UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

TAMAYO ESPINOZA, ET AL. PETITIONERS-PLAINTIFFS

V. CIVIL ACTION NO: 5:20-CV-106-DCB-MTP

SHAWN GILLIS, in his official capacity as Warden of Adams County Detention Center RESPONDENT-DEFENDENT

RESPONSE IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs-Petitioners[1] Leyanis Tamayo Espinoza, Edilia del Carmen Martinez, Joe Ruben Lira Arias, Ndikum Keshia Angu Anjoh, Anthony Baptist and Linda Chao Fru (collectively "Petitioners") filed a petition for habeas relief pursuant to 28 U.S.C. § 2241 and a complaint for injunctive and declaratory relief seeking the release of all petitioners from the custody of the Adams County Detention Center (ACDC), where they are being housed as detainees of the Immigration and Customs Enforcement (ICE). Petitioners argue that their continued detention, in light of the COVID-19 pandemic, violates their Fifth Amendment rights because they have underlying health conditions and/or age that make COVID-19 a serious health and safety risk.

Petitioners have moved for a temporary restraining order.[2] Warden Shawn Gillis respectfully moves the Court to deny Petitioners' motion. Petitioners have not demonstrated (1) a substantial likelihood of success on the merits, (2) irreparable harm, or (3) that their interests outweighs the public interest in maintaining immigration law and process.

[1] Petitioner Viankis Maria Yanes Pardillo has been granted asylum. *See* Hagan Decl. I ¶ 11, Ex. 1. She was released on April 29, 2020, and thus, her petition is moot.
[2] This response will also address whether Petitioners are entitled to a preliminary injunction inasmuch as the standard is the same.

BACKGROUND

Petitioners here are being held by ICE at ACDC, a contract facility, pending removal proceedings. None of the petitioners has received a final order of removal, and their cases are at varying stages. Petitioners challenge their detention because of COVID-19, contending that the ACDC's precautions are insufficient to protect their health and safety. However, ACDC has taken a number of precautions and steps to reduce the incidence of COVID-19 in the facility.

A. Petitioners' Status

None of the Petitioners have received a final order of removal.

Tomayo Espinoza is a 46 year old native and Citizen of Cuba. Hagan Decl. I ¶ 8, Ex. 1. Martinez is a 52 year old native and citizen of El Salvador. *Id.* ¶ 9. Arias is a 46 year old native and citizen of Venezuela. *Id.* ¶ 10. Anjoh is a 19-year old native and citizen of Cameroon. *Id.* ¶ 12. Fru is a 26 year old native and citizen of Cameroon. *Id.* at 14. At varying times, each of these petitioners applied for admission to the United States, and ICE determined that they were inadmissible pursuant to Section 212(a)(7)(A)(i)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(7)(A)(i)(1).[3] *Id.* at ¶¶ 8-10, 12, 14. ICE issued each an Expedited Removal order, and took them into custody. *Id.* At varying times, ICE also issued each a Notice to Appear in immigration court. Their appearances are scheduled for May 1, 2020 (Tomayo Espinoza and Fru), May 4, 2020 (Martinez), May 5, 2020 (Lira Arias), and May 11, 2020 (Anjoh). *Id.*

Baptiste is a 59 year old native and citizen of Trinidad and Tobago. *Id.* ¶ 13. He was admitted to the United States in 1978. *Id.* On April 24, 2017, ICE encountered Baptiste and

[3] In short, this section provides that immigrants without proper documentation are not admissible.

determined that he was removable from United States because he was convicted of controlled substance related offense. *Id.* On the same day, ICE took him into custody. *Id.* On May 4, 2018, an immigration judge ordered Baptiste removed from the United States to Trinidad and Tobago. *Id.* His case is pending appeal to the United States Court of Appeals for the Fifth Circuit. *Id.*

B. ACDC's COVID-19 Protocols and Precautions

Since the beginning of the COVID-19 pandemic, ICE epidemiologists have been "tracking the outbreak, regularly updating infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among detainees." Hagan Decl. II ¶ 7, Ex. 2. With respect to testing ICE and ACDC follows the guidelines issued by the Centers for Disease Control (CDC). *Id.* ¶ 8.

ACDC performs medical intake screenings of any detainee entering the facility. Hagan Decl. ¶ 10, Ex. 2. They are assessed for fever, respiratory illness and are asked questions to discern exposure to COVID-19. *Id.* ACDC isolates and tests detainees who present symptoms of COVID-19. *Id.* ¶ 11. If there is known exposure to COVID-19, a detainee is placed in cohorts, housing all exposed detainees together, with restricted movement for a period of fourteen (14) days. *Id.* ¶ 12. Any detainee who exhibits symptoms of fever or respiratory illness is referred to a medical provider for evaluation. *Id.* The facility has six (6) medical holding cells and two negative pressure observation rooms. *Id.* ¶ 13.

As of 9 a.m. on April 28, 2020, there were two (2) detainees with suspected cases of COVID-19, who are being housed in isolation and on medical observation. Hagan Decl. II ¶ 14. There were twelve (12) confirmed cases of COVID-19 among detainees, one of whom was transferred to a local hospital while the remaining eleven (11) are receiving treatment at the

facility. *Id.* Individuals with confirmed cases are being housed in separate, contained units or in negative pressure rooms. *Id.* ACDC tests detainees consistent with CDC guidelines for testing. Gillis Decl. ¶ 6. Of the six (6) regular housing units, only one has had positive or suspected cases of COVID-19. *Id.* ¶ 7. And none of the petitioners/plaintiffs here are housed in that unit. *Id.* If someone is suspected of or has been diagnosed with COVID-19, there are housed in an isolation pod, and there meals and medical services take place within that pod only. *Id.* ¶ 8.

ACDC has also implemented social distancing guidelines. In living quarters, the number of individuals in each pod has been reduced to allow for social distancing. Gillis Decl. ¶ 1, Ex. 3. In areas where ACDC could not move items to create social distancing, there are educational materials regarding social distancing in multiple languages. *Id.* Female detainees are housed in single-cell units, while male detainees are housed in dormitory style units. *Id.* But because of the decreased capacity of the dormitory style units, there are enough beds available to encourage social distancing. *Id.* In the dining halls, ACDC directs detainees to maintain six feet distance in lines, and has decreased the number of individuals who are called to eat at the same time to ensure social distancing. *Id.* ACDC has also marked chairs in the dining halls so that detainees are socially distanced while eating. *Id.* ACDC has closed recreational areas that are too small to allow for social distancing, and only allows pods to recreate separately in the largest recreational area where they can maintain social distancing. *Id.*

ACDC has also taken other precautions such as increased sanitation frequency and efforts, providing hand-sanitizer, masks and other protective equipment to staff, and providing cleaning solution to detainee workers. Hagan Decl. II ¶ 16; Gillis Decl. ¶ 3. ACDC has increased the amount of liquid soap available and increased the frequency of cleaning cycles. Gillis Decl. ¶ 3. In addition to bleach, ACDC uses a chemical that kills COVID-19 to clean

throughout the facility. *Id.* High contact areas are cleaned every hour. *Id.* In areas where detainees are suspecting of having COVID-19 are housed, items are cleaned in between each use. *Id.* There is also hand sanitizer throughout the facility. *Id.*

Moreover, since April 13, 2020, ACDC has provided masks to all detainees and staff. Gillis Decl. ¶ 5. In housing areas where detainees are suspected of having COVID-19, the staff entering the area wears full personal protective equipment (PPE). *Id.* And only certain staff can enter the areas where individuals have or are suspected of having COVID-19. *Id.* ACDC also monitors its gloves and other PPE to ensure it has sufficient amounts. *Id.*

The facility has also ceased all social visits. Hagan Decl. II *Id.* ¶ 17. For legal visits, non-contact visits are encourages and all legal visitors must wear gloves, masks and eye protection to limit the possible spread of COVID-19. Gillis Decl. ¶ 10. It has also suspended services such as the barbershop and congregational programs. *Id.*

Additionally, all staff and vendors are screened for body temperatures before they enter the facility. Hagan Decl. II ¶ 18; Gills Decl. ¶ 9. Anyone with responses to questions or a body temperature that suggests exposure to COVID-19 is not allowed to enter the facility. *Id.* Further, if an employee is not allowed to work because of the screening process, the employee is sent home with full pay. *Id.* Thus, there is no incentive for an employee to provide inaccurate answers.

The facility also provides educational information to staff and detainees on COVID-19. Hagan Decl. II ¶ 20; Gillis Decl. ¶¶ 2, 4. There are posters throughout the facility in multiple languages regarding effective efforts to slow the spread of COVID-19. Gillis Decl. ¶ 2.

C. Petitioners' Allegations

Petitioners claim that they have certain conditions that put them at higher risk of serious illness or death if they contract COVID-19. Petitioner Tamayo Espinoza claims to suffer from diabetes, hypertension, chronic renal issues and malnutrition. Pet. Mem. (ECF No. 5) at 5. Petitioner Martinez claims to be 53 years old and suffering from diabetes. *Id.* Petitioner Lira Arias claims to have uncontrolled diabetes and hypertension. *Id.* Petitioner Pardillo claims to suffer from epilepsy. *Id.* Petitioner Anjoh claims to suffer from chronic respiratory issues and has a throat injury. *Id.* at 6. (It is worth noting that this statement in Petitioners' Memorandum is based on a physician's declaration, but Anjoh's declaration only says that she has had trouble breathing since she was young and has to breathe through her mouth. Anjoh Decl. (ECF No. 4-4 ¶ 3.) Petitioner Baptiste claims to be a 59 year old who suffers from hypertension and untreated pre-diabetes. Pet. Mem. (ECF No. 5) at 6. Petitioner Fru claims to have untreated Hepatitis B and high blood pressure. *Id.*

Petitioners also complain about detention centers in general and ACDC in particular. Pet. Mem. at 6. They contend that it is impossible to socially distance in detention centers. *Id.* They claim that the facility is crowded and that 120 people share one dorm. *Id.* They also claim that the mitigation efforts of ACDC are inadequate. *Id.* Without specifics, they also claim that individuals who present with COVID-19 symptoms are not isolated or treated. *Id.* at 7. As noted above, the Warden disputes the claims regarding the precautions taken by the facility.

Petitioners claim that the precautions taken at ACDC are not sufficient to slow the spread of COVID-19. *Id.* However, as noted above, ACDC is following CDC guidelines and implementing standards and precautions developed by epidemiologists with ICE.

STANDARD OF REVIEW

Under well-settled Fifth Circuit precedent, a temporary restraining order is an extraordinary remedy that should not be granted unless the movant establishes the following four elements by a preponderance of the evidence: "(1) there is a substantial likelihood of success on the merits; (2) there is a substantial threat that irreparable injury will result if the injunction is not granted; (3) the threatened injury outweighs the threatened harm to the defendant; and (4) granting the preliminary injunction will not disserve the public interest." *Karaha Bodas Co. v. Perusahaan Pertambangan*, 335 F.3d 357, 363 (5th Cir. 2003). A TRO, like all injunctive relief, is an extraordinary remedy requiring the movant to unequivocally show the need for its issuance. *Sepulvado v. Jindal*, 729 F.3d 413, 417 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 1789 (2014) (internal citations and quotations omitted). The party moving for a TRO must carry the burden as to all four elements before a TRO may be considered. *Cf. Voting for America, Inc. v. Steen*, 732 F.3d 382, 386 (5th Cir. 2013) (internal quotations and citations omitted).

A preliminary injunction is an extraordinary remedy. *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). It should only be granted if the movant has clearly carried the burden of persuasion on all four prerequisites. *Id.* The decision to grant a preliminary injunction is to be treated as the exception rather than the rule. *Id.* (citing *State of Texas v. Seatrain Inter. S.A.*, 518 F.2d 175, 179 (5th Cir. 1975)).

ARGUMENT

A. Petitioners have not shown a "substantial likelihood of success on the merits" as required to obtain a TRO that alters the status quo because this Court lacks jurisdiction over their claims.

i. Petitioners are unlikely to succeed on the merits because they cannot invoke habeas to challenge the conditions of their confinement.

Petitioners invoke habeas corpus to challenge the constitutionality of their conditions of confinement and seek release. But habeas corpus is not a means by which to challenge conditions of confinement. The "sole function" of habeas is to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976).

The Fifth Circuit, and district courts within this Circuit, have long recognized that habeas corpus actions are the proper vehicle to "challenge the fact or duration of confinement," whereas allegations that challenge an individual's "conditions of confinement" are "properly brought in civil rights actions." *Schipke v. Van Buren*, 239 F. App'x 85–86 (5th Cir. 2007); *accord Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017) (noting the "instructive principle [is] that challenges to the fact or duration of confinement are properly brought under habeas, while challenges to the conditions of confinement are properly brought under [civil rights actions]") (citations omitted); *Hernandez v. Garrison*, 916 F.2d 291, 293 (5th Cir. 1990) (holding that claims of overcrowding, denial of medical treatment, and access to an adequate law library were not proper subjects of a habeas corpus petition); *Sarres Mendoza v. Barr*, 2019 WL 1227494, at *2 (S.D. Tex. 2019) (denying Honduran detainee's motion for leave to amend because proposed claims concerning "conditions of confinement may not be brought in a habeas corpus proceeding, and are actionable, if at all, in a civil rights action").

The Fifth Circuit highlighted the key distinction in *Rourke v. Thompson*: a plaintiff "cannot avail himself of the writ of habeas corpus when seeking injunctive relief *unrelated to the cause of his detention*." 11 F.3d 47, 49 (5th Cir. 1993) (citing *Pierre v. United States*, 525 F.2d 933, 935 (5th Cir. 1976) ("Simply stated, habeas is not available to review questions unrelated to the cause of detention.")) (emphasis added). Petitioners' argument comes face to face with this admonition from the Fifth Circuit. Petitioners do not challenge the cause of their detention—rather, they expressly claim that their habeas challenge is to remedy alleged unlawful conditions of detention. The Fifth Circuit has foreclosed this precise argument.

Admittedly, there is currently disagreement among the district courts within Fifth Circuit on this issue with respect to COVID-19 cases.

Some courts have ruled that the type challenges raised by Petitioners here are not cognizable under habeas statutes. A court in the Western District of Louisiana dismissed similar claims for immediate release brought under § 2241(a). *Livas v. Myers,* Action No. 2:20-cv-00422 (W.D. La. April 22, 2020). In *Livas,* the petitioners, federal inmates at Oakdale penitentiary filed a Writ of Habeas Corpus under § 2241(a), Injunctive, and Declaratory relief seeking their immediate release from detention in light of the COVID-19 presence there. *Id.* Specifically, Petitioners "[sought] to represent a class of all current and future people in post-conviction custody… including a subclass of persons who, by reason of age or medical condition, are particularly vulnerable to injury or death if they were to contract COVID-19." *Id.* at 7. They alleged that due to the conditions present at Oakdale, it would be "virtually impossible" to mitigate the risk of infection of COVID-19 which violated their constitutional right to treatment and medical care. *Id.* Importantly, the petitioners did not challenge their classification or placement but sought release under § 2241 "because of the extraordinary conditions caused by

COVID-19." *Id.* at 15. The federal respondents argued in opposition that the habeas relief was not available under a challenge to conditions of confinement and thus the court lacked jurisdiction. *Id.* at 16. The court agreed, citing the lack of any Fifth Circuit or Supreme Court precedent permitting conditions of confinement claims under § 2241. *Id.*

Similarly, a court in the Southern District of Texas recently denied an immigrant detainee's similarly styled habeas motion based on fear of potential COVID-19 exposure. *See Sacal-Micha v. Longoria*, Action No. 1:20-cv-37, 2020 WL 1518861 (S.D. Tex. Mar. 27, 2020). *Sacal-Micha* correctly found that allegations related to the inadequacy of COVID- 19 mitigation and avoidance measures "are part and parcel of the conditions in which the facility maintains custody over detainees." *Id*. at *4. Surveying Fifth Circuit precedent, *Sacal-Micha* concluded that "[d]istrict courts have . . . den[ied] a habeas petition based solely on alleged inadequate conditions of incarceration." *Id*. Therefore, even if this court were inclined to findthe existence of civil-rights violations in the petitioners' conditions of confinement, release from custody under a § 2241(a) habeas writ wouldn't be the appropriate remedy. *But see Barrera v. Wolf*, Civ. Action No. 4:20-cv-1241, ECF Doc. No. 41 (S.D. Tex. Apr. 17, 2020) (finding that COVID-19 challenge to detention could properly be brought in a habeas petition).

In a recent Report and Recommendation, Magistrate Judge Parker held that a detainee appeared to "blend" the concepts of habeas relief versus claims involving conditions of confinement, and although Judge Parker allowed the motion to be brought within an existing habeas proceeding, the Court ultimately denied any habeas relief. *Sheikh v. Gillis*, Action No. 5:19-cv-134-DCB-MTP, ECF Doc. No. 19 (S.D. Miss. Apr. 29, 2020). Judge Parker concluded: "While the undersigned is sympathetic to the many challenges faced by individuals with pre-

existing medical conditions during this health crisis, it appears that ACDC has taken meaningful steps to protect the detainees housed at that facility." *Id.* at 5.

Fifth Circuit precedent supports the conclusion that actions of this type, complaining about the conditions within the facility, are conditions of confinement claims and should be brought as civil rights actions.

ii. Petitioners are unlikely to succeed on the merits because they cannot demonstrate that ICE's precautionary measures amount to deliberate indifference in violation of petitioners' due process rights.

As petitioners are civil detainees, their conditions of confinement claims are, like pretrial detainees, governed by the due-process clause. *See Hare v. City of Corinth*, 74 F.3d 633, 638-639 (5th Cir. 1996) (en banc); *see also Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004) (evaluating conditions of confinement claim of civil detainee under Fifth Amendment). In *Hare*, the Fifth Circuit created two standards for conditions-of-confinement claims depending on the nature of the allegation. The court held "that the episodic act or omission of a state jail official does not violate a [civil] detainee's due process right to medical care . . . unless the official acted or failed to act with subjective deliberate indifference."

Alternatively, "[c]onstitutional attacks on general conditions, practices, rules, or restrictions of pretrial confinement," or "jail condition cases," are governed by the reasonable relation test articulated in *Bell v. Wolfish*, 441 U.S. 520 (1979). The Supreme Court held in *Bell* that so long as the challenged condition is "reasonably related to a legitimate governmental objective" it passes constitutional muster. *Id.* at 539. "[I]solated examples of illness, injury, or death, standing alone, cannot prove that conditions of confinement are constitutionally adequate. Nor can the incidence of diseases or infections, standing alone, . . . since any densely populated residence may be subject to outbreaks." *Shepherd v. Dallas Cty.*, 591 F.3d 445, 454 (5th. Cir.

2009). A detainee does not establish a case simply by alleging that the detention center has disease or infection present. "Rather, a detainee . . . must demonstrate a pervasive pattern of serious deficiencies in providing for his basic human needs." *Id*. Petitioners do not choose a theory and instead seem to allege both simultaneously.

In defining the deliberate-indifference standard, the Supreme Court clarified in *Helling v. McKinney* that while "accidental or inadvertent failure to provide adequate medical care to a prisoner would not violate the [constitution], 'deliberate indifference to serious medical needs of prisoners' violates the [constitution] because it constitutes the unnecessary and wanton infliction of pain contrary to contemporary standards of decency." 509 U.S. 25, 32 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

"Deliberate indifference is an extremely high standard." *Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). "Deliberate indifference in the context of failure to provide reasonable medical care means that: (1) the prison officials were aware of facts from which an inference of substantial risk of serious harm could be drawn; (2) the officials actually drew that inference; and (3) the officials' response indicated that they subjectively intended that harm occur." *Thompson v. Upshur County., Texas*, 245 F.3d 447, 458–59 (5th Cir. 2001). A prisoner claiming deliberate indifference must allege that government officials "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Davidson v. Texas Dept. of Criminal Justice*, 91 F. App'x 963, 965 (5th Cir. 2004). Further, "deliberate indifference cannot be inferred merely from a negligent or even a grossly negligent response to a substantial risk of serious harm." *See Thompson*, 245 F.3d at 459–60.

Here, Petitioners' allegations do not support either a "pervasive pattern of serious deficiencies in providing for basic human needs" or a "wanton disregard for serious medical needs." Petitioners' allegations focus on the fact that they are detained with others in typical detention-facility conditions and cannot exercise social distancing. But, as the Fifth Circuit has noted, "any densely populated residence may be subject to outbreaks," and the existence of a disease does not state a constitutional violation. *Shepherd*, 591 F.3d at 454.

Should Petitioners' claims be characterized as a jail-condition case governed by *Bell*, they still fail as detention is reasonably related to the Government's legitimate interest in pre-order detention of aliens to prevent absconding and, in the cases of criminal aliens, to protect the community. In the immigration context, the Supreme Court has consistently upheld the constitutionality of detention, citing the Government's legitimate interest in protecting the public and preventing aliens from absconding into the United States and never appearing for their removal proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018); *Demore v.Kim* , 538 U.S. 510, 520–22; *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Nor is detention pending removal process an excessive means of achieving those interests. The Supreme Court for over a century has affirmed detention as a "constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523 (listing cases).

ACDC has taken steps to reduce the risk that COVID-19 will be introduced into the facility by screening all necessary visitors and has taken steps to reduce a potential spread by isolating those who may have been exposed or who are showing potential COVID-19 symptoms. Additionally, all COVID-19 positive detainees are isolated and treated consistent with CDC guidelines. In addition, ACDC has taken steps to educate its staff and detainees regarding social distancing and has made adjustments to its facility operations to encourage social distancing.

While the methods implemented by ICE may not be perfect, they are not so wanton so as to constitute deliberate indifference to the medical needs of its detainees. On these facts, Petitioners cannot show a constitutional violation. *See Sacal-Micha*, 2020 WL 1815691, at *6. ("But ultimately, Sacal does not assert that Respondents are doing nothing to protect him, other detainees, and staff members from COVID-19, but only that Respondents are not doing enough. . . . Courts have refused to provide habeas relief even when the claimed inadequacies allegedly placed the petitioner in grave peril.").

B. Petitioners are not likely to suffer irreparable harm in the absence of preliminary relief.

The Supreme Court's "frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 22 (2008) (emphasis in original). "To seek injunctive relief, the plaintiff must show a real and immediate threat of future or continuing injury apart from any past injury." *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014). "Speculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *Hurley v. Gunnels*, 41 F.3d 662 (5th Cir. 1994) (quoting *Holland Am. Ins. Co. v. Succession of Roy,* 777 F.2d 992, 997 *(5th Cir. 1985)*).

Petitioners argue that only release from the detention will dissolve the heightened risk of adverse consequences from COVID-19 due to their health issues. These assertions are wholly speculative. Petitioners do not explain how they will suffer irreparable harm in the absence of an order requiring their release, given that their existing medical care would be interrupted if it ended as a consequence of their combined releases.

While some Petitioners allege that they have housing arrangements should they be released, such arrangements would require interstate travel. *See* Pets.' Decls. (ECF Nos. 4-1 to 4-7). Moreover, it cannot be overlooked that the detention facility provides medical care at no cost to detainees, including Petitioners. By reason of their detention, they have greater access to medical care than many in the general public. Ordering their release would leave Petitioners without their present access to health care and could put some or all of them at greater risk of serious complications in the event that they contract COVID-19. As stated above, Petitioners' position is based entirely on their fear of exposure to COVID-19, but Petitioners can be isolated while in detention.

C. The balance of equities and the public interest weigh in the Warden's favor.

It is well-settled that the public interest in enforcement of United States immigration laws is significant. *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) ("The government's interest in efficient administration of the immigration laws at the border is also weighty."); *United States v. Martinez- Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant."); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permit[s] and prolong[s] a continuing violation of United States law." (internal quotation marks omitted)).

Concerns about exposure to COVID-19 are, of course, shared by all. However, an order directing ICE to release Petitioners into the United States—especially considering that one of the petitioners has a criminal history, *see* discussion *supra*—is contrary to the safety of the American

public. Given the vast expanse and indiscriminate nature of Petitioners' requested order, the balance of interests clearly favors the Warden especially considering the status of immigration proceedings—many hearings are imminent. The disruptive effect of such an order would long survive the COVID-19 pandemic. Moreover, the public interest is best served by allowing orderly medical processes and protocols to be implemented by government professionals (which again, include the same type of medical experts represented in Petitioners' papers). *See Youngberg v. Romeo*, 457 U.S. 307, 322-23 (1982) (urging judicial deference and finding presumption of validity regarding decisions of medical professionals concerning conditions of confinement). This type of burden and attendant harm, and its potential impact on ICE operations nationwide, is too great to be permissible at this preliminary stage.

CONCLUSION

For all of the foregoing reasons, the Warden respectfully requests that the Court deny Petitioners' TRO motion (and any motion for a preliminary injunction) seeking their immediate release from custody.

Dated: April 30, 2020

Respectfully submitted,

D. MICHAEL HURST, JR.
United States Attorney

By: ANGELA GIVENS WILLIAMS
Assistant United States Attorney
MS Bar No. 102469
United States Attorney's Office
501 East Court Street, Suite 4.430
Jackson, Mississippi 39201
Telephone: (601) 973-2820
Facsimile: (601) 965-4409
Email: angela.williams3@usdoj.gov