

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.*,

Defendant.

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**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF  
MOTION FOR CLASS CERTIFICATION  
AND APPOINTMENT OF CLASS COUNSEL**

The plaintiffs, by and through the undersigned, submit this reply memorandum in support of their Motion for Class Certification and Appointment of Class Counsel (D.E. 24).

**Argument**

The defendants oppose class certification on three grounds. (D.E. 45). First, they argue that Rule 23(a)'s requirements of commonality, typicality, and adequacy have not been met here. Second, they argue that the All Writs Act does not circumvent Rule 23(a), apparently misunderstanding why the plaintiffs mentioned it in their motion. Third, they argue that 8 U.S.C. § 1252(f) is a bar to class certification here. All three arguments are mistaken.

**I. The fact that some plaintiffs have sought alternative remedies to their injuries does not undermine commonality, typicality, or adequacy.**

The defendants contend that "some Plaintiffs never applied for humanitarian parole while others did and were denied." (D.E. 45, at 7; D.E. 45-1.) However, the three examples cited by

the government are denials of requests for **parole in place**<sup>1</sup> after the fact of those plaintiffs' release from the government's physical custody. This is irrelevant to the claims brought by the plaintiffs in this case, and the government does not explain how these facts affect the Rule 23(a) analyses besides making conclusory statements.

1. 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."). With that in mind, the core legal theory of the plaintiffs' complaint is a straightforward syllogism:

92. All of the plaintiffs and the members of the class arrived in the United States and were **released from DHS custody**, by DHS of its own volition, in the manner contemplated by the terms of *Matter of Q. Li*.

93. Thus, all of the plaintiffs and the members of the class were subject to mandatory detention under 8 U. S. C. § 1225(b)(2)(A) **at the time of their release from DHS custody**, by DHS of its own volition.

94. Therefore, parole under § 1182(d)(5) is the only lawful explanation for the plaintiffs' and the class members' **release from DHS custody**, by DHS of its own volition, under these circumstances.

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<sup>1</sup> Parole in place is a request for parole under 8 U. S. C. § 1182(d)(5) made by someone who qualifies as an applicant for admission, § 1225(a)(1), and who is already in the United States, sometimes even for years or decades. In fact, USCIS used to adjudicate such requests by Cuban nationals, treating those requests as an alternative mechanism for persons whose prior release from DHS or INS custody would no longer be recognized as parole under § 1182(d)(5) due to agency policy changes. John M. Bulger, Interoffice Memo., *Clarification regarding Processing of Initial Parole Requests Presented by Natives or Citizens of Cuba who are released under Section 236 1-2* (Feb. 4, 2009) (copy at **Exh. A**). This is an entirely different matter from release from physical DHS custody which is what is at issue in this case. *Id.*, at 2 ("Although release under section 236(a)(2) is [no longer considered] parole, release under 236(a)(2) does not preclude a **separate decision** to parole the alien under section 212(d)(5)(A).") (emphasis added).

As of late, since the end of the Wet-foot/Dry-foot policy, these requests for parole in place have been handled by the ICE Field Offices responsible for a person's reporting obligations under an (unlawful) order of release on recognizance.

(D.E. 22, at 147–48 (emphasis added).) The whole point of the claim is that the plaintiffs’ releases from physical DHS custody were actually releases via parole under 8 U. S. C. § 1182(d)(5) because releasing them on their recognizance under § 1226(a) was a legal impossibility, and thus a mischaracterization and misclassification of the plaintiffs’ releases from custody. The facts “at the time of their release from DHS custody” are what matter.

Notably, the facts the defendants point to relate to events from years after the fact of release from DHS’ physical custody. They have nothing to do with the claims presented by this case.

First, named plaintiff Yusniel Alvarez-Lorenzo (#96) arrived in the United States on or about June 3, 2019. (D.E. 24-5, at 235.) DHS released him from custody on or about June 26, 2019. (D.E. 24-5, at 239.) The defendants point to a letter from ICE from over five years later, dated September 25, 2024, denying a later request for parole in place, while Mr. Alvarez-Lorenzo was already released from custody. (D.E. 45-1, at 1 & 8.) This has nothing to do with Mr. Alvarez-Lorenzo’s 2019 release from DHS custody after his arrival in the United States.

Second, named plaintiff Iraldo Socorras-Moza (#83) arrived in the United States on or about February 24, 2022. (D.E. 24-5, at 38.) DHS released him from custody on or about March 1, 2022. (D.E. 24-5, at 42.) The defendants point to a letter from ICE from over two years later, dated June 26, 2024, denying a June 5, 2024, request for parole in place, while Mr. Socorras-Moza was already released from custody. (D.E. 45-1, at 2–4.) This also has nothing to do with Mr. Socorras-Moza’s 2022 release from DHS custody.

Last, named plaintiff Yunior Miguel Soler-Oliva (#26) arrived in the United States on or about August 23, 2021. (D.E. 24-2, at 2.) DHS released him from custody on or about August 24, 2021. (D.E. 24-2, at 6.) The defendants point to a request for parole in place dated over two years later, December 13, 2023, with the notations “Parole Denied” written on it, presumably by

an ICE official. (D.E. 45-1, at 5–7.) This also has nothing to do with Mr. Soler-Oliva’s 2021 release from DHS custody.

2. Regarding commonality, the defendants conclusively assert that these years-later requests for parole in place “defea[t] commonality because a single class wide answer is unavailable.” (D.E. 45, at 7.) They then conclusively assert that “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.” (*Id.* (emphasis added).) But there was no simultaneous denial of parole in place at the time of the three named plaintiffs’ release from physical DHS custody; the denials of parole in place happened **several years** after the fact.

And even if the denials of parole in place occurred much closer in time, the defendants’ own current policy guidance recognizes that whether or not parole was documented at the time of a person’s physical release from custody is an entirely separate matter than a later request for parole in place. Bulger Memo 2 (**Exh. A**). None of what the government raises “‘ha[s] the potential to impede the generation of common answers,’ ” *Wal-Mart Stores, Inc. v. Dukes*, 564 U. S. 338, 350 (2011) (citation omitted), as to the legal significance of DHS’ act of releasing the named plaintiffs and the members of the class from its custody while those persons were subject to detention under 8 U. S. C. § 1225(b)(2)(A) at that time. The denials of years-later requests for parole in place while already at physical liberty is irrelevant to the “central,” *Dukes*, 564 U. S., at 350, issues in this case. See also *Evon v. Law Offices of Sidney Mickell*, 688 F. 3d 1015, 1029 (CA9 2012) (“ ‘Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists.’ ”) (citation

omitted); *Gonzalez v. U. S. Immigr. & Customs Enf't*, 975 F. 3d 788, 808 (CA9 2020) (“in a civil-rights suit commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members”) (cleaned up).

3. As for typicality, the defendants argue that “the inherent nature of determining eligibility for the discretionary grant of humanitarian parole calls for an individualized analysis of eligibility and duration.” (D.E. 45, at 8.) But this completely mis-frames and alters the plaintiffs’ claims in order to suit the defendants’ narrative.

The plaintiffs do not claim that they merited parole at the time of their release from DHS custody, which would have the type of the problem that the defendants wish to impute upon the plaintiffs’ claim. Rather, what they claim is that “parole under § 1182(d)(5) is the only lawful explanation for the plaintiffs’ and the class members’ release from DHS custody” (D.E. 22, at 147 ¶ 94) because the idea that they were released on their recognizance under § 1226(a) is a legal impossibility. This is a very simple, direct question of law that requires the application of law to the fact of plaintiffs’ releases which have already occurred in the past. Thus, 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 (CA11 1985) (citation omitted). It is settled law that “a strong similarity of legal theories,” *id.* (citations omitted), which exists here, “will satisfy the typicality requirement despite substantial factual differences,” *id.* (citations omitted), which do not even exist here. Therefore, the plaintiffs have satisfied the typicality requirement.

4. Concerning adequacy, the defendants simply repeat the above, arguing that “[t]he 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.” (D.E. 45,

at 8–9.) Those arguments are mistaken for the same reasons described above. Additionally, the defendants have in no way explained how there are any “conflicts of interest between [the] named parties and the class they seek to represent.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

5. Last, the fact that plaintiff Duran-Matos is currently detained has nothing to do with whether the class should be certified. At most, his individual claim for habeas relief under Count I is potentially moot, but that does not affect his individual claims under Counts II and III. Regardless, that issue is part of why the plaintiffs filed their separate Motion for All Writs Act Injunction (D.E. 38). And more importantly, Mr. Duran-Matos was not proffered as a class representative. (D.E. 24, at 4–6.) Nor were Mr. Alvarez-Lorenzo, Mr. Socorras-Moza, or Mr. Soler-Oliva. (*Id.*) Five other named plaintiffs were proffered as the class representatives. (*Id.*) All of the other named plaintiffs are potential back up class representatives in case some issue were to arise regarding the suitability of the named plaintiffs who are being proffered as the class representatives for this case.

**II. The plaintiffs do not seek to circumvent Rule 23’s requirements by invoking the All Writs Act.**

The defendants appear to misapprehend why the plaintiffs discuss the All Writs Act in their motion for class certification. The plaintiffs discuss the All Writs Act in their motion as it pertains to their Count I habeas claims. (D.E. 24, at 13.) The reason they do so is because the Supreme Court “has never addressed whether habeas relief can be pursued in a class action,” *Jennings v. Rodriguez*, 583 U.S. 281, 324 n. 7 (2018) (Thomas, J., concurring) (citation omitted), which is a live issue in the case law given that “class certification under Federal Rule of Civil Procedure 23(b)(2) . . . applies only when the class seeks ‘final injunctive relief or corresponding declaratory relief,’ ” *id.*, at 324. As noted in the plaintiffs’ motion, some courts use the All Writs

Act to certify classes for habeas relief using the same standards required by Rule 23 given the special nature of habeas jurisdiction:

To say that the precise provisions of Rule 23 do not apply to habeas corpus proceedings, however, is *toto caelo* different from asserting that we do not have authority to fashion expeditious methods of procedure in a specific case. Harris confirms the power of the judiciary, under the All Writs Act, 28 U.S.C. § 1651 (1970), to fashion for habeas actions ‘appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage.’ 394 U.S. at 299, 89 S.Ct. at 1090.

*U. S. ex rel. Sero v. Preiser*, 506 F. 2d 1115, 1125 (CA2 1974); accord *Bijeol v. Benson*, 513 F. 2d 965, 967 (CA7 1975); *Napier v. Gertrude*, 542 F. 2d 825, 827 n. 2 (CA10 1976); *LoBue v. Christopher*, 82 F. 3d 1081, 1085 (CADDC 1996). On the other hand, some courts have had no issue certifying habeas classes under Rule 23. *Williams v. Richardson*, 481 F. 2d 358, 361 (CA8 1973); *Mead v. Parker*, 464 F. 2d 1108, 1112 (CA9 1972).

Regardless, the defendants failed to raise this issue, so it is not properly before the Court and has been forfeited by the defendants. *United States v. Sineneng-Smith*, 590 U. S. 371, 375 (2020) (“[I]n both civil and criminal cases, in the first instance and on appeal . . . we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.”); *id.*, at 376 (“In short, Courts are essentially passive instruments of government. They do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties.”) (cleaned up).

### **III. Section 1252(f), Title 8, is not an impediment to class certification in this case.**

The defendants have not argued that 8 U. S. C. § 1252(f)’s remedy bar applies to anything other than injunctive relief. (D.E. 45, at 10–11.) And rightfully so, given that several courts of appeals have ruled as such. *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F. 4th 606, 625 (CA9 2024) (“As the Government concedes, however, that argument is foreclosed by circuit

precedent holding that § 1252(f)(1) does not ‘bar classwide declaratory relief.’ ”) (citation omitted); *Brito v. Garland*, 22 F. 4th 240, 251 (CA1 2021) (“And while declaratory relief can sometimes have much the same practical effect as injunctive relief, it differs legally and materially.”); *Make The Rd. New York v. Wolf*, 962 F. 3d 612, 635 (CADDC 2020) (“It does not proscribe issuance of a declaratory judgment, which the Associations sought here, *see* J.A. 38–39.”); *Alli v. Decker*, 650 F. 3d 1007, 1012 (CA3 2011) (“A closely adjacent provision, § 1252(e)(1)(A) . . . is compelling evidence that Congress knew how to preclude declaratory relief, but chose not to in § 1252(f)(1).”). Nor have the defendants argued that § 1252(f) applies to bar class wide common law habeas relief.

Rather, it appears that the defendants’ approach is to, in a conclusory fashion, frame all of the plaintiffs’ requests as being injunctive. (D.E. 45, at 10 (“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).”)) But the defendants provide no explanation at all for why all of the plaintiffs’ requested relief is actually injunctive in nature, as opposed to being declaratory (D.E. 24, at 13–14 (regarding Count II)) or common law habeas (D.E. 24, at 16–18 (regarding Count I)) in nature. Nor have the defendants addressed the plaintiffs’ argument that their Count III claim for injunctive relief does not fall within the scope of § 1252(f) because they are seeking to enforce a regulatory, as opposed to a statutory, provision (D.E. 24, at 15–16). *See Texas v. U. S. Dep’t of Homeland Sec.*, 123 F. 4th 186, 209 (CA5 2024) (“And as the Supreme Court suggested in dicta, ‘a court may enjoin the unlawful operation of a provision *that is not specified in § 1252(f)(1)* even if that injunction has some collateral effect on the operation of a covered provision.’ ”) (quoting *Aleman Gonzalez*, 596 U. S. 543, at 553 n. 4) (emphasis in original).

By not responding to and meaningfully addressing these issues raised by the plaintiffs, the defendants have forfeited any and all arguments to the contrary. *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”); *Singh v. U. S. Att’y Gen.*, 561 F.3d 1275, 1278 (CA11 2009) (“simply stating that an issue exists, without further argument or discussion, constitutes abandonment of that issue”) (citation omitted). And given that there is “no basis for the conclusion that section 1252(f)(1) concerns subject matter jurisdiction,” *Biden v. Texas*, 597 U. S. 785, 801 (2022), any meaningful objections grounded in § 1252(f) which the defendants could have made are abandoned and waived, *Castanon-Nava v. U. S. Dep’t of Homeland Sec.*, No. 25-3050, 2025 WL 3552514, at \*4–\*5 (CA7 Dec. 11, 2025).

**IV. A final point about *Matter of Q. Li* versus *Matter of Yajure Hurtado*.**

In their amended complaint (D.E. 22), the plaintiffs expressly rely on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), for the proposition that they were subject to detention under 8 U. S. C. § 1225(b)(2)(A) when and while they arrived in the United States at the Southwest land border. The government has not disagreed with that. But it is important to note that the government seems to be pressing a much broader interpretation of § 1225(b)(2)(A) than the plaintiffs do by citing to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), throughout their various briefings. While not relevant to this motion, the plaintiffs do wish to point out this distinction, as it will likely to be relevant to various matters before the Court. The plaintiffs position is that *Matter of Q. Li* establishes the outer boundary of § 1225(b)(2)(A)’s application, and that *Matter of Yajure Hurtado* exceeds it. See, e. g., *Traverse* (D.E. 8, at 11–14), *Boffill v. Field Off. Dir.*, No. 1:25-cv-25179-JB (Nov. 17, 2025).

### Conclusion

The Court should grant the plaintiffs' Motion for Class Certification and Appointment of Class Counsel (D.E. 24) in full.

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**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

Respectfully submitted,

**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*