justices O’Connor, Scalia, and Thomas did not join the majority’s jurisdictional ruling that § 1226(e) has no effect on habeas jurisdiction, *id.*, at 533 (“I cannot join Part I because . . .”) (O’Connor, J., concurring in part), because, in their view, “Congress’ failure to mention § 2241 in this context . . . lacks the significance that the Court accorded Congress’ silence on the issue in *St. Cyr*,” *id.*, at 536. Notably, when Congress amended § 1252 to expressly address habeas jurisdiction in response to *St. Cyr*, it did **not** amend § 1226(e). § 106, REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, Tit. I, 119 Stat. 302, 310–11 (May 11, 2005).

to challenge their detention under Section 1226 of the INA, because ‘Section 1226(e) contains no explicit provision barring habeas review.’ ” (quoting *Demore*, 538 U. S., at 517); *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-CV-93 (HL), 2021 WL 5413661, at \*2 (M.D. Ga. Jan. 15, 2021) (“The Supreme Court has interpreted § 1226(e) to allow habeas claims and constitutional challenges.”) (citations omitted).

Further, as more recently (and fully) held by the Supreme Court, and as applicable to all of the Counts in the plaintiffs’ First Amended Petition (D.E. 22), § 1226(e) only “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) (citing *Demore*, 538 U. S., at 516) (emphasis added) (punctuation omitted). In contrast, the legal claims presented by the plaintiffs here, “challenging the extent of the Government’s detention authority under the ‘statutory framework’ as a whole,” *id.*, at 295–96, “fal[l] outside of the scope of § 1226(e),” *id.*, at 296, “[b]ecause the extent of the Government’s detention authority is not a matter of ‘discretionary judgment,’ ‘action,’ or ‘decision,’ ” *id.*, at 296. And a year after *Jennings*, the Supreme Court repeated the point again:

As we have held, this limitation applies only to “discretionary” decisions about the “application” of § 1226 to particular cases. It does not block lawsuits over “the extent of the Government’s detention authority under the ‘statutory framework’ as a whole.” *Jennings v. Rodriguez*, 583 U.S. —, — — —, 138 S.Ct. 830, 841, 200 L.Ed.2d 122 (2018) (quoting *Demore*, 538 U.S. at 517, 123 S.Ct. 1708). And the general extent of the Government’s authority under § 1226(c) is precisely the issue here. Respondents’ argument is not that the Government exercised its statutory authority in an unreasonable fashion. Instead, they dispute the extent of the statutory authority that the Government claims. Because this claim of authority does not constitute a mere “discretionary” “application” of the relevant statute, our review is not barred by § 1226(e).

*Nielsen v. Preap*, 586 U. S. 392, 401 (2019); accord *Zadvydas v. Davis*, 533 U. S. 678, 688 (2001) (“The aliens here, however, do not seek review of the Attorney General’s exercise of discretion; rather, they challenge the extent of the Attorney General’s authority under the post-removal-period detention statute. And the extent of that authority is not a matter of discretion.”) (interpreting, *inter alia*, § 1226(e)); *Rogers v. Ripa*, No. 1:21-CV-24433-JLK, 2022 WL 708493, at \*3 (S.D. Fla. Jan. 22, 2022) (Becerra, J.), *report and recommendation adopted*, No. 1:21-CV-24433-JLK, 2022 WL 574389 (S.D. Fla. Feb. 25, 2022) (rejecting government’s broad interpretation of § 1226(e)); see also *Martinez v. Clark*, 124 F.4th 775, 781–82 (CA9 2024) (“We explained that

§ 1226(e) ‘restricts jurisdiction only with respect to the executive’s exercise of discretion’ but that discretionary judgment does not include constitutional claims or questions of law.’’) (citation omitted).

Reviewing the First Amended Petition (D.E. 22) proves the point. The Count I habeas claim asserts that “the plaintiffs and the class members are not lawfully subject to orders of release on recognizance under the purported auspices of 8 U. S. C. § 1226(a).” (D.E. 22, at 152 ¶ 115). That is a clear “challeng[e] [to] the extent of the Government’s detention authority under the ‘statutory framework’ as a whole,” *Jennings*, 583 U. S., at 295–96, which “falls outside of the scope of § 1226(e),” *id.*, at 296.

As for Counts II and III, the plaintiffs merely seek to enforce the “mandatory, nondiscretionary obligation to provide evidence of parole to persons who have been paroled into the United States” (D.E. 22, at 153 ¶ 119, & 154 ¶ 126) under a regulation. See 8 CFR § 235.1(h)(2) (“Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crew-member, **shall** be issued a completely executed Form I–94, endorsed with the parole stamp.”) (emphasis added); *Arenales-Salgado-De-Oliveira v. Jaddou*, No. 23-61167-CIV-AL-TONAGA/Strauss, 2024 WL 68291, at \*10 (S.D. Fla. Jan. 5, 2024), appeal filed, No. 24-12360 (CA11 Jan. 5, 2024) (“the word ‘will’ — like the word ‘shall’ — indicates imposition of a mandatory condition”) (citations omitted). Not only is that not a claim that goes toward any sort of discretionary authority of the agency, but the regulation is merely a papering requirement to record a past historical fact.<sup>3</sup> The “argument is not that the Government exercised its statutory authority in an unreasonable fashion.” *Preap*, 586 U. S., at 401.

Last, this case is a systemic challenge to the agency’s practice of mis-papering paroles under 8 U. S. C. § 1182(d)(5)(A) as releases on recognizance under § 1226(a). Such a systemic challenge is not barred by § 1226(e). *Florida v. United States*, No. 3:21CV1066-TKW-EMT, 2022 WL 2431414, at \*11 (N.D. Fla. May 4, 2022) (“These statutes do not bar judicial review of the challenged policies or the claims asserted in the amended complaint because they only preclude review of individual immigration decisions.”) (interpreting, *inter alia*, §§ 1226(e) &

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<sup>3</sup> In another case pending before the Court, the government has conceded that, “[l]ike any past event, the act of parole,” i.e., release from DHS custody, “is a factual occurrence.” Resp’t Return Opposing Pet. for Writ of Habeas Corpus 27 (Doc. 7), *Boffill v. Field Ofc. Dir.*, No. 1:25-cv-25179-BECERRA (S.D. Fla. Nov. 14, 2025) (citations omitted).

1252(a)(2)(B)(ii)) (citations omitted); *Preap*, 586 U. S., at 401 (“As we have held, this limitation applies only to ‘discretionary’ decisions about the ‘application’ of § 1226 to **particular cases.**”) (emphasis added); see also *McNary v. Haitian Refugee Ctr.*, 498 U. S. 479, 492 (1991) (“Significantly, the reference to ‘a determination’ describes a single act rather than a group of decisions or a practice or procedure employed in making decisions.”) (interpreting jurisdictional bar at 8 U. S. C. § 1160(e)(1)).

Ultimately, the plaintiffs’ release from the government’s physical custody are past historical facts that have not been disputed. The “‘decision’ that the Attorney General has made regarding [each plaintiffs’ individual] detention or release” *Demore*, 538 U. S., at 516–17, was made long ago, and is not in dispute here. Rather, the dispute goes to the source of “the Government’s detention [and release] authority under the ‘statutory framework,’” *Jennings*, 583 U. S., at 295–96, at the time of the plaintiffs’ release from physical custody. In fact, not even that is in dispute. (D.E. 39, at 4 § C.) The only dispute in this case is the remedy.

**II. Section 1252(a)(2)(B)(ii) does not bar legal challenges, claims regarding regulations, or claims relating to procedural rules.**

The reason § 1252(a)(2)(B)(ii) does not apply in this case is essentially the same as why § 1226(e) does not apply; no exercise of discretion is being challenged. This case presents a raw question of law, and seeks to enforce a procedural regulation. The government seeks to obfuscate that reality by citing cases dealing with completely different types of claims.<sup>4</sup> Reviewing the case law on § 1252(a)(2)(B)(ii) shows the error in the government’s logic.

“Separation-of-powers concerns, moreover, caution us against reading legislation, absent clear statement, to place in executive hands authority to remove cases from the Judiciary’s domain.” *Kucana v. Holder*, 558 U. S. 233, 237 (2010). “[S]imply because the Secretary has the ultimate discretionary authority to grant an immigration benefit does not mean that every

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<sup>4</sup> “Alonso–Escobar 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 Off. Dir. Miami, Fla.*, 462 Fed. Appx. 933, 934–35 (CA11 2012). That is not what the plaintiffs are seeking here. Rather, what “they allege is actually the misclassification of their releases-on-recognizance,” *Sicar*, 541 F. 3d, at 1060, and, under Counts II and III, what they “seek [is] declaratory and injunctive relief, alleging the Government has systematically misclassified their parole status,” *id.*, at 1057. As for Count I, it relies upon the same underlying legal theory, while seeking a writ of habeas as the remedy.

determination made by [the agency] regarding an alien’s application for that benefit is discretionary, and hence not subject to review.” *Mejia Rodriguez v. U. S. Dep’t of Homeland Sec.*, 562 F.3d 1137, 1143 (CA11 2009). “Rather the language of the INA’s judicial review provision—‘any other decision or action . . . the authority for which is specified . . . to be in the discretion of the Attorney General or the Secretary of Homeland Security’—is more precise.” *Id.* (quoting 8 U. S. C. § 1252(a)(2)(B)(ii)). “The statute requires us to look at the *particular* decision being made and to ascertain whether *that* decision is one that Congress has designated to be discretionary.” *Id.* (emphasis in original).

“Congress barred court review of discretionary decisions only when Congress itself set out the Attorney General’s discretionary authority **in the statute.**” *Kucana*, 558 U. S., at 247 (emphasis added) (citation omitted). “Decisions on [issues] made discretionary **by regulation**, in contrast, are adjunct rulings,” *id.*, at 248 (emphasis added), not implicated by the bar because “Congress had in mind decisions . . . made discretionary by legislation,” *id.*, at 246–27 (footnote omitted). “If Congress wanted the jurisdictional bar to encompass decisions specified as discretionary by regulation along with those made discretionary by statute, moreover, Congress could easily have said so.” *Id.*, at 248. But it didn’t. “[A] paramount factor” behind this interpretation of § 1252(a)(2)(B)(ii) is that, “[b]y defining the various jurisdictional bars by reference to other provisions in the INA itself, Congress ensured that it, and only it, would limit the federal courts’ jurisdiction,” *id.*, at 252—a key foundation of separation of powers.

There is further “precis[ion],” *Mejia Rodriguez*, 562 F.3d, at 1143, to keep in mind. “[T]he Attorney General’s general authority to arrive at an outcome through **the application of law to facts is distinct** from the issue of whether Congress has ‘specified’ that the decision lies in the Attorney General’s discretion and is thus unreviewable.” *Id.*, at 1143 (emphasis added) (citations omitted). “[P]reliminary *statutory* eligibility decisions are not ones that involve discretion.” *Id.* (emphasis in original). The “statutory eligibility determinations” the agency “is obligated to make in deciding whether to grant or deny” a discretionary request “are not ‘decision[s] or action[s] . . . the authority for which is specified to be in the discretion of’ ” the agency. *Id.*, at 1144 (quoting § 1252(a)(2)(B)(ii)) (alterations in original).

Additionally, “Section 1252(a)(2)(B)(ii) does not deprive the district court of jurisdiction” over “claims” that the agency “failed to follow the correct procedure” because that type of “failure

[i]s not within [the agency's] discretion.” *Kurapati v. USCIS*, 775 F.3d 1255, 1262 (CA11 2014). “‘Even when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations.’” *Id.* (citation omitted). “‘Agencies must respect their own procedural rules and regulations.’” *Id.* (quoting *Gonzalez v. Reno*, 212 F.3d 1338, 1349 (CA11 2000)). This principle was recently affirmed earlier this year where, even though “[u]nder the Supreme Court’s *Bouarfa* decision, the district court lacked jurisdiction to consider any substantive challenges to USCIS’s decision to revoke its prior approval of Tuozzolo’s visa petition,” *T & B Holding Grp., LLC v. U. S. Att’y Gen., Sec’y*, No. 23-13385, 2025 WL 1013414, at \*3 (CA11 Apr. 3, 2025), the Court still held that Tuozzolo’s “claims of procedural error challenging a discretionary revocation decision are reviewable,” *id.* (citations omitted).

Here, the plaintiffs agree that the **decision to release** them (or not) from physical custody—regardless of whether 8 U. S. C. § 1182(d)(5) or § 1226(a) was the controlling provision over that decision—was an act of discretion that the Court generally cannot review in terms of how that discretion was exercised. Accord Motion to Dismiss (D.E. 39, at 7) (“§ 1226(a) allows DHS to exercise its **discretion to release**”) (emphasis added); *id.* (“*discretionary decision and action to release* an alien . . . under § 1182(d)(5)(A)) (bolded emphasis added). But they are not asking to be taken back into physical custody; that would be foolish.

Rather, under Count I, they are asking to be released from **continued supervision and reporting obligations**, claiming that they “are not lawfully subject to orders of release on recognition under the purported auspices of 8 U. S. C. § 1226(a)” because “parole under § 1182(d)(5) would have been the only lawful basis to release the plaintiffs and the class members from physical immigration custody” when the government chose to release them. (D.E. 22, at 152 ¶ 115.) This claim presents a question of law regarding whether the plaintiffs were statutorily eligible for release under § 1182(d)(5) or § 1226(a) at the time the DHS chose to release them.<sup>5</sup> Section “1252(a)(2)(B)(ii) does not preclude the [Court] from reviewing [the plaintiffs’ claims] because such *non-discretionary*, statutory eligibility decisions . . . fall outside the limitations on judicial review in the INA.” *Mejia Rodriguez*, 562 F.3d, at 1144–45 (emphasis in original). “[T]hese

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<sup>5</sup> And the government appears to readily agree with the plaintiffs’ assessment of that statutory eligibility question. (D.E. 39, at 4 § C).

are precisely the legal, non-discretionary determinations that [the plaintiffs] see[k] to have reviewed by the [Court].” *Id.*, at 1144 (citation omitted).

As for Counts II and III, those causes of action seek relief regarding the agency’s need to comply not only with its regulations—which are not protected by § 1252(a)(2)(B)(ii)—but with regulations that are of a non-discretionary and of a procedural nature. (D.E. 22, at 153 ¶ 119, & 154 ¶ 126 (“Under § 235.1(h)(2), the defendant has a mandatory, nondiscretionary obligation to provide evidence of parole to persons who have been paroled into the United States.”)); see 8 CFR § 235.1(h)(2) (“Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, **shall** be issued a completely executed Form I–94, endorsed with the parole stamp.”) (emphasis added). Thus, the Court has jurisdiction over this claim under both *Mejia Rodriguez* and *Kurapati*.

As for those last two Counts, there is one last point to rebut. The government argues that “§ 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).” (D.E. 39, at 7 (bolded emphasis added)); see also *id.* (“the *discretionary decision to issue* humanitarian parole”) (bolded emphasis added)). The use of the words “with” and “issue” here is either a sleight of hand or reflects a fundamental misunderstanding of what parole is. Parole is nothing more than the act of releasing someone from custody, and it is not a status or benefit of any kind. *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.”). The government’s framing of the issue eliminates the regulations’ documentation requirement under 8 CFR § 235.1(h)(2) as an independent procedural act that occurs after the fact of parole. The fact that other immigration benefits require the past act of parole as an element for statutory eligibility does not change the nature of parole as being nothing more than an act of release from physical custody. *Leng May Ma*, 357 U. S., at 190 (“Physical detention of aliens is now the exception, not the rule, and is generally employed only as to security risks or those likely to abscond.”) (describing “the congressional mandate” behind the parole statute).

The parole statute’s text and grammar further buttress the point. *Preap*, 586 U. S., at 407–08 (“Because words are to be given the meaning that proper grammar and usage would assign them, the rules of grammar govern statutory interpretation unless they contradict legislative intent

or purpose.”) (cleaned up). That statute provides:

**The Secretary of Homeland Security may**, except as provided in subparagraph (B) or in section 1184(f) of this title, 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, 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). Thus, under the statute’s terms, the government “may . . . **parole** [an immigrant] **into** the United States,” and when it is time for that parole to end, the immigrant “shall . . . be returned to the custody from which he **was paroled**.” *Id.* (emphasis added).

The word “parole” is used as a verb in the statute.<sup>6</sup> Garner, B., *The Chicago Guide to Grammar, Usage, and Punctuation* 71 § 137 (2016) (“A verb shows the performance or occurrence of an action or the existence of a condition or a state of being, such as an emotion.”). Specifically, it is being used as a “dynamic (or *action*)” verb which “express[es] actions that a subject can carry out,” as opposed to a “stative (or *nonaction*)” verb which “express[es] a state or condition, not an action {Jim **has** the article} {Maria **owns** a car}.” *Id.*, at 72–73 § 140. In the phrase “may . . . parole into the United States,” the word “parole” is being used as a phrasal verb (“parole into”) which “is usually a verb plus a preposition (or particle) {settle down} {act up} {phase out}.” *Id.*, at 82 § 143. And in the phrase “returned to the custody from which he was paroled,” the word “parole” is being used as in the past indicative tense which “denotes an act, state, or condition that occurred or existed at some explicit or implicit point in the past {the auction ended yesterday} {we returned the shawl},” and which, “[f]or a regular verb, . . . is formed by adding *-ed* to its base form {jump-jumped} {spill-spilled}.” *Id.*, at 95 § 174. In fact, even the documentation regulation uses the verb “parole” in the form of a phrasal verb in the past indicative tense. 8 CFR § 235.1(h)(2) (“Any alien paroled into the United States . . .”).

With regard to the phrase “such parole,” it appears that the drafters might have erred by

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<sup>6</sup> Accord Resp’t Return Opposing Pet. for Writ of Habeas Corpus 27 (Doc. 7), *Boffill v. Field Ofc. Dir.*, No. 1:25-cv-25179-BECERRA (S.D. Fla. Nov. 14, 2025) (“‘Parole’ as used in 8 U. S. C. § 1182(d)(5) is a transitive verb.”).

using the word “parole” as a gerund, which is a “present participle used as a noun,” Garner 87 § 155, without using the -ing that is required of present participles. *Id.*, at 86 § 152 (“The present participle is formed by adding -ing to the stem of the verb {reaping} {wandering}.”). However, lawyers often misuse the word “such,” and this wrinkle may represent nothing more than a scrivener’s grammatical error. *Such*, Garner’s *Modern English Usage* 873 (4th ed. 2016) (“[W]hen used as a demonstrative adjective to modify a singular noun, *such* typifies LEGALESE.”). It also appears that the word “parole,” when used in a legal sense, functions as a verb and also as a noun. *Parole*, *Black’s Law Dictionary* 1139 (7th ed. 1999). But when used as a noun, parole means “[t]he **release** of a prisoner from imprisonment before the full sentence has been served.” *Id.* (emphasis added); see also *id.* (“The essence of parole is release from prison . . . .”) (quoting 59 Am. Jur. 2d *Pardon and Parole* § 6 (1987)).

In sum, parole is an action, as in the act of release. **Parole** is just the act of release from custody; **documenting** that parole is something else. To describe what 8 CFR § 235(h)(2) requires as an “*action to release* an alien **with** a humanitarian parole” (D.E. 39, at 7 (emphasis added)) makes no sense because what that sentence structure is actually describing is the “*action to release* an alien **with** [release].” See also *id.* (“the *discretionary* decision **to issue** [release]”). It is a circular redundancy, and a logical fallacy. The Court has jurisdiction to enforce this regulation’s mandatory procedural documenting obligation.

**III. The Court has venue under both 28 U. S. C. § 1391 and its habeas jurisdiction, and Count I of the First Amended Petition can proceed under the legal custodian exception to the immediate custodian rule because this case challenges non-core custody.**

Over several sections of its motion to dismiss, the government challenges venue under 28 U. S. C. § 1391(b) for some of the plaintiffs (D.E. 39, at 9–10), challenges the Court’s habeas venue/jurisdiction for those same plaintiffs (*id.*, at 11–12), and facially challenges the Court’s habeas jurisdiction under the “in custody” requirement (*id.*, at 10–11). See *Romero v. Sec’y, U. S. Dep’t of Homeland Sec.*, 20 F. 4th 1374, 1378 (CA11 2021) (“Whether a person is ‘in custody’ within the meaning of § 2241 is a question of subject-matter jurisdiction.”) (citation omitted). The plaintiffs address each point in turn.

**a. Venue is proper in this district under 28 U. S. C. § 1391(e).**

As will be discussed below, the “venue” issue for habeas jurisdiction is of a different nature than venue under 28 U. S. C. § 1391. However, as to Counts II and III of the First Amended Petition (D.E. 22, at 153–54), they are subject to § 1391.

To begin, the plaintiffs are asserting venue under § 1391(e) which applies to actions against federal government defendants, not subsection (b). (D.E. 22, at 42 ¶ 5.) They invoke subsection (e) because: (1) a substantial part of the events or omissions giving rise to the claim occurred” in this district, § 1391(e)(1)(B); (2) a defendant “resides” in this district, § 1391(e)(1)(A); and (3) several of the plaintiffs reside in this district, § 1391(e)(1)(C). (*Id.*) And given that Counts II and III are brought under the Administrative Procedure Act (APA), 5 U. S. C. § 701, et seq., it is important to keep in mind that the APA provides that “the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer.” 5 U. S. C. § 703.

Section 1391(e)(1), Title 28, grants venue “in any judicial district in which . . . the plaintiff resides if no real property is involved in the action.” The defendants argue that “the Court should dismiss the claims of Plaintiffs that are detained or report to ICE Field Offices outside” of this district. (D.E. 39, at 9.) In so doing, and without citing any case law, they are implying that venue in a joinder/putative class action must be shown as to every plaintiff in the case. Not so:

For over thirty years federal courts have conclusively and consistently held that the statutory language in 28 U.S.C. § 1391(e)(3) regarding the residency of “the plaintiff” should be interpreted to mean **any plaintiff rather than all plaintiffs**.

*A.J. Taft Coal Co. v. Barnhart*, 291 F. Supp. 2d 1290, 1301–02 (N.D. Ala. 2003) (collecting cases) (bolded emphasis added);<sup>7</sup> accord *C.M. v. Noem*, No. 25-CV-23182-RAR, 2025 WL 2400953, at \*19 (S.D. Fla. Aug. 18, 2025) (“Section 1391(e)(1) is also easily satisfied, because several plaintiffs live in this District.”). And like in the *Barnhart* case, where “counsel for both the Commissioner and the Trustees conceded that, even with the vast resources of their respective law groups, they could not identify a single case deciding that § 1391(e)(3) should be interpreted to mean *all* plaintiffs,” 291 F. Supp. 2d, at 1302, it appears that the same is true here as well.

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<sup>7</sup> Pursuant to § 202(2) of the Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758, 764 (Dec. 7, 2011), 28 U. S. C. § 1391(e)(3) was redesignated as § 1391(e)(1)(C) without any substantive changes.

As for venue “[u]nder § 1391(e)(1)(A), venue is proper in any district where ‘a defendant in the action resides.’ ” *Pac. Solar Energy, S.A. de C.V. v. U. S. Dep’t of the Treasury*, No. 16-25324-CIV-COOKE, 2017 WL 6730069, at \*2 (S.D. Fla. Dec. 29, 2017). “For venue purposes, a federal agency or officer resides where it ‘performs its official duties.’ ” *Id.* (citations omitted). “Venue can properly lie in more than one jurisdiction because officers and agencies may have more than one residence.” *Id.* (citations omitted). All it takes is for “a Defendant [to] resid[e] here.” *C.M.*, 2025 WL 2400953, at \*19 (emphasis added). The government has not denied that any of the **named** defendants reside in this district for § 1391 purposes.

With regard to transactional venue under “§ 1391(e)(1)(B), venue is proper in any district where ‘a substantial part of the events or omissions giving rise to the claim occurred.’ ” *Pac. Solar Energy*, 2017 WL 6730069, at \*3. “To determine where these events or omissions occurred, only the events that directly give rise to a claim and only those locations hosting the substantial part of the events are deemed relevant.” *Id.* (citation and footnote omitted). “When conducting a venue analysis, courts must focus on the relevant activities of the defendant—not of the plaintiff—that were ‘wrongful’ or have a ‘close nexus to the wrong.’ ” *Id.* (citation omitted). The government has not denied that venue is proper under this provision.

The defendants’ argument against venue in this district is wholly plaintiff-focused. (D.E. 39, at 10 (“Venue is proper in the districts where they regularly report or reported, as required by their orders o[f] release on recognizance.”) (footnote omitted).) With regard to residence, the defendants discuss the residence of non-party ICE Field Office Directors, but say nothing about the actual **named** defendants, and, as noted above, they do not deny that the actual named defendants reside in this district. (*Id.* (“Further, those districts are also where their corresponding ICE Field Office Director, who has authority over the terms of the orders o[f] release on recognizance, reside.”).) Nor has the government denied that the actual named defendants have authority over the named plaintiffs, or denied that the named defendants are proper defendants under the APA, 5 U. S. C. § 703.

As such, the defendants have waived any objections they could have made to venue under 28 U. S. C. §§ 1391(e)(1)(A) (defendant residence) and (B) (transactional venue) which are both defendant-focused inquiries. *Lipofsky v. New York State Workers Comp. Bd.*, 861 F.2d 1257, 1258 (CA11 1988) (“Lack of personal jurisdiction and improper venue . . . defenses are waived

when a defendant files a responsive pleading or Rule 12 motion failing to assert them.”) (citations and footnotes omitted); see also *Barnhart*, 291 F. Supp. 2d, at 1301 (“neither the Commissioner nor the Trustees raised as a defense improper venue under **that** section”) (emphasis added). And although the government never mentions § 1391(e)(1)(C), at best, the substance of its argument goes to that ground for venue. But, as noted above, the case law shows that that provision is “interpreted to mean *any* plaintiff rather than *all* plaintiffs.” *Id.*, at 1301–02 (collecting cases).

Last is the fact that this case is a putative class action. In such cases, “the substantial parts of the events that give rise to Plaintiffs’ claims [can] occu[r] in multiple districts” without undermining venue in one of those districts. *Harvard v. Inch*, 408 F. Supp. 3d 1255, 1261 (N.D. Fla. 2019). “[T]his district need not be the site of *most* of the contacts; ‘venue may be proper even if contacts with another district were more substantial.’” *Smith v. Burlington N. Santa Fe Ry. Co.*, No. 06-2151-CM, 2006 WL 3192545, at \*1 (D. Kan. Nov. 1, 2006) (citation omitted); accord *Emps. Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1165–66 (CA10 Cir. 2010) (“[V]enue is not limited to the district with the *most* substantial events or omissions.”) (citing, *inter alia*, *First of Mich. Corp. v. Bramlet*, 141 F.3d 260, 264 (CA6 1998); *Setco Enters. Corp. v. Robbins*, 19 F.3d 1278, 1281 (CA8 1994)). Regardless, the government has not challenged transactional venue in its motion to dismiss.

**b. Because the plaintiffs challenge non-core custody, the Court is properly acting “within its jurisdiction” under 28 U. S. C. § 2241(a).**

A central theme in habeas jurisprudence is the distinction between core and non-core habeas challenges. This distinction can arise between the type of remedies pursued:

Habeas is at its core a remedy for unlawful executive detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 536, 124 S. Ct. 2633, 159 L.Ed.2d 578 (2004) (plurality opinion). The typical remedy for such detention is, of course, release. See, e.g., *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S. Ct. 1827, 36 L.Ed.2d 439 (1973) (“[T]he traditional function of the writ is to secure release from illegal custody”). But here the last thing petitioners want is simple release . . . .

*Munaf v. Geren*, 553 U.S. 674, 693 (2008); accord *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973) (describing the relief of “immediate release” or a “shortening [of] the length of . . . confinement in prison” as falling “within the core of habeas corpus”). This distinction can arise with regard to the type of legal challenge being made. *Nance v. Ward*, 597 U.S. 159, 160 (2022) (“When a prisoner seeks relief that would ‘necessarily imply the invalidity of his conviction or

sentence, he comes within the core and must proceed in habeas.”) (citation omitted). This distinction also matters with regard to the type of custody being challenged:

That our understanding of custody has broadened to include restraints short of physical confinement does nothing to undermine the rationale or statutory foundation of *Wales*’ immediate custodian rule where physical custody *is* at issue. Indeed, as the cases cited above attest, it has consistently been applied in this core habeas context within the United States.

*Rumsfeld v. Padilla*, 542 U. S. 426, 437 (2004) (footnote omitted); see also 1 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* § 2.2 n. 13, at 18 (7th ed. Dec. 2024) (“evidencing the Court’s belief in its broad power unilaterally to supplement the statute, but exercising that power to expand rather than contract the writ, the Court in 1963 . . . expanded substantially its interpretation of the statutory ‘custody’ prerequisite for habeas corpus relief, *Jones v. Cunningham*, 371 U. S. 291 (1963)”).

1. Beginning with whether the plaintiffs and the putative class are “in custody” within the meaning of 28 U. S. C. § 2241(c), the parties might agree that being subject to a release on recognizance is not a form of core habeas custody. (D.E. 39, at 12 (“a habeas petitioner who challenges a form of ‘custody’ other than present physical confinement”) (citation omitted).) The plaintiffs’ position is that they are “in custody” under a non-core custody theory.

The government cites *Alvarez v. Holder*, 454 Fed. Appx. 769 (CA11 2011), a case dealing with an Order of Supervision,<sup>8</sup> to argue that Count I fails because supervision only counts as custody when one challenges a condition of said supervision, while also framing the argument in standing terms. (D.E. 39, at 10–11.) However, a later precedential decision from the Eleventh Circuit directly contradicts this proposition, noting that supervision counts as custody for habeas purposes when challenged on pure statutory authority grounds, and even when the government has an alternate basis to proceed against the petitioner:

Romero initiated this action prevent her deportation. She sought a writ of habeas corpus and declaratory and injunctive relief under 28 U.S.C. § 2241, arguing that the government’s ongoing supervision and planned removal subjected her to unlawful “custody.” In particular, she contended that the 1995 order was no longer

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<sup>8</sup> An Order of Supervision, authorized by 8 U. S. C. § 1231(a)(3), is issued using DHS Form I-220B. See sample form at: [https://www.ice.gov/doclib/detention/checkin/I\\_220B\\_OSUP.pdf](https://www.ice.gov/doclib/detention/checkin/I_220B_OSUP.pdf). At issue in this case is the Order of Release on Recognizance which is issued using DHS Form I-220A. See sample form at: [https://www.ice.gov/doclib/detention/checkin/I\\_220A\\_OREC.pdf](https://www.ice.gov/doclib/detention/checkin/I_220A_OREC.pdf). The terms for each type of order are substantially the same.

operative because she had validly self-executed it by voluntarily departing the United States before its issuance. Without reinstating that order, she argued, the government couldn't lawfully supervise or deport her.

*Romero v. Sec'y, U. S. Dep't of Homeland Sec.*, 20 F. 4th 1374, 1378 (CA11 2021) (footnote omitted). With that description of the claim in mind, the Court found that the immigration supervision counted as custody because the inquiry was whether the petitioner was being restrained of their liberty in a significant manner:

Following *Jones*, we have held that § 2241's "in custody" requirement should be construed "very liberally" and that habeas petitioners "need only show that they are subject to a significant restraint on their liberty that is not shared by the general public." *Howard*, 776 F.3d at 775. Even more closely on point is a decision of our predecessor court, *United States ex rel. Marcello v. District Director of Immigration & Naturalization Service*, which concluded that an individual who, like *Romero*, was subject to a deportation order and pre-deportation supervision was "in custody" within the meaning of § 2241. 634 F.2d 964, 971 & n.11 (5th Cir. 1981). The petitioner in that case was required to report to a representative of the federal government on a quarterly basis and was forbidden from travelling outside his state of residence for more than 48 hours without notifying the government. *Id.* at 971 n.11.

*Romero*, 20 F. 4th, at 1379. In so holding, the Court never once invoked the concept of "collateral consequences," or a supposed need to challenge the terms of the supervision; challenging the legality of the supervision, or say "the nature of the release on recognizance" (D.E. 39, at 10), itself was enough.<sup>9</sup>

Even more recently, with that rule of liberal construction in mind, the Court explicitly stated, "we have held that 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." *Clements v. Fla.*, 59 F. 4th 1204, 1213 (CA11 2023) (citations omitted). That is exactly the scenario that the plaintiffs and the putative class members are in. As the Court noted, "[i]n the 1970s and 1980s, the Supreme Court extended the *Jones* rationale to release on personal recognizance." *Id.*, at 1211 (citing, *inter alia*, *Hensley v. Mun. Ct.*, 411 U. S. 345, 351–52 (1973)).

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<sup>9</sup> As for the case of *France v. Ripa*, that case involved a pro se petitioner who did not update his address with the Court after being released from physical confinement under supervision. No. 24-CV-24333-ALTMAN, 2025 WL 973532, at \*2 (S.D. Fla. Apr. 1, 2025). Importantly, the petitioner there only challenged his prior physical confinement, and those claims became moot upon his "supervised release—which was what he wanted all along." *Id.*, at \*3 (citations omitted). That case is inapposite to this one.

In fact, the *Hensley* case abrogated several cases including *Wales v. Whitney*, 114 U. S. 564 (1885) — a case cited by the government in its motion to dismiss (D.E. 39, at 12). 411 U. S., at 350 n. 8. It did so to hold that “a person released on bail or on his own recognizance,” *id.*, at 349, “is in custody for purposes of the habeas corpus statute,” *id.*, at 351, because “he is subject to restraints ‘not shared by the public generally,’ . . . that is, the obligation to appear ‘at all times and places as ordered’ by,” *id.* (citation officials), government officials. The same is true of the plaintiffs’ and the class members’ Orders of Release on Recognizance. See, *supra*, n. 8.

As for the government challenge on standing grounds (D.E. 39, at 11), precedent holds that the type of claims brought here are justiciable. In *Sicar v. Ashcroft*, “a plain reading of [Appellants’] complaint indicates the injury they allege is actually the misclassification of their releases-on-recognizance, not the ultimate denial of their status adjustment applications.” 541 F. 3d 1055, 1060 (CA11 2008). “This alleged misclassification is an injury in fact for standing purposes, regardless of how Appellants’ ultimate status adjustment determinations may be resolved.” *Id.* “Also, this injury is fairly traceable to the actions of the Government, as it was the Government that allegedly misclassified Appellants’ releases-on-recognizance.” *Id.* “Moreover, this injury would be redressed by a favorable decision in federal court.” *Id.* “Were the court to find Appellants had been paroled, the misclassification would be corrected, and Appellants could have another attempt to have their status adjusted, this time without the allegedly incorrect initial classification.” *Id.* “Thus, Appellants have met the constitutional requirements of standing.” *Id.* The same is true here.

2. With the plaintiffs’ subjection to non-core custody established, the remaining issue pertains to the proper respondents for their Count I claims. Importantly, this is not a jurisdictional issue in the traditional subject matter sense. *Padilla*, 542 U. S., at 434 n. 7 (“The word ‘jurisdiction,’ of course, is capable of different interpretations. We use it in the sense that it is used in the habeas statute, 28 U.S.C. § 2241(a), and not in the sense of subject-matter jurisdiction of the District Court.”); *id.*, at 451–52 (“[M]y understanding of how the statute should be interpreted in light of the Court’s holding” is that “the question of the proper location for a habeas petition is best understood as a question of personal jurisdiction or venue.”) (Kennedy, J., concurring, joined by O’Connor, J.) (citing, *inter alia*, *Braden v. 30th Judicial Circuit Court of Ky*, 410 U. S. 484, 493 (1973) (indicating that the analysis is guided by “traditional venue considerations” and “traditional principles of venue”)); see also *Moore v. Olson*, 368 F. 3d 757, 759 (CA7

2004) (“All of the subsections make sense, however, if understood to determine the venue of collateral litigation. The need for personal jurisdiction over the custodian comes from general principles outside § 2241 itself.”); *Aziz v. Leferve*, 830 F.2d 184, 186 (CA11 1987) (“Respondents not only waived any lack of personal jurisdiction, they actually requested the transfer themselves.”).

Thus, if there is an issue pertaining to the naming of the respondent in a habeas case, the Court may permit correction of the matter:

The Court agrees with Petitioner that his error is a technical one. In the interest of reaching the merits of his Petition, the Court may *sua sponte* substitute the correct Respondent, and dismiss the improperly named Respondents.

*Mayorga v. Meade*, No. 24-CV-22131-BLOOM, 2024 WL 4298815, at \*3 (S.D. Fla. Sept. 26, 2024) (citations omitted); see also 1 Hertz & Liebman, *Federal Habeas Corpus* § 10.2 & nn. 24–27, at 600–01 (collecting cases showing that remedy of such errors should be permitted as appropriate to the issue, rather than dismissing the case). In light of that, to the extent the Court finds that there is an issue with the named respondents, the plaintiffs request that the Court allow them to remedy the issue. But, for the following reasons, there is no error to remedy here.

i. Supreme Court precedent holds that the immediate custodian rule applies to core custody challenges:

[L]ongstanding practice confirms that in habeas challenges to present **physical** confinement—“core challenges”—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.

*Padilla*, 542 U. S., at 435 (emphasis added) (citations and footnote omitted). However, there are “recognized,” *id.*, “exceptions to this rule,” *id.*, for non-core custody cases as discussed in the *Braden* case among others, *id.*, at 435 n. 9. See *Braden*, 410 U. S., at 495 (“So long as the custodian **can be reached by service of process**, the court can issue a writ ‘within its jurisdiction’ requiring that the prisoner be . . . released outright from custody, even if the prisoner himself is confined outside the court’s territorial jurisdiction.”) (emphasis added).

Specifically, the recognized “simple proposition [is] that the immediate physical custodian rule, by its terms, does not apply when a habeas petitioner challenges **something other than his present physical confinement.**” *Padilla*, 542 U. S., at 438 (emphasis added). In that context, the rule is that “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 (emphasis added). For example, in the military conscientious objector case of “*Strait v. Laird*, 406 U.S. 341, 92 S.Ct. 1693, 32 L.Ed.2d 141 (1972),” which “involved an inactive reservist domiciled in California,” the Court allowed the habeas petition to proceed against “the reservist’s ‘**nominal**’ **custodian** [who] was a commanding officer in Indiana who had charge of petitioner’s Army records.” *Id.*, at 438–49 (citing *Strait*, 406 U. S., at 344) (emphasis added).

There, “the immediate custodian rule had no application because petitioner was not challenging any present physical confinement.” *Id.*, at 439. The Court explained that in a “nominal custodian” case, “to say that Strait’s custodian is **amenable to process** only in Indiana—or wherever the Army chooses to locate its recordkeeping center . . . —would be to exalt fiction over reality.” *Strait*, 406 U. S., at 344 (emphasis added) (citation omitted). The Court reasoned that “Strait’s commanding officer is ‘present’ in California through the officers in the **hierarchy of the command** who processed this serviceman’s application for discharge.” *Id.*, at 345 (emphasis added) (footnote omitted). Thus, the Court held, “[t]he concepts of ‘custody’ and ‘custodian’ are sufficiently broad to allow us to say that the commanding officer in Indiana, **operating through officers in California** in processing petitioner’s claim, is in California for the limited purposes of habeas corpus jurisdiction.” *Strait*, 406 U. S., at 345–46 (emphasis added). Returning to the Guantanamo detainee case of *Padilla*, the Court explained that the legal custodian rule “comes into play when there is no immediate physical custodian with respect to the challenged ‘custody,’ ” looking to identify the “supervisory official who exercises legal control, is the proper respondent.” 542 U. S., at 439. This exception cannot “appl[y] to physical-custody challenges,” however, because then “a convicted prisoner would be able to name **the State or the Attorney General** as a respondent to a § 2241 petition.” *Id.* (emphasis added).

Again, this is a non-core custody case that is not challenging physical confinement. A particularly instructive case explains that, in non-core immigration custody challenges, the majority of courts hold that the Attorney General—who is a named respondent here—is the proper respondent. Noting that it is “unclear whether [the custodian] limitation refers to personal jurisdiction, venue, or some sort of *sui generis* ‘habeas jurisdiction,’ ” *S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 407 (S.D.N.Y. 2018) (citing *Padilla*, 542 U. S., at 434 n. 7), the court explained:

As for “non-core” challenges, courts in this Circuit have relied on a combination

of venue and personal jurisdiction principles in deciding whether they have jurisdiction. *See, e.g., Somir*, 354 F.Supp.2d at 218; *Campbell*, 353 F.Supp.2d at 338; *Batista-Taveras*, 2004 WL 2149095, at \*6; *Garcia-Rivas*, 2004 WL 1534156, at \*3. Those courts applying venue principles have relied on “traditional venue considerations,” such as the location of “material events,” the location of “records and witnesses pertinent to the claim,” and the relative “convenience of the forum” for each party. *Garcia-Rivas*, 2004 WL 1534156, at \*3; *see also, e.g., Somir*, 354 F.Supp.2d at 218; *Batista-Taveras*, 2004 WL 2149095, at \*6. Those relying on principles of personal jurisdiction have asked whether the respondent can be reached by service of process and whether the respondent falls under the state’s long-arm laws. *See, e.g., Campbell*, 353 F.Supp.2d at 338.

*Id.*, at 408. With that in mind:

Applying the legal control test, most district courts in this Circuit have held that the Attorney General is the proper respondent for “non-core” claims challenging orders of removal. *See, e.g., Somir*, 354 F.Supp.2d at 217–18 & n.2 (collecting cases); *Batista-Taveras*, 2004 WL 2149095, at \*6. In these courts’ view, the Attorney General is a “custodian” over individuals facing exclusion and deportation due to the “near total control” that he exercises over them. *Somir*, 354 F.Supp.2d at 217–18. Thus, under the governing case law, Attorney General Jefferson B. Sessions III is the proper respondent for Petitioner’s “non-core” claim.

*Id.*, 410 (footnotes omitted); accord *Calderon v. Sessions*, 330 F. Supp. 3d 944, 952 (S.D.N.Y. 2018) (“For a non-core habeas challenge, courts in this circuit have consistently held that the proper respondent is **a person or entity** that has *legal custody* of the petitioner, also known as a ‘legal custodian.’”) (emphasis added); *Khalil v. Joyce*, 771 F. Supp. 3d 268, 280 (S.D.N.Y. 2025) (“[C]ourts have generally held that for ‘non-core’ habeas proceedings — for example, proceedings in which a petitioner seeks ‘a stay of deportation or an adjustment of status’ — jurisdiction can be proper outside the district of confinement.”) (citing *Singh v. Holder*, 2012 WL 5878677, at \*2 (S.D.N.Y. 2012) (in turn citing cases)).

All of the named defendants, whom the government has not addressed in its motion to dismiss, are “person[s] who exercis[e] legal control with respect to,” *Padilla*, 542 U. S., at 438, the plaintiffs’ and the putative class’ improper subjection to § 1226(a) custody. All of the named defendants are “‘present’ in [this district] through the officers in the hierarchy of the command who proces[s],” *Strait*, 406 U. S., at 345, the reporting and supervision obligations of the plaintiffs and putative class members in this district. They all sit in a position as to the plaintiffs that is analogous to “a convicted prisoner” petitioning against “the State or the Attorney General as a

respondent.” *Padilla*, 542 U. S., at 439.<sup>10</sup> The government has not disputed any of this.

But just to be sure, all the named defendants have legal authority over the plaintiffs’ reporting and supervision. In all immigration matters, “determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” 8 U. S. C. § 1101(a)(1); see also 28 CFR § 0.20(b) (DOJ control over decisions to appeal from district court rulings). Additionally, “[a]ll authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security.” 8 CFR § 2.1. And down the DHS chain, via § 2.1 delegation, every one of the other named defendants has legal authority and supervision of all the Field Office Directors which the government claims should be the named respondents in this case. The government has not disputed any of this.

ii. As a short aside, for nearly 100 years, the Supreme Court has expressly reserved ruling on the issue of whether the immediate custodian rule applies at all to immigration cases, even in **core** habeas cases challenging present physical custody. *Padilla*, 542 U. S., at 436 n. 8 (“In *Ahrens v. Clark*, 335 U.S. 188, 68 S.Ct. 1443, 92 L.Ed. 1898 (1948), we left open the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation. . . . Because the issue is not before us today, we again decline to resolve it.”) (also noting circuit split). “Moreover, the Eleventh Circuit has not weighed in on the application of *Padilla*’s default rule in an immigration detention case.” *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1301 (S.D. Fla. 2020).

However, locally, it has been held in a core challenge to present physical confinement that a strict application of the immediate custodian rule is sometimes inappropriate. *Id.*, at 1302 (“This Court joins those courts adopting the latter approach that have recognized that ‘where a petitioner is held in a facility pursuant to a contract, rather than by the state or federal government itself, application of the [default] immediate custodian rule must take account of that fact.’”)

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<sup>10</sup> Further, “venue in this district does not pose an inconvenience for the parties or otherwise offend other ‘traditional venue considerations,’” *S.N.C.*, 325 F. Supp. 3d, at 410 (citation and footnote omitted), given that 28 U. S. C. “Section 1391(e)(1)(C) is . . . easily satisfied [here], because several plaintiffs live in this District,” *C.M. v. Noem*, No. 25-CV-23182-RAR, 2025 WL 2400953, at \*19 (S.D. Fla. Aug. 18, 2025). Compare *S.N.C.*, 325 F. Supp. 3d, at 410 (“the Attorney General ‘is unquestionably subject to long-arm jurisdiction under New York law,’ *Henderson v. I.N.S.*, 157 F.3d 106, 124 n.19 (2d Cir. 1998); because ‘a substantial part of the events or omissions giving rise to the claim occurred’ in this District, 28 U.S.C. § 1391(e)(1)(B)”).

(quoting *Saravia v. Session*, 280 F. Supp. 3d 1168, 1185 (N.D. Cal. 2017)); accord *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1235 (S.D. Fla. 2020) (“ICE’s field officer (whose jurisdiction encompasses Glades, even though Glades is in the Middle District of Florida, not the Southern District of Florida) could produce a Glades detainee for the habeas claim”) (following *Masingene*). Additionally, the Eleventh Circuit has issued multiple habeas precedents dealing with core habeas challenges to present physical confinement without mentioning any concern about the immediate custodian rule. *Singh v. U. S. Att’y Gen.*, 945 F. 3d 1310 (CA11 2019); *Sopo v. U. S. Att’y Gen.*, 825 F. 3d 1199 (CA11 2016), vacated on mootness grounds, 890 F. 3d 952 (CA11 2018); *Akinwale v. Ashcroft*, 287 F. 3d 1050 (CA11 2002).<sup>11</sup>

Regardless, the habeas claim in this case challenges non-core custody, and the immediate custodian rule simply does not apply.

iii. Last, the government’s argument regarding whom the proper respondents should be does not make any substantive argument regarding the relevant test to determine the issue. (D.E. 39, at 11–12.) And while saying nothing about the defendants who are actually named in the First Amended Petition (*id.*), the government argues that the various ICE ERO Field Office Directors around the country<sup>12</sup> — who, notably, are overseen by named defendant Tom Giles who is the Assistant Director for ERO Field Operations — are the proper respondents without any citation to legal authority or argument under a legal standard, relying on just a bare assertion.

As noted above, the propriety of the respondent is not a “subject-matter jurisdiction” issue. *Padilla*, 542 U. S., at 434 n. 7. Decided on the same day as *Padilla*, the Court explained:

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<sup>11</sup> Relatedly, in a case where the Central District of California certified a class including “‘all individuals who are detained pursuant to 8 U.S.C. § 1231(a)(6) in the Ninth Circuit by, or pursuant to the authority of, the U.S. Immigration and Customs Enforcement (‘ICE’), and who have reached or will reach six months in detention, and have been or will be denied a prolonged detention bond hearing before an Immigration Judge (‘IJ’),” that is, a core habeas challenge to current physical confinement, the Supreme Court expressed no doubts about the propriety of the scope of the class with regard to the identity of the respondents or the district court’s territorial reach. *Gonzalez v. Sessions*, 325 F.R.D. 616, 621 (N.D. Cal. 2018), enforcement denied sub nom. *Gonzalez v. Whitaker*, No. 18-CV-01869-JSC, 2019 WL 330466 (N.D. Cal. Jan. 25, 2019), and aff’d sub nom. *Aleman Gonzalez v. Barr*, 955 F. 3d 762 (CA9 2020), rev’d and remanded sub nom. *Garland v. Aleman Gonzalez*, 596 U. S. 543 (2022), and amended sub nom. *Gonzalez v. Barr*, No. 18-CV-01869-JSC, 2020 WL 3402227 (N.D. Cal. June 19, 2020).

<sup>12</sup> There are 25 ICE Field Offices around the country with their respective areas of responsibility. See <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFieldOffices.pdf>.

In *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 495, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973), this Court held, contrary to *Ahrens*, that the prisoner's presence within the territorial jurisdiction of the district court is not "an invariable prerequisite" to the exercise of district court jurisdiction under the federal habeas statute. Rather, because "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," a district court acts "within [its] respective jurisdiction" within the meaning of § 2241 as long as "the custodian **can be reached by service of process.**" 410 U.S., at 494–495, 93 S.Ct. 1123.

*Rasul v. Bush*, 542 U.S. 466, 478–79 (2004) (emphasis added); accord *Masingene*, 424 F. Supp. 3d, at 1303; *Campbell v. Wolf*, No. 20-CV-20768-COOKE, 2020 WL 2109933, at \*1 (S.D. Fla. Feb. 26, 2020). This issue "is strictly relevant only to the question of the appropriate forum, not to whether the claim can be heard at all." *Id.*, at 479 (citation omitted). "So long as the custodian can be reached by service of process, the court can issue a writ 'within its jurisdiction' requiring that the prisoner be brought before the court for a hearing on his claim, or requiring that he be released outright from custody, even if the prisoner himself is confined outside the court's territorial jurisdiction." *Braden*, 410 U. S., at 495 (non-core habeas challenge).

In not discussing the named defendants in their motion to dismiss, the government has wholly failed to challenge service of process against the named defendants. They have said nothing about it. Importantly, "[u]nder Fed.R.Civ.P. 12(h)(1), a party is deemed to have waived any objection to personal jurisdiction or service of process if the party makes a pre-answer motion under Rule 12 and fails to include such objections in that motion." *Pardazi v. Cullman Med. Ctr.*, 896 F. 2d 1313, 1317 (CA11 1990) (citation omitted). "Therefore, when [the government] failed to raise its personal-jurisdiction and service-of-process objections in its pre-answer motion to dismiss, it waived any objections that it might have had to the court's exercise of personal jurisdiction" over the named defendants. *Id.* (citation and footnote omitted). "A party that fails to raise a defense of lack of personal jurisdiction at the appropriate time is deemed to have conferred personal jurisdiction on the court by consent." *Id.* (citation omitted).

Precedent has established that waiver by failure to object also applies in habeas cases. *Padilla*, 542 U. S., at 452 ("Because the immediate-custodian and territorial-jurisdiction rules are like personal-jurisdiction or venue rules, objections to the filing of petitions based on those grounds can be waived by the Government.") (Kennedy, J., concurring) (citations omitted); *Ex parte Endo*, 323 U. S. 283, 305 (1944) ("The fact that no respondent was ever served with process

or appeared in the proceedings is not important. The United States resists the issuance of a writ.”); *Aziz v. Leferve*, 830 F. 2d 184, 186 (CA11 1987) (“Respondents not only waived any lack of personal jurisdiction, they actually requested the transfer themselves.”).

Regardless, the service of process was proper as to all named defendants:

Warden Conner, the respondent when the post-exhaustion litigation began, has not contested service of process and could not do so, as Fed.R.Civ.P. 4(i)(2)(A) creates national service for federal employees sued in their official capacities. Thus only venue is at stake, and the defense of improper venue was forfeited when it was omitted from the custodian’s opening brief.

*Moore v. Olson*, 368 F. 3d 757, 760 (CA7 2004). The same type of service occurred here. (D.E. 21 & 21-1.) And even if one were to judge service of process under a State’s long arm statute, see, e. g., *Calderon v. Sessions*, 330 F. Supp. 3d 944, 954 (S.D.N.Y. 2018) (“Mr. Sessions, Ms. Nielsen, and the DHS can all be reached by service of process.”) (citation omitted), service was proper against all the named defendants in accordance with Fla. Stat. § 48.193. See *Padilla*, 542 U. S., at 426 (“In *Strait*, we held that the Northern District of California had jurisdiction over Strait’s “nominal” custodian” because he “was ‘present’ in California ‘through the officers in the hierarchy of the command’ ”) (citation omitted).

#### **IV. The plaintiffs have stated plausible claims for relief.**

As noted earlier, the government does not contest that the plaintiffs’ and putative class members’ release on recognizance pursuant to 8 U. S. C. § 1226(a) was legally incorrect, and that the only lawful way they could have been released from DHS’ physical custody was via parole under § 1182(d)(5)(A). (D.E. 39, at 4 § C; and at 16 n. 8 (“if DHS had applied the proper statute”).) Nor does the government contest that the plaintiffs and putative class members were released from DHS custody, pursuant to DHS’ own choice, when the only lawful way to have done so was parole under § 1182(d)(5)(A).

The plaintiffs have already explained above that parole is nothing more than a release from custody with no effect on a person’s legal status, as per the *Leng May Ma* case, and others. Thus, whether they “acquire[d] entitlement to substantive statue or bec[a]me any less an unlawful entrant” (D.E. 39, at 14) is irrelevant. Nor does any law confine the authority to grant parole to only “at a port of entry” (*id.*), so that purported distinction about the procedural regularity doctrine is irrelevant as well. The point is that courts can apply law to fact to determine whether an admission or parole did or did not occur. The cases of *Matter of O-*, 16 I. & N. Dec. 344, 348

(BIA 1977) (“We are unaware of, and the Service had not provided us any authority making it lawful for the Government to bring these aliens to the United States other than the parole authority granted the Attorney General under section 212(d)(5) of the Act.”), *id.*, at 351 (“All this taken together leads to the conclusion that the applicants were, in fact, paroled.”), *Vitale v. INS*, 463 F. 2d 579, 582 (CA7 1972) (“The placing of Vitale in the custody of Alitalia Airlines constituted parole; he did not effect an entry into the United States.”), and *Medina Fernandez v. Hartman*, 260 F. 2d 569, 573 (CA9 1958) (looking to facts to determine that “the parole form” “is a sham”), all support this proposition. Also, the entire thrust of the plaintiff’s complaint is that they **were** paroled because there could be no other lawful explanation for their releases.

As for *Savoury v. U. S. Att’y Gen.*, 449 F. 3d 1307 (CA11 2006), it is irrelevant as that case was about the meaning of “lawfully admitted **for permanent residence**” under § 1101(a)(20) which is a completely different issue with its own body of case law. And the other cases cited by the government (D.E. 39, at 17–18) all involved claims that releases under § 1226(a) made them eligible for adjustment of status; none argued “misclassification of their releases-on-recognizance” asking to be “f[ou]nd [to] ha[ve] been paroled.” *Sicar v. Chertoff*, 541 F. 3d 1055, 1060 (CA11 2008).

Last, for the reasons explained above (which also demonstrate why the plaintiffs have plausibly stated three claims for relief), none of the plaintiffs’ claims are subject to the jurisdictional bars at §§ 1226(e) or 1252(a)(2)(B)(ii). Ironically, the government seems to argue that the Court can review the reasons behind DHS’ prior release decisions to conclude that those reasons do not support release pursuant to § 1182(d)(5). (D.E. 39, at 15–16 & n. 16.) Concluding as the government urges would run right into the impermissible act of determining “that the Government exercised its statutory [parole] authority in an unreasonable fashion.” *Nielsen v. Preap*, 586 U. S. 392, 401 (2019). Rather, the most the Court can do is determine “the extent of the Government’s detention authority under the ‘statutory framework’ as a whole,” *id.*, *Jennings v. Rodriguez*, 583 U. S. 281, 295–96 (2018), and then apply it to the “‘admitted facts,’” which “‘is a question of law,’” *Guerrero-Lasprilla v. Barr*, 589 U. S. 221, 227 (2020) (citation omitted). And with no dispute over the statutory framework, the plaintiffs have stated plausible claims.

### **Conclusion**

The Court should deny the defendants’ motion to dismiss (D.E. 39).

**SIGNATURE PAGE**

Respectfully submitted,

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