

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROGER ERNESTO LA O MUNOZ,
et al.,

Petitioner,

v.

CHAD F. WOLF, et al.,

Respondents.

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Civil No. 4:20-cv-2206

RESPONDENTS' RESPONSE TO TEMPORARY RESTRAINING ORDER

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EXHIBITS

Number	Description
1	Ulbo-Escobar Release Papers
2	GEO Declaration for Joe Corley Detention Center
3	Robert D. Murray Declaration for Joe Corley Detention Center
4	Bryan C. Mentz Sworn Declaration for Morales
5	Aaron S. Crisp Sworn Declaration for La O Munoz
6	Bryan C. Mentz Sworn Declaration for Sanchez
7	Joe Corley Detention Center Photos

INTRODUCTION AND SUMMARY

Petitioners' temporary restraining order should be denied because their allegations are not based in any substantiated facts or law. This is amplified by the fact that one of the Petitioners was paroled and released nearly a month before the habeas petition and temporary restraining order were filed.

Petitioners are essentially arguing that immigration detention is now unconstitutional and ask the Court to order their immediate release. Petitioners are bringing habeas corpus claims alleging that their continued detention at the Joe Corley Detention Center (JCDC) violates the Fifth and Eighth Amendments to the Constitution. Their claims focus on the alleged dangers of being detained while COVID-19 is a risk.

Even assuming Petitioners' allegations are true, they do not state a claim. The Fifth Circuit does not recognize a conditions-of-confinement habeas corpus claim, and a cause of action against the federal government directly under the Constitution is similarly not cognizable. Even if these claims could be brought in the Fifth Circuit, Petitioners have pled merely the potential introduction of a disease coupled with typical conditions of a densely populated detention facility—allegations the Fifth Circuit has made clear do not amount to a constitutional violation. Moreover, the evidence submitted here shows that these allegations are without merit. Petitioners do not provide any firsthand accounts of the conditions that they claim are unconstitutional.

This case—with dubious claims and a detailed record of the actions Respondents are taking to prevent COVID-19—does not warrant the release of Petitioners. Respondents' evolving proactive measures show that they are responsive to the ever-changing threat of COVID-19 and are working to protect their detainees.

FACTUAL AND PROCEDURAL BACKGROUND

Kelvin Armando Ulloa Escobar. Ulloa Escobar was paroled and released on June 1, 2020, nearly a month before this habeas was filed.¹ On June 2, 2020 an immigration judge changed Ulloa's venue to Newark, New Jersey, where Ulloa would be staying. Ulloa is not at JCDC; he is in New Jersey, and his case is moot.

Roger Ernesto La O Munoz. On July 14, 2019, U.S. Border Patrol (USBP) encountered La O Munoz after he entered the country without inspection near El Paso, Texas.² La O Munoz was issued a Notice to Appear (NTA) and had immigration hearings on October 8th, October 30th, and December 9, 2019.³ On March 12, 2020, he was transferred to the JCDC.⁴ On March 27, 2020, ERO Houston denied La O Munoz's request for parole because he did not fall into any of the categories of aliens whom parole would be generally justified.⁵ Immigration proceedings continued on May 5th, May 19th, and June 1, 2020.⁶ La O Munoz is currently scheduled for a final hearing on the merits on July 9, 2020.⁷

La O Munoz is on medication for adjustment disorder and gastro-esophageal reflux disease without esophagitis.⁸ He is also on a treatment plan for adjustment disorder with anxiety.⁹ On March 15, 2020 La O Munoz made a request for health services, and attended a medical appointment on March 19, 2020.¹⁰ On April 1, 2020 he made another request and received a flu shot the next day.¹¹ On April 6, 2020 he received a follow up medical appointment.¹² La O Munoz made another request

¹ Ex. 1.

² Ex. 5 ¶ 4.

³ *Id.*

⁴ *Id.*

⁵ Ex. 5 ¶ 5.

⁶ Ex. 5 ¶ 4.

⁷ Ex. 5 ¶ 4.

⁸ Ex. 5 ¶ 6.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

on May 3, 2020 and he received an appointment on May 6th and 8th, 2020.¹³ He received a medication adjustment on May 12, 2020.¹⁴ Then he made another request for medical care on June 3, 2020; he attended an appointment the next day and refused care on June 9, 2020.¹⁵

Jorge Luis Morales-Diaz. On November 4, 2019, USBP encountered Morales after he applied for admission in El Paso, Texas.¹⁶ Morales was issued a Notice to Appear (NTA) and had immigration hearings on February 12, 2020.¹⁷ On March 12, 2020, he was transferred to the JCDC.¹⁸ On April 7, 2020 ERO Houston denied Morales request for parole because he did not fall into any of the categories of aliens whom parole would be generally justified.¹⁹ Immigration proceedings continued on May 5th, May 14th, May 26th, June 3rd, and June 30, 2020.²⁰ Morales is currently scheduled for a final hearing on the merits on July 9, 2020.²¹

Morales does not have any medical health concerns.²²

Hugo Sanchez-Valdes. On November 4, 2019, USBP encountered Sanchez after he applied for admission in El Paso, Texas.²³ Sanchez was issued a Notice to Appear (NTA) and had an immigration hearing on February 12, 2020.²⁴ On March 12, 2020, he was transferred to the JCDC.²⁵ On April 3rd and 29, 2020, ERO Houston denied Sanchez request for parole because he did not fall into any of the categories of aliens whom parole would be generally justified.²⁶ Immigration

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ex. 4 ¶ 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Ex. 4 ¶ 5-6.

²³ Ex. 6 ¶ 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

proceedings continued on May 6th, May 14th, May 26th, June 3rd, and June 27, 2020.²⁷ Sanchez is currently scheduled for a final hearing on the merits on July 7, 2020.²⁸

Sanchez has been diagnosed with Post-Traumatic Stress Disorder (PTSD) and is on a treatment plan, including medication.²⁹ On May 19, 2020, Sanchez requested that medical cleared him to work and he was cleared on May 28, 2020.³⁰

Joe Corley Detention Center. The JCDC has been providing consistent medical care and protection from COVID-19. 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.³¹ On April 10, 2020, ICE ERO released its *ERO COVID-19 Pandemic Response Requirements* (PRR), a guidance document that builds upon previously issued guidance and sets forth specific mandatory requirements expected to be adopted by all detention facilities housing ICE detainees, as well as best practices for such facilities, to ensure that detainees are appropriately housed and that available mitigation measures are implemented during this pandemic.³² JCDC has issued masks, conducted training, and provided cleaning equipment to staff and detainees.³³ Additionally, incoming detainees and staff are screened for signs of COVID-19, and detainees have around the clock access to medical care.

ISSUES

1. Whether Petitioners' habeas petition has a substantial likelihood has a success on the merits.
2. Whether Petitioners will suffer an irreparable injury if the injunction is denied.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ex. 6 ¶ 5-6.

³⁰ *Id.*

³¹ Ex. 3 ¶ 3.

³² Ex. 3 ¶ 4.

³³ Ex. 2 ¶ 9-12; Ex. 4 ¶ 17.

3. Whether the Petitioners' injunction will disserve the public interest.

STANDARD

A temporary restraining order is an equitable remedy that may be granted only if the movant satisfies four requirements: “(1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest.”³⁴ Failure to establish any of these elements results in the denial of the motion for injunctive relief.³⁵ Such relief is an extraordinary remedy that requires the applicant to unequivocally show the need for its issuance.³⁶ This standard is particularly stringent when the movant seeks mandatory preliminary relief as opposed to an order to maintain the status quo.³⁷

The standard is heightened further when a party seeks mandatory preliminary relief that alters the status quo.³⁸ Although Petitioners filed a separate motion for a temporary restraining order for a preliminary injunction, Respondents respond to their arguments in conjunction with their response to the habeas petition.

ARGUMENT

I. Petitioners' habeas motion is unlikely to succeed on the merits.

A. Under Fifth Circuit precedent, Petitioners cannot invoke habeas corpus to challenge the conditions of their confinement.

Petitioners invoke habeas corpus to challenge the constitutionality of their conditions of confinement and seeks release. But habeas corpus is not a means by which to challenge conditions of confinement. “Simply stated, habeas is not available to review questions unrelated to the cause of

³⁴ *Sunbeam Products, Inc. v. West Bend Co.*, 123 F.3d 246, 250 (5th Cir. 1997); *see also Parker v. Ryan*, 960 F.2d 543, 545 (5th Cir. 1992) (“[T]he requirements of rule 65 apply to all injunctions.”) (citing Fed. R. Civ. P. 65).

³⁵ *Guy Carpenter & Co. v. Provenzale*, 334 F.3d 459, 464 (5th Cir. 2003) (citation omitted).

³⁶ *Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997) (citation omitted).

³⁷ *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976).

³⁸ *Id.*

detention.”³⁹ In other words, a petitioner “cannot avail himself of the writ of habeas corpus when seeking injunctive relief *unrelated to the cause of his detention*.”⁴⁰

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.”⁴¹ Even when a petitioner alleges that inadequate conditions of confinement create the risk of serious physical injury, illness, or death, a petition for a writ of habeas corpus is not the proper vehicle for such a claim.⁴²

The same is true in the civil immigration context. When a Mexican national sought release from ICE custody due to concerns for COVID-19, another member of this Court dismissed the petition, noting, “The Fifth Circuit has not recognized [habeas corpus as a permissible avenue for relief from alleged inadequate conditions of confinement].”⁴³ Likewise, when civil Border Patrol detainees sought release from custody to cure allegedly unconstitutional conditions, that Court noted, “Any person in custody can obtain relief from allegedly inadequate conditions by being released, but

³⁹ *Pierre v. United States*, 525 F.2d 933, 935 (5th Cir. 1976).

⁴⁰ *Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir. 1993) (emphasis added).

⁴¹ *Schipke v. Van Buran*, 239 F. App’x 85, 85–86 (5th Cir. 2007); *see also Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017) (noting the “instructive principle 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); *Livas v. Myers*, 2020 WL 1939583, at *8 (W.D. La. Apr. 22, 2020) (“Neither party nor this Court found a single precedential case in the Fifth Circuit . . . allowing conditions of confinement claims to be brought under § 2241.”); *United States v. Robinson*, 2009 WL 1507130, at *4 (S.D. Tex. 2009) (“Claims concerning the conditions of confinement are actionable, if at all, under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), and not under the habeas corpus statutes.”).

⁴² *Spencer v. Bragg*, 310 F. App’x 678, 679 (5th Cir. 2009) (affirming the lower court’s dismissal of petitioner’s habeas claim even though he alleged that the conditions of confinement endangered his life); *Northrup v. Thaler*, 2012 WL 4068676, at *2 (S.D. Tex. Aug. 7, 2012), *rep. & rec. adopted*, 2012 WL 4068997 (S.D. Tex. Sept. 14, 2012) (dismissing petitioner’s habeas claim based on alleged risk of abuse by other inmates).

⁴³ *Sacal-Micha v. Longoria*, 2020 WL 1815691, at *5 n.6 (S.D. Tex. Apr. 9, 2020) (Rodriguez, J.).

this fact does not create a permissible habeas corpus claim when the complaint turns on the conditions of confinement.”⁴⁴

“A detention facility’s protocols for isolating individuals, controlling the movement of its staff and detainees, and providing medical care are part and parcel of the conditions in which the facility maintains custody over detainees.”⁴⁵ These conditions of confinement are precisely what Petitioners challenge here.⁴⁶ Because their request for release is due to the conditions, the Fifth Circuit has barred his claims. If their habeas claims are allowed here, any detainee could simply seek release to sidestep the Fifth Circuit’s express admonition that habeas corpus is not a means to challenge conditions of confinement. This loophole would swallow the rule.

Finally, habeas corpus is meant to correct only unlawful detention. Petitioners do not challenge the lawfulness of their custody or the cause of their detention.⁴⁷ Thus, Petitioners cannot invoke habeas to seek relief unrelated to the cause of their detention.⁴⁸

⁴⁴ *Rivera Rosa v. McAleenan*, 2019 WL 5191095, at *18 (S.D. Tex. 2019). *See also Sarres Mendoza v. Barr*, 2019 WL 1227494, at *2 (S.D. Tex. 2019) (denying Honduran detainee’s motion for leave to amend because the proposed claims on “conditions of confinement may not be brought in a habeas corpus proceeding, and are actionable, if at all, in a civil rights action”); *Patrick v. Whitaker*, 2019 WL 588465, at *4, n.36 (S.D. Tex. 2019), *appeal dismissed*, 2019 WL 4668409 (5th Cir. 2019) (ICE detainee’s “motion for leave to file supplemental pleadings concerning the conditions of his confinement” is denied because “Petitioner’s proposed claims are not actionable under 28 U.S.C. § 2241.”).

⁴⁵ *Sacal-Micha*, 2020 WL 1815691, at *4.

⁴⁶ (*See, e.g.*, Dkt. 1 ¶ 41 (“The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees persons in civil immigration detention the right to reasonable safety and to be free from punitive conditions of confinement, and requires the government to put forth a constitutionally adequate, non-punitive purpose for continued detention.”));

⁴⁷ *See Pierre*, 525 F.2d at 935–36; *Linas*, 2020 WL 1939583, at *7–8 (denying prisoners’ requests for home confinement because of concerns of COVID-19 and noting that they incorrectly invoked habeas corpus to challenge their lawful imprisonment).

⁴⁸ *See Rourke*, 11 F.3d at 49.

B. Petitioners’ direct constitutional claims seeking release are not cognizable, and, even if they were, the facts here do not support a constitutional violation.

i. Petitioners do not plead a constitutional violation.

To the extent Petitioners bring direct constitutional claims seeking their release, they may not do so in the Fifth Circuit. “Although there have been a few notable exceptions, the federal courts, and this Circuit in particular, have been hesitant to find causes of action arising directly from the Constitution.”⁴⁹ Recognizing a claim directly under the Fifth Amendment to order Petitioners’ release would be a departure from Fifth Circuit precedent.⁵⁰

Even if a direct constitutional claim were cognizable in this Circuit, Plaintiffs have not pled it. In a conditions-of-confinement case, “the proper inquiry is whether those conditions amount to punishment of the detainee.”⁵¹ Under Fifth Circuit case law, “isolated 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.”⁵² A detainee does not establish a case simply by alleging that the detention center has disease or infection present or that it may in the future. “Rather, a detainee . . . must demonstrate a pervasive pattern of serious deficiencies in providing for his basic human needs.”⁵³

Petitioners claim that Respondents do not have a legitimate government interest detain the Petitioners in their present conditions. Notably, however, Petitioners do not provide any sworn statements about the condition of JCDC.⁵⁴ Instead Petitioners rely on newspaper articles, statements

⁴⁹ *Alexander v. Trump*, 753 F. App’x 201, 206 (5th Cir. 2018) (rejecting a freestanding constitutional complaint against the FBI seeking injunctive relief). *See also* *Hearth, Inc. v. Dep’t of Public Welfare*, 617 F.2d 381, 382 (5th Cir. 1980) (citing *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), as one “notable exception”).

⁵⁰ *Sacal-Micha*, 2020 WL 1815691, at *5–6.

⁵¹ *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

⁵² *Shepherd v. Dallas Cty.*, 591 F.3d 445, 454 (5th Cir. 2009).

⁵³ *Id.*

⁵⁴ Dkt. 9-1 at 17.

from other detainees, and a hearsay declaration from their counsel regarding the conditions. Furthermore, the information provided in that declaration must be at least a month old since Petitioner Ulloa has not been detained since June 1, 2020.⁵⁵ It is notable that the declaration does not provide any dates regarding the alleged conditions of JCDC. The response to the COVID-19 virus is constantly shifting. Thus, hearsay that was gathered two or three months ago would likely not be applicable today.

Alternatively, if the detainee challenges an officer's episodic act or omission, he must demonstrate that the official acted with deliberate indifference to his medical needs or safety.⁵⁶ Officials disregard a risk to an inmate when they "refuse to treat him, ignore his complaints, intentionally treat him incorrectly, or engage in any similar conduct that would clearly evince a wanton disregard for any serious medical needs."⁵⁷

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." First, Petitioners do not have any medical conditions or risk factors that the Centers for Disease Control and Prevention (CDC) has determined make someone more vulnerable to COVID-19.⁵⁸ Furthermore, Petitioners have access to around the clock medical care and have not made any complaints of symptoms.⁵⁹

Second, to the extent that Petitioners claim that they are in danger because they are detained with others in typical detention-facility conditions, his claims fail as a matter of law. Even taking these

⁵⁵ Ex. 1.

⁵⁶ *Gobert v. Caldwell*, 463 F.3d 339, 345 (5th Cir. 2006).

⁵⁷ *Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001).

⁵⁸ See Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), *People Who Need to Take Extra Precautions*, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html

⁵⁹ Ex. 2 ¶ 26-28.

allegations as true, Fifth Circuit expressly forecloses Petitioners' claim: "any densely populated residence may be subject to outbreaks," and the existence of a disease does not state a constitutional violation.⁶⁰ The Fifth Circuit recently reaffirmed this principle in the context of COVID-19 in staying the preliminary injunction order against the Texas Department of Criminal Justice (TDCJ) relating to its COVID-19 prevention procedures.⁶¹ Where the district court imposed detailed procedures on TDCJ, going beyond CDC guidance and impeding TDCJ's ability to adapt to changing circumstances, the Fifth Circuit noted that TDCJ is likely to prevail on the merits of its appeal.⁶²

ii. The proactive measures Respondents have taken to prevent COVID-19 show that they are neither punishing Petitioners nor deliberately indifferent to their needs.

In staying the district court's injunction against TDCJ, the Fifth Circuit found that Texas prisoners challenging the prisons' COVID-19 measures failed to show deliberate indifference because "the evidence shows that TDCJ has taken and continues to take measures—informed by guidance from the CDC and medical professionals—to abate and control the spread of the virus."⁶³ The same is true here.

The JCDC has taken extensive measures to prevent COVID-19:

- Since the onset of reports of Coronavirus Disease 2019 (COVID-19), 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.⁶⁴
- On April 10, 2020, ICE ERO released its *ERO COVID-19 Pandemic Response Requirements* (PRR), a guidance document that builds upon previously issued guidance and sets forth specific mandatory requirements expected to be adopted by all detention facilities housing ICE detainees, as well as best practices for such facilities, to ensure that detainees are

⁶⁰ *Shepherd*, 591 F.3d at 454.

⁶¹ *Valentine v. Collier*, No. 20-20207, 2020 WL 1934431, at *3 (5th Cir. Apr. 22, 2020) (citing *Shepherd*, 591 F.3d at 454).

⁶² *Id.* at *3–4.

⁶³ *Valentine*, 2020 WL 1934431, at *4.

⁶⁴ Ex. 3 ¶ 3.

appropriately housed and that available mitigation measures are implemented during this pandemic.⁶⁵

- Informed staff and detainees how to recognize symptoms of COVID-19.⁶⁶
- The facility is operating below capacity. The facility is designed to accommodate 1533 detainees, currently they are housing 303 detainees.⁶⁷
- All multi-occupant housing units are equipped with bunk beds. The bunk beds in the 36-occupant units are set five (5) feet eight (8) inches apart from the center of one lower bunk to the other lower bunk; however, there are bunks that are arranged side by side with a metal plate separating them. Detainees are encouraged to sleep head to foot. The bunk beds in the rest of the housing units are set five (5) feet ten (10) inches apart from the center of one lower bunk to the other lower bunk.⁶⁸
- Detainees at the Joe Corley Processing Center are provided meals in their housing units (satellite feeding) which reduces potential exposure to other detainees and staff. There are cleaners and sanitizers as well as clean cloth towels and/or paper towels available for cleaning of the day room tables and floors after a meal service.⁶⁹
- All Joe Corley Processing Center housing units have ample supplies of cleaning products and disinfectant available for detainees to clean showers, toilets, sinks, tables and common areas between uses.⁷⁰
- All detainees have been issued masks.⁷¹
- The Center has posted signage in multiple languages that identify symptoms of COVID-19 as well as hand hygiene instructions.⁷²
- Joe Corley Processing Center staff have initiated town hall informational sessions with detainees to present the proper usage of the masks and to encourage usage.⁷³
- Limited transfers and movement among the detention centers. Incoming detainees that are symptomatic are placed in a single housing unit. Health care professionals may test individual detainees per medical standards, and medically treat any detainee in need of care. Individuals are not placed back into the general population without medical clearance provided by a medical doctor and monitored.⁷⁴
- Staff and detainees are screened upon entering JCDC with questionnaires and temperature checks.⁷⁵

⁶⁵ Ex. 3 ¶ 4.

⁶⁶ Ex. 2 ¶ 8.

⁶⁷ Ex. 2 ¶ 9; Ex. 4 ¶ 17.

⁶⁸ Ex. 4 ¶ 17.

⁶⁹ Ex. 4 ¶ 17.

⁷⁰ Ex. 4 ¶ 17.

⁷¹ Ex. 2 ¶ 10.

⁷² Ex. 2 ¶ 11.

⁷³ Ex. 4 ¶ 17.

⁷⁴ Ex. 2 ¶ 12 (B)(i).

⁷⁵ Ex. 2 ¶ 12 (B)(ii); ¶ 22.

- Twice a week, each detainee is provided with shampoo/body wash, tissue paper along with other hygiene products, as required and followed by facility issuance schedule, exceeding the Performance Based National Detention Standards (PBNDS).⁷⁶
- Living areas are sanitized and supplies are monitored to assure adequate supplies long term and there is no shortage.⁷⁷
- There is a respiratory protection program with fit testing and training so that PPE is correctly donned, doffed, and disposed of properly.⁷⁸
- JCPC has implemented intensified cleaning of surfaces and objects that are frequently touched, especially in common areas. This includes the video telecommunications (VTC) consoles, telephone and visitation rooms that are cleaned between each use. GEO has instructed detainees and staff to clean and disinfect shared equipment and property with frequency.⁷⁹
- Cleaning occurs throughout the day, multiple times a day, with EPA registered disinfectants that are represented as effective against COVID-19.⁸⁰
- JCPC follows the guidelines from the CDC to increase fresh air exchange to reduce the risk of the spread of airborne illness throughout JCPC. Twice daily a complete air exchange within JCPC is performed.⁸¹
- JCPC has limited open movement and individual detainees are not moving in mass from location to location at will.⁸²
- JCPC has temporarily stopped visitors from meeting with detainees, except legal counsel who confer with clients in visitation rooms while practicing social distancing. Each visitation room is sanitized before and after each use.⁸³
- Staff have personal protective gear, including N95 respirators. PPE are stored in spaces in JCPC where PPE can be accessed when needed and in an emergency. Staff have been trained to perform hand hygiene after removing PPE.⁸⁴
- JCPC has onsite health care services. Detainees at JCPC have immediate access to timely and appropriate health care.⁸⁵

⁷⁶ Ex. 2 ¶ 13.

⁷⁷ Ex. 2 ¶ 13.

⁷⁸ Ex. 2 ¶ 14.

⁷⁹ Ex. 2 ¶ 15.

⁸⁰ *Id.*

⁸¹ Ex. 2 ¶ 17.

⁸² Ex. 2 ¶ 18.

⁸³ Ex. 2 ¶ 20.

⁸⁴ Ex. 2 ¶ 21.

⁸⁵ Ex. 2 ¶ 24.

Based on the steps that Respondents have taken to protect detainees during the pandemic, Petitioners cannot show a constitutional violation.⁸⁶ Further, to the extent Petitioners argue that all the steps taken by Respondents are still inadequate to “fully guarantee [Plaintiffs’] safety,” that is not the applicable standard, and release is still not warranted.⁸⁷

II. Petitioners will not suffer an irreparable injury if the temporary restraining order is denied.

Petitioners are unlikely to suffer an irreparable injury if the temporary restraining order is denied. None of the Petitioners have underlying medical conditions or other risk factors that make them more susceptible for COVID-19.⁸⁸ It is notable that no Court in the Fifth Circuit has authorized the release of detainees due to COVID-19 who do not have medical vulnerabilities. As such, even if the Petitioners were to contract COVID-19, they are unlikely to suffer an irreparable injury.

III. Petitioners’ proposed injunction will disserve the public interest.

Concern for potential exposure to COVID-19 is shared by all, but mandating release of ICE detainees is against the public interest. The public interest in enforcement of immigration laws is significant.⁸⁹ The Petitioners are all arriving aliens subject to mandatory detention under Section 212(a)(7)(A)(i)(I). The Petitioners have been determined to be flight risks because they do not have

⁸⁶ *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.”).

⁸⁷ *Sacal-Micha*, 2020 WL 1518861, at *6. (“[I]t is possible that despite ICE’s best efforts, Sacal may be exposed and contract the virus. . . . But the fact that ICE may be unable to implement the measures that would be required to fully guarantee Sacal’s safety does not amount to a violation of his constitutional rights and does not warrant his release.”). *See also Jorge V. S. v. Green*, 2020 WL 1921936, at *3 (D.N.J. Apr. 21, 2020) (“That these steps [by ICE in accordance with CDC guidance for detention facilities] do not guarantee Petitioner will remain healthy and free of the disease is immaterial, the constitution requires no such perfection.”); *Dawson v. Asher*, 2020 WL 1704324, at *12 (W.D. Wash. Apr. 8, 2020) (“No one can entirely guarantee safety in the midst of a global pandemic. However, the standard under which the court evaluates Petitioners’ second TRO motion is not guaranteed safety—an impossible standard to meet no matter the circumstances—but rather a likelihood of irreparable harm.”).

⁸⁸ Ex. 2 ¶ 26-28.

⁸⁹ *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Nken v. Holder*, 556 U.S. 418, 435 (2009).

any ties to the area and there is a lack of confidence that they will appear for their hearing and possible removal if one is ordered.⁹⁰

Furthermore, all the Petitioners have a final hearing on merits of their immigration case coming up; Sanchez will be on July 7, 2020,⁹¹ La Munoz will be on July 9, 2020,⁹² and Morales will be on July 9, 2020.⁹³ If Petitioners are released, their hearings will be cancelled and they will be taken off the detained docket. Once the immigration judge transfers their case to the closest immigration court to their new residence, it will take months, possibly years, before a new hearing can be scheduled. The public interest is best served by allowing the immigration process to continue, especially when the Petitioners have hearings so soon, and those hearings could moot their claims. As such, Petitioner's proposed injunction will disserve the public interest and should be denied.

CONCLUSION

Respondents respectfully request that the Court deny Petitioners' temporary injunction.

⁹⁰ Ex. 4 ¶ 7; Ex. 5 ¶ 7; Ex. 6 ¶ 6.

⁹¹ Ex. 6 ¶ 4.

⁹² Ex. 5 ¶ 4.

⁹³ Ex. 4 ¶ 4.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 30, 2020, the foregoing motion was filed with the Court and served on all parties through the Court CM/ECF system.

/s/ Ariel N. Wiley

Ariel N. Wiley
Assistant United States Attorney