

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.

REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Kristi Noem, in her official capacity as Secretary of Homeland Security, *et al.*, (“Defendants”), by and through the undersigned counsel, replies to Pedro Bello-Rubio, *et al.*, (“Plaintiffs”) Opposition to Defendants’ Motion to Dismiss First Amended Class Action Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (ECF No. 34).

- I. 8 U.S.C. § 1226(e) strips the Court of jurisdiction to review the Department of Homeland Security’s decision to release Plaintiffs with a release on recognizance under 8 U.S.C. § 1226(a)(2)(B).**

In their motion to dismiss, Defendants argued § 1226(e) strips the Court of jurisdiction to void the release on recognizance and it replace with humanitarian parole, as Plaintiffs request, because it “precludes an alien from challenging a ‘discretionary judgment’ by the Attorney General or a ‘decision’ that the Attorney General has made regarding his detention or release.” *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003)). (ECF No. 39 at 7). Quoting *Demore v. Kim*, 538 U. S. 510, 516 (2003), Pedro Bello-Rubio, *et al.*, (“Plaintiffs”) responded that § 1226(e) is inapplicable in a habeas setting: “the defendants are

rehashing an old argument rejected by the Supreme Court decades ago.” (ECF No. 43 at 6). However, *Demore* is distinguishable as it involved an alien subject to mandatory detention under 8 U.S.C. § 1226(c) because of his criminal history. *Demore v. Kim*, 538 U. S. 510, 513 (2003) (“Respondent does not dispute the validity of his prior convictions....”).

Unlike the petitioner in *Demore*, Plaintiffs, here, were not subject to mandatory detention under 28 U.S.C. § 1226(c) due to their criminal history. Further, at the time of their prior encounter, Plaintiffs were detained under 8 U.S.C. § 1226(a). Thus, the discretionary decision to release with a release on recognizance under § 1226(a), at that time, instead of humanitarian parole, is unreviewable and cannot be voided by the Court. *See Dos Santos v. Meade*, 20-cv-22996-GAYLES, 2020 WL 6565212, 2020 U.S. Dist. LEXIS 208986, at *9 (S.D. Fla. Nov. 9, 2020) (finding that § 1226(e) stripped the Court of jurisdiction to review DHS’s decision to revoke petitioner’s discretionary detention under § 1226(a)).

II. 8 U.S.C. § 1252(a)(2)(B)(ii) strips the Court of jurisdiction to make a substantive finding that DHS constructively paroled Plaintiffs into the United States.

Plaintiffs allege the jurisdiction stripping provision of 8 U.S.C. § 1252(a)(2)(B)(ii) does not apply when there is a claim that the Department of Homeland Security (“DHS”) did not follow its own regulations or procedures. *See (id.* at 10-11). Plaintiffs blur the line between “regulations” and “procedures” with substantive decisions, which § 1252(a)(2)(B)(ii) precludes

The U.S. Court of Appeals for the Eleventh Circuit’s decisions in *Kurapati* and *T & B Holding Grp., LLC* are illustrative.

In *Kurapati v. U.S. Bureau of Citizenship & Immigr. Servs.*, the petitioners argued that “[United States Citizenship and Immigration Services (USCIS)] failed to follow the correct procedure in revoking the I-140 petitions” because it failed to provide a “notice of intent to revoke

to the petitioner” under 8 C.F.R. § 205.2(b). 775 F.3d 1255, 1259, 1262 (11th Cir. 2014). The Court found § 1252(a)(2)(B)(ii) did not bar jurisdiction to determine the narrow question of whether USCIS followed its *procedure* when it failed to send a *notice* of its decision to revoke the approval of the application. *See id.* at 1259, 1262 (finding § 1252(a)(2)(B)(ii) did not divest the district court of jurisdiction to consider whether the agency complied with the applicable administrative procedure). Importantly, the Court did not make a substantive finding on whether the application was properly revoked.

Similarly, in *T & B Holding Grp., LLC v. U.S. Att’y Gen.*, the Court found § 1252(a)(2)(B)(ii) precluded jurisdiction to determine the *substantive* question of whether USCIS properly revoked the approval of the visa petition, but it did not strip it of jurisdiction over the *procedural* question whether USCIS properly revoked the visa on grounds not stated in the Notice of Intent to Revoke. 2025 WL 1013414, 2025 U.S. App. LEXIS 7811, at *5-6 (11th. Cir. Apr. 3, 2025).

In this case, Plaintiffs are not challenging a procedural matter, such as notice of a potential adverse decision, but are instead asking the Court to make a substantive finding that they are entitled to constructive humanitarian parole. Simply put, they argue DHS applied the incorrect legal standard by “mis-papering parole releases under § 1182(d)(5)(A) as purported releases on recognizance.”¹ (ECF No. 22 at 40). As such, they request the Court make a *substantive* finding—

¹ Between 2019-2022, when Plaintiffs were released from custody, individuals that were present in the United States without admission or parole were eligible for release on their own recognizance. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225, n.3 (BIA 2025) (“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.”). It was only after the Board of Immigration Appeals’ decision in *Yajure Hurtado* in 2025 that individuals that entered without inspection were found to be ineligible for a release

something the Eleventh Circuit has consistently found it does not have jurisdiction to do under § 1252(a)(2)(B)(ii).

III. Venue under 28 U.S.C. § 1391(e)(1)²

Further, Plaintiffs argue that Defendants “are implying that venue in a joinder/putative class action must be shown as to every plaintiff in the case.” (ECF No. 43 at 15). This mischaracterizes Defendants’ argument. Instead, Defendants assert that since Plaintiffs reside in various districts outside the Southern District of Florida, then they, correspondingly, report or are within the jurisdiction, of various ICE Field Offices outside the Southern District of Florida. *See* (ECF No. 39 at 10). Defendants further maintain that Southern District of Florida is an improper venue because the “events giving rise to where the claim occurred” did not occur here, since the Miami Field Office does not oversee Plaintiffs’ release on recognizance. Relatedly, the field office director in charge of each Plaintiff’s local ICE Field Office would be the appropriate Defendant. (*Id.* at 12).

Moreover, Defendants denied that supervisory officials are the appropriate defendants. Specifically, Defendants referred to the local ICE Field Office, instead of supervisory officials, like the Attorney General, as those with authority over the release on recognizance: “those districts are also where their corresponding ICE Field Office Director, who has authority over the terms of the orders on release on recognizance, reside.” (ECF No. 39 at 10). That is consistent with Defendants’ argument that the “proper respondent in a habeas petition is not the Attorney General or some other remote supervisory official.” (ECF No. 39 at 11).

on recognizance. (*Id.*).

² The proper venue provision is 28 U.S.C. § 1391(e), not 28 U.S.C. § 1391(b). *See* (ECF No. 39 at 9).

Further, a supervisory official does not reside in a district solely because there is a regional office there. *Cf. Hernandez v. USCIS*, Case No. 21-CV-20355-SINGHAL, 2021 U.S. Dist. LEXIS 261032, at *6, 2021 WL 9408841, at *2 (S.D. Fla. Aug. 31, 2021)(“Merely maintaining offices within a district does not mean a federal defendant resides in that district.”); *Trujillo v. Garland*, Case No. 22-CV-23980-SCOLA, 2023 WL 2374445, 2023 U.S. Dist. LEXIS 37037, at *14-15 (S.D. Fla. Mar. 6, 2023) (collecting cases).

Accordingly, Defendants respectfully request that this Court grant Defendants’ Motion to Dismiss First Amended Class Action Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief.

Respectfully submitted,

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