

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

**PEDRO BELLO-RUBIO, et al.,**

Plaintiff,

v.

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

Defendants.

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**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF  
MOTION FOR ALL-WRITS ACT INJUNCTION**

The plaintiffs, by and through the undersigned, submit this reply memorandum to the Defendant's Response to Plaintiffs' Motion for All-Writs Injunction (D.E. 40), and in support of their Opposed Motion for All-Writs Act Injunction (D.E. 38).

**Argument**

In opposing the plaintiffs' motion for an injunction under the All Writs Act, the government argues three points: (1) that the Court lacks jurisdiction over the plaintiff's First Amended Petition (D.E. 22) under 8 U. S. C. §§ 1226(e), 1252(a)(2)(B)(ii), & 1252(f); (2) that there is other, adequate relief available at law; and (3) that the plaintiffs have failed to establish that the integrity of these proceedings are threatened absent an injunction. The government is mistaken

**I. The government's ability to moot any of the named plaintiffs' claims absent an injunction is a threat to the integrity of these proceedings.**

At a recent hearing before the Court on the government's prior motion to stay this action (D.E. 31 (minute entry)), there was a discussion about how the risk of detention or removal could

threaten the proceeding. Of note, counsel for the plaintiffs noted that detention would moot Count I for a given plaintiff (or plaintiffs), but that at least those persons could proceed under Counts II and III while they are still in the United States.

Count I of the First Amended Petition challenges “[t]he plaintiffs’ and the class members’ ongoing subjection to orders of release on recognizance under the purported auspices of 8 U. S. C. § 1226(a),” and claims that they “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 151–52 ¶¶ 111 & 115.) Upon those allegations, they claim that they “are entitled to a writ (or writs) of habeas corpus immediately releasing them from their orders of release on recognizance, and declaring that they were paroled out of custody, thereby making them subject only to lawful conditions of parole under § 1182(d)(5) and its implementing regulations.” (*Id.*, at 151 ¶ 116.)

If a given named plaintiff (or plaintiffs) is detained by the government, then they would no longer be “subject to [the] orders of release on recognizance under the purported auspices of 8 U. S. C. § 1226(a)” which they claim are unlawful. There would no longer be an injury for the Court to redress under Count I, thus depriving the Court of Article III jurisdiction over Count I due to mootness. See generally *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560–62 (1992); see also *France v. Ripa*, No. 24-CV-24333-ALTMAN, 2025 WL 973532, at \*3 (S.D. Fla. Apr. 1, 2025) (challenge to physical confinement mooted because petitioner “is now on supervised release—which was what he wanted all along”). The government does not meaningfully contest this point, or suggest that Count I claims could proceed despite re-detention.

As for Counts II and III, the fact that a newly detained named plaintiff could proceed on those counts does not take away from the fact that they would lose standing to continue pressing their Count I claim. “A court may grant a writ under this act whenever it is calculated in the

court's sound judgment to achieve the ends of justice entrusted to it, and **not only when it is necessary** in the sense that the court could not otherwise physically discharge its duties." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (CA11 2004) (emphasis added) (punctuation and citation omitted). "Regarding pending proceedings, a court may enjoin almost any conduct which, left unchecked, would have the practical effect of **diminishing** the court's power to bring the litigation to a natural conclusion." *Id.*, at 1102 (emphasis added) (punctuation and citation omitted). "It may also compel acts necessary to promote the resolution of issues in a case properly before it or **facilitate the court's effort to manage the case to judgment**, such as issuing orders to aid in conducting factual inquiries or permitting the use of interrogatories in habeas corpus proceedings." *Id.* (emphasis added) (punctuation and citation omitted).

The government cites no authority for the proposition that an All Writs Act injunction can issue only if the **entire** proceeding is being threatened **in full**. Rather, the inverse is true; such an injunction cannot issue where the entire proceeding can naturally conclude. *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (CA5 1978) ("Consequently, if a court is able to effect a **full and complete resolution** of the issues before it without resorting to the extraordinary measures contemplated under the Act, then such measures cannot be employed.") (emphasis added) (precedential under *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (CA11 1981) (en banc)). Thus, even in a world where every single named plaintiff that ends up detained (and is somehow not removed) can proceed on their Count II and III claims to judgment, the fact that they cannot proceed on their Count I claims means that the Court is "[un]able to effect a full and complete resolution of [all] the issues before it," *id.*, absent the requested relief.

And, of course, if a given named plaintiff (or plaintiffs) ends up removed from the United States following re-detention without a showing of a material change in circumstances by the

government, then that person's entire claim for relief under all counts in the First Amended Petition would be extinguished. See § 1, Cuban Refugee Adjustment Act of 1966 (CAA), Pub. L. No. 89-732, 80 Stat. 1161, as amended (requiring physical presence to be eligible for adjustment of status); 8 CFR § 245.2(a)(4)(iii) (requiring "readmi[ssion] or parol[e] upon return" following "de-part[ure] from the United States temporarily with no intention of abandoning his or her residence" for the application for adjustment under the CAA to continue). Seeing that the entire purpose of this case is to facilitate the named plaintiffs' and putative class' "pursuit of permanent residence under the Cuban Refugee Adjustment Act" (D.E. 22, at 40), the loss of their ability to pursue permanent residence would strip them of redressability from this Court.

**II. Relief under the All Writs Act is the only way that the named plaintiffs can seek relief that protects the Court's ability to bring this case to a full and complete resolution on all their claims for relief in the First Amended Petition.**

The government asserts that other remedies are available the named plaintiffs at law under Federal Rule of Civil Procedure 65, administratively before the immigration courts, and through independent habeas actions. Those suggested remedies are neither adequate nor available to the named plaintiffs.

With regard to the balance between Rule 65 and the All Writs Act, the All Writs Act is available with a requested injunction is "not a traditional injunction, and c[an]not be justified as such, because the plaintiffs ha[ve] no cause of action against the defendants upon which the injunction [i]s based." *Klay*, 376 F. 3d, at 1098. Here, a Rule 65 injunction cannot provide the relief requested in the plaintiffs' motion (D.E 38) because the form of the relief sought by the plaintiffs (to protect the integrity of the Court's proceedings) is outside the scope of the pleadings in the First Amended Petition. *Kaimowitz v. Orlando, Fla.*, 122 F. 3d 41, 43 (CA11), opinion amended on reh'g, 131 F. 3d 950 (CA11 1997) ("A district court should not issue an injunction

when the injunction in question is not of the same character, and deals with a matter lying wholly outside the issues in the suit.”) (footnote omitted); see also *Alabama v. U. S. Army Corps of Eng’rs*, 424 F. 3d 1117, 1127 (CA11 2005) (“any motion or suit for either a preliminary or permanent injunction must be based upon a cause of action”); *Fontaine v. Inch*, No. 20-CV-23438-BLOOM, 2021 WL 3053329, at \*2 (S.D. Fla. July 20, 2021) (“Plaintiff’s Motion improperly seeks relief that is based on different alleged constitutional and statutory violations than those raised in and sought in his Second Amended Complaint.”) (citations omitted).

Additionally, it is not improper for an All Writs Act injunction to protect the status quo of a case; that is in fact one of the very purposes of such an injunction:

Status quo orders illustrate this concept well. A federal court has the power under the All Writs Act to issue injunctive orders in a case even before the court’s jurisdiction has been established. When potential jurisdiction exists, a federal court may issue status quo orders to ensure that once its jurisdiction is shown to exist, the court will be in a position to exercise it. See, e. g., *FTC v. Dean Foods Co.*, 384 U.S. 597, 603-05, 86 S.Ct. 1738, 16 L.Ed.2d 802 (1966).

*Barton*, 569 F. 2d, at 1359 n. 19;

See *Heckler v. Redbud Hosp. Dist.*, 473 U.S. 1308, 1313, 106 S.Ct. 1, 4, 87 L.Ed.2d 677 (1985) (holding that a court may issue an injunction under the All Writs Act to “preserve the status quo while administrative proceedings are in progress . . . to prevent impairment of the effective exercise of appellate jurisdiction” (citing *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–04, 86 S.Ct. 1738, 1742, 16 L.Ed.2d 802 (1966))); *Barton*, 569 F.2d at 1359 n. 19 (“When potential jurisdiction exists, a federal court may issue status quo orders to ensure that once its jurisdiction is shown to exist, the court will be in a position to exercise it.”).

*Klay*, 376 F. 3d, at 100 n. 10. Thus, the fact that the relief requested by the plaintiffs would preserve the status quo is not a basis to defeat the request.

As for requesting a bond from the immigration court system, that would be absolutely futile due to the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). See, e. g., *Boffill v. Field Ofc. Dir.*, No. 25-CV-25179-BECERRA, 2025 WL 3246868, at \*4–\*5

(S.D. Fla. Nov. 20, 2025).<sup>1</sup> Also, the idea that a plaintiff needs to file an independent habeas petition in order to preserve a court's jurisdiction in an already ongoing matter is not recognized by case law, and has in fact been rejected as a requirement for relief under the All Writs Act:

Upon these facts the District Court held that the complainants, who were nonresidents of Florida, were without an adequate remedy at law, and that the threatened acts of the comptroller, if illegal, should be restrained by a court of equity. As to this we are not in doubt, the multiplicity of actions necessary for redress at law being sufficient, without reference to other considerations, to uphold the remedy by injunction. *Wilson v. Illinois Southern R. Co.*, 263 U.S. 574, 44 S.Ct. 203, 68 L.Ed. 456; *Hill v. Wallace*, 259 U.S. 44, 62, 42 S.Ct. 453, 66 L.Ed. 822.

*Lee v. Bickell*, 292 U. S. 415, 421 (1934);

If a plaintiff can secure legal relief only through a multiplicity of lawsuits, plaintiff has suffered irreparable harm sufficient to warrant a preliminary injunction. *Wilson v. Illinois Southern Railway Co.*, 263 U.S. 574, 576–77, 44 S.Ct. 203, 204, 68 L.Ed. 456 (1924); *Galella v. Onassis*, 353 F.Supp. 196, 235 (S.D.N.Y.1972), *aff'd in part, rev'd in part on other grounds*, 487 F.2d 986 (2d Cir.1973); Wright & Miller, *Federal Practice and Procedure: Civil* § 2944, p. 398.

*Ecolab Inc. v. Paolo*, 753 F. Supp. 1100, 1110 (E.D.N.Y. 1991); accord 13 *Moore's Federal Practice* § 65.06[1] (3d ed. 2019) (“An adequate remedy at law may be deemed unavailable if legal redress may be obtained only by commencement of multiple actions . . . .”) (footnote omitted).

**III. The government has not challenged whether the Court should grant the plaintiffs' motion as a matter of the Court's sound discretion.**

“A court may grant a writ under th[e All Writs Ac]t whenever it is ‘calculated in [the court's] sound judgment to achieve the ends of justice entrusted to it . . . .’” *Klay*, 376 F. 3d, at 1100 (citation omitted) (second alteration in original); accord *Adams v. U. S. ex rel. McCann*, 317

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<sup>1</sup> To be clear, the named plaintiffs' position is that *Matter of Yajure Hurtado* is overly broad, and is an incorrect interpretation of 8 U. S. C. § 1225(b)(2)(A). Rather, their position is that they were subject to § 1225(b)(2)(A) at the time of their arrival in the United States pursuant to the narrower decision of *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“the term arriving applies to aliens, like the respondent, who are apprehended just inside the southern border, and not at a point of entry, on the same day they crossed into the United States”) (cleaned up).

U. S. 269, 273 (1942) (“Unless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it. . . . The real question is whether the Circuit Court of Appeals abused its power in exercising that jurisdiction in the situation that confronted it.”)

The government has not argued that a grant of the plaintiffs’ motion would be improper under equitable principles, or that it would amount to an abuse of discretion. Thus, any such issues have been abandoned by the government. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F. 3d 678, 681 (CA11 2014) (a litigant “abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority”) (citations omitted). However, at best, the government’s argument that *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), is inapplicable here and conflicts with statutory and regulatory authority (D.E. 40, at 10), goes to the propriety of the relief requested. However, the government has said nothing about the multiple district court cases cited by the plaintiffs (D.E. 38, at 8), and has not argued anything in response to the plaintiffs’ arguments sounding in procedural due process (*id.*, at 11–14). Thus, to the extent the Court rules that the government has properly raised an issue on that point, the plaintiffs’ rest on their prior argument addressing it.

#### **IV. The Court has jurisdiction over the plaintiffs’ First Amended Petition.**

1. Section 1226(e), Title 8, does not apply because 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.**” *Demore v. Kim*, 538 U. S. 510, 516–17 (2003) (emphasis added). “Rather, [they] challeng[e] the statutory framework that [purportedly] permit[ted]” their release as documented by the government. *Id.*, at 517. To begin with, § 1226(e)

does not repeal habeas jurisdiction. *Id.* (“Section 1226(e) contains no explicit provision barring habeas review . . . .”); *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 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).

Further, § 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. Accord *Nielsen v. Preap*, 586 U. S. 392, 401 (2019) (“Because this claim of authority does not constitute a mere ‘discretionary’ ‘application’ of the relevant statute, our review is not barred by § 1226(e).”); *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)).

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 crewmember, **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-ALTONAGA/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. The “argument is not that the Government exercised its statutory authority in an unreasonable fashion.” *Preap*, 586 U. S., at 401.

2. 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, whether a given act of release is parole under 8 U. S. C. § 1182(d)(5)(A) because it cannot legally be anything else. It also seeks to enforce a procedural regulation.

“[S]imply because the Secretary has the ultimate discretionary authority to grant an immigration benefit does not mean that every 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).

“[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.* (emphasis added) (citations omitted). “[P]reliminary *statutory* eligibility decisions are not ones that involve discretion.” *Id.* (emphasis 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). Because no exercise of discretion is being challenged here, the bar at § 1252(a)(2)(B)(ii) is inapplicable.

3. Last, § 1252(f) is not a jurisdictional limitation. *Biden v. Texas*, 597 U. S. 785, 801, (2022) (“In short, we see no basis for the conclusion that section 1252(f)(1) concerns subject matter jurisdiction.”) Thus, the application (or not) of § 1252(f) to “a specific category of remedies: those that ‘enjoin or restrain the operation of’ the relevant sections of the statute,” *id.*, at 798, is irrelevant to whether “an All Writs Act injunction is predicated upon some other matter upon which a district court has jurisdiction,” *Klay*, 376 F. 3d, at 1100.

### Conclusion

The Court should grant the plaintiffs’ motion (D.E. 38).

**Signature Page**

Respectfully submitted,

Dated: November 25, 2025

**s/ Claudia Canizares**

Fla. Bar No. 98308

Canizares Law Group, LLC

8360 W. Flagler Street, Suite 200

Miami, FL 33144

o. 305.680.0036

claudia@abogadadeinmigracion.us

**s/ Mark Andrew Prada**

Fla. Bar No. 91997

**s/ Anthony Richard Dominguez**

Fla. Bar No. 1002234

**s/ Maitte Barrientos**

Fla. Bar No. 1010180

Prada Dominguez, PLLC

12940 SW 128 Street, Suite 203

Miami, FL 33186

o. 786.703.2061

c. 786.238.2222

mprada@pradadominguez.com

adominguez@pradadominguez.com

maitte@pradadominguez.com

*Counsel for Plaintiffs*