UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-23665-JB

Pedro BELLO-RUBIO, *et al.*,

Plaintiffs,

v.

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

Defendants.
_____/

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Kristi Noem, in her official capacity as Secretary of Homeland Security, *et al.*, ("Defendants"), by and through the undersigned counsel, hereby files Defendants' Opposition to Plaintiffs' Motion for Class Certification and Appointment of Class Counsel ("Motion for Class Certification") and states as follows:

I. BACKGROUND

Pedro Bello-Rubio, *et al.*, ("Plaintiffs") are nine-hundred ninety-two (992) natives and citizens of Cuba who arrived in the United States between 2019 and 2022. *See* (ECF No. 22 at ¶ 25). Plaintiffs were released from immigration detention with a Form I-220A, Order of Release on Recognizance, under 8 U.S.C.§ 1226(a) ("release on recognizance"). (*Id.* at ¶ 21). Plaintiffs reside across different states, and accordingly, report to various U.S. Immigration and Customs Enforcement (ICE) local field offices in the United States. (*Id.* at ¶ 25); *See generally* (ECF No. 22 at 46-134).

Plaintiffs were not released with humanitarian parole under 8 U.S.C. § 1182(d)(5). (*Id.* at ¶ 22). As the Eleventh Circuit Court of Appeals explained, an order of release on recognizance is distinct from a release from detention with humanitarian parole. (*Id.* at ¶ 22). *See Castillo-Padilla v. United States*, 417 Fed. Appx. 888, 891 (11th Cir. 2011) ("An alien may be paroled into the United States by the Attorney General temporarily if the parole would serve urgent humanitarian reasons or provide a significant public benefit…§ 1182(d)(5)(A), which contrasts starkly with being released on conditional parole until immigration authorities decide if an alien should be removed from the United States…"). Unlike release on recognizance, humanitarian parole is discretionary and granted on a case-by-case basis for urgent humanitarian reasons or significant public benefit. Section 1182(d)(5)(A) states:

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

(emphasis added).

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

The Board noted this was the first time this issue had been addressed in a precedential Board decision and acknowledged that, historically, aliens who entered without inspection, such as Plaintiffs, routinely received bond hearings. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216, 225, n.3 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us.").

Under *Matter of Yajure Hurtado*'s reasoning, Plaintiffs are subject to mandatory detention under § 1225(b)(2)(A) and should not have been released on recognizance. The only avenue for release is humanitarian parole. *See Jennings v. Rodriguez,* 583 U.S. 281, 288 (2018) ("applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.").

In light of that, Plaintiffs ask the Court to certify the below putative class under "Federal Rules of Civil Procedure 23(a) and (b)(2), and in the alternative, under the All-Writs Act" and find that they were released from immigration detention with a constructive humanitarian parole since that is the only avenue for release for individuals subject to mandatory detention under 8 U.S.C. § 1225(b). (ECF No. 24 at 1, 4).

However, Plaintiffs' request for class certification should be denied because Plaintiffs have failed to satisfy their burden of proof with respect to the threshold requirement of Rule 23; specifically, that it is adequately defined. Further, should the Court find the class definition is sufficient, Plaintiffs have not satisfied three of the required elements for certification of a class under Fed. R. Civ. P. 23(a).

Although Defendants do not dispute Plaintiffs have met the numerosity requirement under Fed. R. Civ. P. 2(a) and do not oppose counsel's appointment as class counsel under Fed. R. Civ. P. 23(c)(1)(B) and Fed. R. Civ. P. 23(g), Plaintiffs have not proven the requirements of commonality, typicality, and adequacy of representation under Fed.R.Civ.23(a). Furthermore, the All-Writs Act, 28 U.S.C. § 1651, does not permit Plaintiffs to circumvent the class certification requirements under Rule 23. Lastly, 8 U.S.C. § 1252(f)(1) bars classwide injunctive relief.

II. ARGUMENT

A. Plaintiffs' motion for class certification should be denied because Plaintiffs' have not proven the requirements of commonality, typicality, and adequacy of representation under Fed.R.Civ.23(a).

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). To fall within the exception, Plaintiffs "must affirmatively demonstrate [their] compliance" with Federal Rule of Civil Procedure 23. *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011).

Plaintiffs ask this Court to certify a class under Federal Rules of Civil Procedure 23(a) and (b)(2). *See* (ECF No. 24 at 4). Rule 23(a) sets out four requirements for class certification: (1) the class is so numerous that joinder is impractical ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the named plaintiffs are typical of claims or defenses of the class ("typicality"); and (4) the named plaintiffs will fairly and adequately protect the interests of the class ("adequacy of representation"). Fed. R. Civ. P. 23(a).

The Supreme Court has held that "actual, not presumed, conformance with Rule 23(a) [is] indispensable." *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160 (1982). The party seeking class certification bears the burden of demonstrating it has satisfied all four Rule 23(a)

prerequisites and that the class lawsuit falls within one of the three types of actions permitted under Rule 23(b). *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (stating "parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3).").

Here, Plaintiffs seek certification of their putative class under Rule 23(b)(2), which provides that a class action can be maintained if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole…" Fed. R. Civ. P. 23(b)(2). "The key to the (b)(2) class is 'the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Wal-Mart Stores, Inc.*, 564 U.S. at 360.

Plaintiffs propose one class:

All Cuban nationals currently present in the United States:

(1) who were "applicants for admission" under 8 U.S.C. § 1225(a)(1) at the time of their last physical arrival in the United States;

(2) who were taken into DHS custody (in the form of physical detention or confinement) within 24 hours of their last physical arrival in the United States;

(3) who, prior to their subsequent release from physical DHS custody, were subjected to the commencement of direct removal proceedings under § 1229a against them via service of a notice to appear under § 1229(a);

(4) who were thereafter enlarged or released from physical DHS custody, by DHS of its own volition, into the United States pending a final determination of inadmissibility by an immigration judge in removal proceedings under § 1229a;

(5) who were not, and have not been, provided with documentation of parole under § 1182(d)(5)(A), and who are being treated as not having been paroled at the time of their release from physical DHS custody;

(6) who were released from physical DHS custody under, and remain subject to, an order of release on recognizance purporting to have been issued under the auspices of § 1226(a); and

> (7) who were not processed for expedited removal under § 1225(b)(1), contiguous return under § 1225(b)(2)(C), or reinstatement of removal under § 1231(a)(5), or processed as unaccompanied alien children under 6 U.S.C. § 279 & 8 U.S.C. § 1232, during and between the time of their last physical arrival in the United States and their subsequent release from physical DHS custody as described above; and
>
> (8) who have not departed from the United States since their release from physical DHS custody.

(ECF No. 24 at 4-5).

i. Plaintiffs have not satisfied the commonality requirement.

The "commonality" requirement mandates that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). More specifically, the putative class "claims must depend upon a common contention" and "[t]hat common contention . . . must be of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 349. Although for purposes of Rule 23(a)(2) even a single common question will do, "[w]hat matters to class certification . . . is not the raising of common questions — even in droves — but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.* "Dissimilarities within the proposed class are what have the potential to impede the generation of common answers." *Id.* at 350 (citation omitted). "Rule 23(a)(2) requires that all of the class member's claims depend on a common issue of law or fact whose resolution 'will resolve an issue that is central to the validity of each one of the [class member's] claims in one stroke.'" *Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012) (citing Dukes, 564 U.S. at 350) (emphasis and brackets in original). "If proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 311 (3d Cir. 2009).

The crux of Plaintiffs' claim is that they were released with a constructive humanitarian parole instead of a release on recognizance. However, Plaintiffs cannot satisfy the commonality requirement because Plaintiffs experienced different scenarios: some Plaintiffs never applied for humanitarian parole while others did and were denied. *See* Exhibit A, Composite Humanitarian Parole Denials. This defeats commonality because a single class wide answer is unavailable. The issue cannot be resolved "in one stroke" as required by *Dukes* because the analysis differs for the Plaintiffs who were explicitly denied humanitarian parole as awarding those Plaintiffs constructive humanitarian parole requires the additional step of reconciling how the Defendants allegedly gave constructive humanitarian parole while simultaneously explicitly finding Plaintiffs were ineligible for humanitarian parole. Further, Plaintiff Duran-Matos does not share a common question of law or fact as the other putative class members because his release on recognizance was revoked and he is now in immigration detention in Texas. *See* (ECF No. 38 at 1). Thus, he does not "remain subject to an order of recognizance."

ii. Plaintiffs have not established typicality.

Plaintiffs also fail to demonstrate that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The typicality inquiry "directs the district court to focus on whether [the] named representatives' claims have the same essential characteristics as the claims of the class at large." *Appleyard v. Wallace,* 754 F.2d 955, 958 (11th Cir. 1985) (quoting *De La Fuente v. Stokely-Van Camp, Inc.,* 713 F.2d 225, 232 (7th Cir. 1983))). "Typicality measures whether a sufficient nexus exists between the claims of the named representative and those of the class at large." *Prado-Steiman ex rel. Prado v. Bush,* 221 F.3d 1266, 1279 (11th Cir. 2000). "In other words, there must be a nexus between the class representative's claims or defenses and the common questions of fact or law [that] unite the class. A sufficient

nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984).

The proposed class lacks typicality because the inherent nature of determining eligibility for the discretionary grant of humanitarian parole calls for an individualized analysis of eligibility and duration. The individualized nature of the grant of humanitarian parole is embedded in the plain text of § 1182(d)(5)(A): "The Secretary of Homeland Security *may*...in h[er] *discretion* parole into the United States temporarily under such conditions as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." Section 1182(d)(5)(A). Further, "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." *Id.* Thus, an inquiry as to why class representatives may or may not be eligible for humanitarian parole for urgent humanitarian reasons or significant public benefit will reveal facts unique to each Plaintiff. Further, the putative class lacks typicality because the class representatives are not detained, but Plaintiff Duran-Matos is detained in Texas.

iii. The named Plaintiffs are not adequate class representatives.

The putative class cannot satisfy the adequacy requirement of Rule 23(a)(4). An adequate representative is one who will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy "inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). The named Plaintiffs are not adequate class members for the same reason the proposed class lacks typicality— an individualized analysis of each Plaintiff's case is required to determine whether they are eligible for humanitarian parole and previously denied humanitarian

parole. Further, unlike the class representatives, as mentioned above, Plaintiff Duran-Matos is currently detained.

B. The All-Writs Act does not permit Plaintiffs to circumvent the class certification requirements under Rule 23.

Plaintiffs request the Court certify the class "in the alternative, under the All-Writs Act" if certification under Rule 23 is not appropriate. (ECF No. 24 at 4). However, the All-Writs Act does not provide independent jurisdiction to certify a class or a method to circumvent the requirements under Rule 23, even if filed in conjunction with habeas corpus under 28 U.S.C. § 2241.

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

The Eleventh Circuit has observed that there are two kinds of situations in which a court may exercise its jurisdiction under the Act: (1) a court may use the Act to direct action by another court whose proceedings are subject to appellate review by the court issuing the order; and (2) to "directly protect the issuing court's own proceedings and judgments." *Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1264 (11th Cir. 2021). None of those situations apply in the case at bar. Thus, the All-Writs Act is unavailable as a mechanism to secure class relief.

C. Section 1252(f)(1) bars class wide injunctive relief.

Section 1252(f)(1) provides that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [8 U.S.C. §§ 1221–1231] other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." 8 U.S.C. § 1252(f)(1). This provision consists of two halves: (1) a general rule that courts lack jurisdiction "to enjoin or restrain the operation" of the specified provisions "[r]egardless of the nature of the action or claim," and (2) an exception for "the application of such provisions to an individual alien." *Id.*

The injunctive relief Plaintiffs seek—revoking their release on recognizance, awarding them humanitarian parole, and ordering Defendants to provide copies of appropriate parole documentation—falls within the ambit of § 1252(f)(1). *See* (ECF 22 at 155). Section 1252(f)(1) "prohibits federal courts from granting classwide injunctive relief against the operation of §§ 1221–1231." *Reno v. Am.- Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999). The term "operation," in this context, is synonymous with execution, enforcement, or implementation. *See, e.g.*, *Webster's Third New International Dictionary* 1581 (1993) ("method or manner of functioning"). Therefore, § 1252(f)(1) prohibits injunctions that restrain the Executive's implementation of the immigration laws, even when the basis for the lawsuit is that the Executive has purportedly misinterpreted the relevant provisions, as Plaintiffs seem to allege here. Section 1252(f) states that the jurisdictional bar applies "[r]egardless of the nature of the action or claim." Section 1252(f)(1).

In three previous cases, the Supreme Court has described Section 1252(f)(1) as prohibiting classwide injunctions against the operation of 8 U.S.C. §§ 1221-1231. In *Reno* v. *American-Arab Anti-Discrimination Committee* (*AADC*), the Court explained that "[Section 1252(f)(1)] prohibits

federal courts from granting classwide injunctive relief against the operation of §§ 1221-1231, but specifies that this ban does not extend to individual cases." *Reno* v. *American-Arab Anti-Discrimination Committee* (*AADC*), 525 U.S. 471, 481-82 (1999). In *Nken v. Holder*, the Court described section 1252(f)(1) as "a provision prohibiting classwide in-junctions against the operation of removal provisions." *Nken v. Holder*, 556 U.S. 418, 431 (2009). In *Jennings v. Rodriguez*, the Court explained that section 1252(f)(1) "prohibits federal courts from granting classwide injunctive relief against the operation of §§ 1221-123[1]." *Jennings v. Rodriguez*, 583 U.S. 281, 313 (2018).

Accordingly, Defendants maintain the Court should deny Plaintiffs' Motion for Class Certification and Appointment of Class Counsel because Plaintiffs have failed to meet the requirements of Federal Rule 23.

Respectfully submitted,

JASON A. READING-QUIÑONES
UNITED STATES ATTORNEY

By: **Natalie Diaz**

NATALIE DIAZ
ASSISTANT U.S. ATTORNEY
Florida Bar No. 85834
E-mail: Natalie.Diaz@usdoj.gov
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Telephone: (305) 961-9306