UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

TATALU HELEN DADA, ET AL.	*	**CASE NO. 20-1093**
vs.	*	**SECT. T(4)**
DIANNE WITTE, in her official capacity as Interim New Orleans Field Office Director, U.S. Immigration and Customs Enforcement, ET AL.	*	**JUDGE GUIDRY**
	*	**MAG. ROBY**

MEMORANDUM IN OPPOSITION TO
MOTION FOR TEMPORARY RESTRAINING ORDER

I. Introduction and summary of the argument

MAY IT PLEASE THE COURT: Petitioners are detainees of U.S. Immigration and Customs Enforcement (ICE). They seek a writ of habeas corpus under 28 U.S.C. § 2241(a) and a temporary restraining order (TRO) for their immediate release from detention centers located in three federal judicial districts, spread across three states, and assigned to two federal circuit courts of appeals. The federal defendants—ICE, Dianne Witte, and Matthew Albence—file this opposition.[1]

The Court should deny the TRO and dismiss this case in its entirety for several reasons. First, none of the petitioners or detention facilities are located within the territorial jurisdiction of the Eastern District of Louisiana. This Court, therefore, is not the proper venue for petitioners to seek habeas relief. Second, petitioners lack indispensable elements of Article III standing—namely, a concrete injury-in-fact redressable through a favorable decision. Third, petitioners have

[1] Some of the individual warden-defendants are ICE private contractors. The purely legal arguments in this opposition memorandum apply equally to them.

not demonstrated a likelihood of success on the merits of their due-process claims. Specifically, their allegations regarding the conditions of their confinement are not the proper subject of habeas relief, nor do the conditions constitute deliberate indifference to petitioners' legitimate medical needs. Fourth, petitioners have not demonstrated any irreparable injuries. Finally, the public interest and balance of the equities in this instance favor deference to the executive agency statutorily vested with enforcement of federal law. That is, judicial intervention in these novel circumstances based on petitioners' speculative showing could create a slippery slope by which every civil or criminal detainee in a state or federal facility could conceivably invoke COVID-19 as a means to secure immediate release.

For these reasons, further explained below, the Court should deny petitioners' motion for a TRO and dismiss their petition in its entirety.

II. Facts and procedural background

Petitioners are 17 individuals currently held in the following immigration detention facilities: LaSalle ICE Processing Center in Jena, Louisiana; Richwood Correctional Center in Richwood, Louisiana; Winn Correctional Center in Winnfield, Louisiana; Adams Correctional Center in Natchez, Mississippi; and Etowah County Detention Center in Gadsden, Alabama. Rec. Doc. 1 at ¶ 1.[2] LaSalle, Richwood, and Winn are located in parishes within the Western District of Louisiana. 28 U.S.C. § 98(c). Adams is located in the Southern District of Mississippi, 28 U.S.C. § 104(b)(4), and Etowah is in the Northern District of Alabama. 28 U.S.C. § 81(a)(6).

Petitioners allege that they have a variety of medical conditions and co-morbidities that place them at an increased risk of contracting COVID-19 in a detention facility. Rec. Docs. 1 & 2-

2 None of the petitioners has disputed in these proceedings the legality of his or her detention. Rec. Docs. 1 & 2-1. For additional detail on the circumstances leading to each detention, *see* Ex. 1 at ¶¶ 20–36 (declaration of Michel Nelson, ICE Assistant Field Office Director, New Orleans Field Office).

1 at pp. 4–6. They allege six claims for alleged violations of: substantive and procedural due process rights; unlawful detention under the federal habeas statute, 28 U.S.C. § 2241; Fifth Amendment right to counsel and a fair hearing; the Administrative Procedure Act; and the Rehabilitation Act. Rec. Doc. 1 at ¶¶ 189–229. Along with their petition for habeas relief, Petitioners filed a motion for a TRO seeking immediate release from detention. Rec. Doc. 2. Their memorandum in support focuses on the likelihood of success on their constitutional claims for alleged deliberate indifference and due-process violations. Rec. Doc. 2-1 at pp. 13–21.

III. Argument

A. Standard of review

A petitioner seeking a temporary restraining order under Fed. R. Civ. P. 65(b) must satisfy the same four-factor test that governs the issuance of a preliminary injunction under Rule 65(a). *God's Chariot, L.P. v. City of Euless*, 2003 WL 21640622, at *1 (N.D. Tex. July 8, 2003). These four factors are: (1) a substantial likelihood that petitioners will eventually prevail on the merits; (2) a showing that the petitioners will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the petitioners outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest. *Hardin v. Houston Chronicle Pub. Co.*, 572 F.2d 1106, 1107 (5th Cir. 1978); *Canal Auth. of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

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)).

B. This Court lacks jurisdiction to issue habeas relief to detainees held outside of the Eastern District of Louisiana.

The federal habeas corpus statute provides that "[w]rits of habeas corpus may be granted by . . . the district courts . . . within their respective jurisdictions." 28 U.S.C. § 2241(a). The Fifth Circuit has explained that "[t]he only district that may consider a habeas corpus challenge to present physical confinement pursuant to § 2241 is the district in which the prisoner is confined." *United States v. McPhearson*, 451 F. App'x 384, 387 (5th Cir. 2011) (citing, *inter alia*, *Rumsfeld v. Padilla*, 542 U.S. 426, 442–43 (2004)).

In *Padilla*, the Supreme Court made clear that in "core" habeas petitions—*i.e.*, petitions like the present one that challenges petitioners' present physical confinement—the petitioner must name his warden as a respondent and file the petition in the district of confinement. *Padilla*, 542 U.S. at 437. In embracing the "immediate custodian" rule,[3] the Supreme Court explained that limiting a district court's jurisdiction[4] to issue a writ to custodians within their jurisdiction "serves the important purpose of preventing forum shopping by habeas petitioners." *Id.* at 447 (the result of disregarding the immediate custodian rule "would be rampant forum shopping, district courts with overlapping jurisdiction, and the very inconvenience, expense, and embarrassment Congress sought to avoid when it added the jurisdictional limitation 137 years ago"). In fact, *Padilla* specifically rejected what petitioners currently seek from the Court—that is, the "possibility that

3 In adopting the "immediate custodian" rule, the Supreme Court rejected the "legal reality of control" standard and held that legal control does not determine the proper respondent in a habeas petition that challenges present physical confinement. *See Padilla*, 542 U.S. at 437–39; *compare id.* at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent."), *with* Rec. Doc. 1 at ¶ 21.

4 *Padilla* clarified that "jurisdiction" in the habeas context refers to the territorial limits referenced in § 2241(a), and not to subject matter. *Padilla*, 542 U.S. at 434 n.7. Like personal jurisdiction or venue, habeas "jurisdiction" is subject to waiver. *Id.* at 451–52 (Kennedy, J., concurring). Responding defendants in this matter, of course, presently preserve objections to territorial jurisdiction, venue, and lack of proper service. *See* Fed. R. Civ. P. 12(b)(2)–(5).

every judge anywhere could issue the Great Writ on behalf of applicants far distantly removed from the courts whereon they sat." *Id*. at 442 (cleaned up).[5]

While *Padilla* didn't arise from immigration proceedings, this court, relying on Fifth Circuit authority, has consistently applied the territorial-jurisdiction rule to immigrant detainees. *See Zurawsky v. Ashcroft*, #03-439, 2003 WL 21088092, at *1 (E.D. La. May 8, 2003) ("The record indicates that at the time of the filing of the petition and at present, Plaintiff has been detained at the INS facility in Oakdale, Louisiana. Oakdale, Louisiana is located within the jurisdiction of the United States District Court for the Western District of Louisiana. Thus, this Court lacks jurisdiction to preside over the above-captioned matter. Plaintiff's § 2241 petition should be filed in the Western District of Louisiana."); *Santos v. U.S. I.N.S.*, #98-2247, 1998 WL 774175, at *1 (E.D. La. Oct. 30, 1998) ("Petitioner is incarcerated within the geographical area comprising the United States District Court for the Western District of Louisiana. Because . . . he is not incarcerated within the geographical confines of this district, the Eastern District is not a proper venue for the adjudication of *habeas* claims from this petitioner."); *McFarlane v. I.N.S.*, #92-0709, 1992 WL 161135, at *2 (E.D. La. June 23, 1992) ("This complaint presents similar claims about alleged violations of detainee's rights stemming from the very fact of their detention and, for this reason, the court finds the Western District of Louisiana to be a more appropriate forum to consider such claims."); *Nguyen v. I.N.S.*, #92-1116, 1992 WL 73343, at *1 (E.D. La. Apr. 2, 1992) ("INS presently detains [petitioner] in Oakdale, Louisiana. His person (over which

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5 Statutes and precedent briefly aside, it is also a matter of judicial comity to defer habeas decisions to the judges with territorial jurisdiction over the respective petitioner. By illustration, petitioners in this suit would have the Court intrude upon not one, but three judicial districts in the absence of territorial jurisdiction over even just one of the 17 petitioners. Further illustrating the incongruity of petitioners' request, no judge in either the Fifth or Eleventh Circuit Courts of Appeals, which cover multiple states, would have sufficient territorial jurisdiction to entertain the entirety of petitioners' present case. *See* 28 U.S.C. §§ 2241(a)–(b).

habeas corpus jurisdiction exists), therefore, is not held within this district nor did the proceedings of which he complains apparently take place here.***The court, therefore, finds [the WDLA] to be the proper venue for this petition to be considered . . .").

Since there isn't a single judicial district with territorial jurisdiction over all 17 petitioners, the Court should dismiss, rather than transfer,[6] this matter without prejudice to allow petitioners to refile in the three respective judicial districts with proper territorial jurisdiction. *See* 28 U.S.C. § 1406(a) (authorizing transfer of a "case"); *cf.*, *Smiley v. Reno*, 131 F. Supp. 2d 839, 841 (W.D. La. 2001) ("The United States Code provisions addressing venue and related transfers apply to 'a civil action', 'civil actions', 'a case', 'proceedings', or 'any civil action', not to a given claim, a single defendant, or a specific group of defendants.").[7] Further, as the Court lacks jurisdiction to order the relief petitioners seek in their TRO (i.e., immediate release from detention), no further analysis of the four factors for injunctive relief is necessary. Nonetheless, it's included below in an abundance of caution.

C. Petitioners lack Article III standing for the relief they seek.

"Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in the case law to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The "irreducible constitutional minimum of standing" contains three requirements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, a plaintiff must have suffered an

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6 If the Court was inclined to transfer the matter, the WDLA is the most likely landing place, since 11 of the 17 petitioners are detained there. Before doing so, however, the Court would first need to sever and drop the misjoined petitioners located in the SDMS and NDAL. *See* Fed. R. Civ. P. 21. Dismissal is certainly the more efficient course.

7 Even if petitioners had an arguable claim to proper territorial jurisdiction and venue in this Court, severance and transfers could still be appropriate under 28 U.S.C. § 1404(a), the codification of the *forum non conveniens* doctrine. *See, e.g.*, *McFarlane*, 1992 WL 161135, at *2.

"injury in fact"—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.' " *Id.* Second, the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the Court." *Id.* Third, it must be "likely," as opposed to merely "speculative" that the injury will be "redressed by a favorable decision." *Id.* at 560–61 (internal citations omitted).

Petitioners have not shown an injury in fact. To establish this, petitioners must show that they suffered "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc.*, 136 S. Ct. at 1548 (quoting *Lujan*, 504 U.S. at 560). To be "particularized" the injury "must affect the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 560 n.1. "Particularization is necessary to establish injury in fact, but it is not sufficient. An injury in fact must also be 'concrete.'" *Spokeo, Inc*, 136 S. Ct. at 1548. A "concrete" injury must be "'de facto'; that is, it must actually exist[,]" that is, it must be "real," and not "abstract." *Id.* While "the risk of real harm" may, in some circumstances, be sufficiently concrete, "imminence . . . cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is 'certainly impending,'" *Lujan*, 504 U.S. at 568. "For a threatened future injury to satisfy the imminence requirement, there must be at least a 'substantial risk' that the injury will occur." *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019).

Petitioners' alleged harm—that their continued detentions increase the risk of contracting COVID-19—is speculative. ICE has outlined detailed procedures for the screening, management, and treatment of detainees' potential exposure to COVID-19. *See* Ex. 1 at ¶¶ 38–45 (declaration of Michel Nelson, ICE Assistant Field Office Director, New Orleans Field Office). Importantly,

ICE has also established that there are no current cases of COVID-19 in the five detention facilities listed in petitioners' pleadings. *Id.* at ¶ 37. Thus, petitioners' claims of future injury are hypothetical; they are not entitled to immediate release from detention based on a conjectural injury that they have not suffered. *See Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (holding that an injunction is unavailable absent "any real or immediate threat that the plaintiff will be wronged"). Moreover, even if COVID-19 is found in a detention facility, petitioners have not alleged—and cannot prove—that defendants are unprepared to respond to that contingency. To the contrary, ICE already screens its detainees, and has procedures in place to quarantine, test, and, if necessary, transfer detainees with COVID-19 symptoms or diagnoses. Ex. 1 at ¶¶ 41–42.

Even assuming injury-in-fact, petitioners' claims lack redressability. "The redressability requirement limits the relief that a plaintiff may seek to that which is likely to remedy the plaintiff's alleged injuries." *Stringer*, 942 F.3d at 720. For standing purpose, a plaintiff's injury is redressable where there is "a substantial likelihood that the requested relief will remedy the alleged injury." *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (citation omitted). Here, Petitioners' desired relief—release from detention—will not prevent them from contracting COVID-19, nor will it ameliorate the various medical conditions that heighten their risks if they contract COVID-19. Put another way, remaining in federal detention doesn't ensure petitioners' exposure to COVID-19, and releasing them to the community doesn't give them immunity from it.

D. Petitioners haven't satisfied the four-part test for issuance of a TRO.

1. Unlikelihood of success on the merits

An "absence of likelihood of success on the merits is sufficient to make the district court's grant of a preliminary injunction improvident as a matter of law." *Lake Charles Diesel, Inc. v.*

Gen. Motors Corp., 328 F.3d 192, 203 (5th Cir. 2003). To assess the likelihood of success on the merits, the Court looks to standards provided by the substantive law. *Janvey v. Alguire*, 647 F.3d 585, 596 (5th Cir. 2011).

And substantive law standards aren't in petitioners' favor here. At bottom, this suit concerns the conditions of petitioners' confinements in various detention centers. *See* Rec. Doc. 1 at ¶¶ 6, 14, 105–12, & 132–37. Assuming the truth of these allegations for the sake of argument, a habeas action isn't the appropriate vehicle to deliver them to the Court. 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); *Villela v. Hinojosa*, 730 F. Supp. 2d 624, 627 (W.D. Tex. 2010). In other words, "[h]abeas petitions can only 'grant relief from unlawful imprisonment or custody' and cannot be used to challenge 'conditions of confinement.'" *Rosa v. McAleenan*, 2019 WL 5191095, at *18 (S.D. Tex. Oct. 15, 2019) (citing *Schipke v. Van Buren*, 239 F. App'x 85, 85–86 (5th Cir. 2007)).

The Fifth Circuit, and other district courts within this Circuit, have long recognized that habeas 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." *See Schipke*, 239 F. App'x at 85–86; *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 petition).

U.S. District Judge Fernando Rodriguez 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*, #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 find the 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.

And the Court won't find any constitutional violations on the record before it. 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. Under either standard, petitioners' claims fail.

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.

Petitioners in this case have not demonstrated that the measures ICE has implemented to combat COVID-19 in its detention centers are so wanton as to constitute deliberate indifference to the medical needs of its detainees. *See* Ex. 1 at ¶¶ 38–45. Petitioners' failure of proof is

unsurprising since there are no confirmed COVID-19 cases in the detention centers identified in this suit. Ex. 1 at ¶ 37.

As in *Sacal-Micha*, petitioners instead rely on "conclusory arguments based on general articles regarding the highly-contagious nature of COVID-19 and its impact on the elderly and individuals with certain underlying medical conditions." *Id*. at *5. The declarations of petitioners' medical experts, Drs. Bazzaro and Meyer, simply regurgitate what is already well known through press coverage—namely, COVID-19 is a serious pandemic that will tax limited medical resources and disproportionally affect individuals with pre-existing risk factors. *See* Rec. Docs. 2-21 & 2-22. Accepting this as true, conclusions from a court in the Eastern District of California considering a habeas motion for a cancer patient at heightened risk for COVID-19 are instructive and equally applicable here:

> [A]lthough the COVID-19 situation is an extraordinary one for the population at large in this country, including prisoners, and without diminishing in the least the fact that petitioner is part of an especially at-risk COVID-19 population, petitioner has not shown that prison authorities are unable or unwilling to address this serious problem within prisons, or that petitioner is unable to take the general, protective measures applicable to all as of yet unafflicted persons, i.e., wash hands frequently, avoid touching the face and so forth. Moreover, prison authorities may be able to isolate highly at-risk prisoners, such as petitioner, more easily than isolation or "social distancing" is achieved in the general population, e.g., housing in administrative segregation, partial lockdowns or transfers. Prisons are certainly able to order their afflicted employees to stay at home, and can probably, more easily find testing opportunities for their essential employees than is yet possible for the general population.

Peterson v. Diaz, #2:19-cv-01480, 2020 WL 1640008, at *2 (E.D. Cal. Apr. 2, 2020); *see also Patel v. Barr*, #2:20-cv-488, (W.D. Wash. April 2, 2020), Rec. Doc. 9 at p. 9 (denying TRO and habeas release for COVID-19 based on a lack of likelihood of success on Fifth Amendment claim).

In accord with *Peterson*'s suggestions, ICE has shown that it has taken appropriate steps to limit COVID-19 transmission in its facilities, identify detainees who might have had exposure

to COVID-19, and, most importantly, timely treat those who are ill. Ex. 1 at ¶¶ 38–45.[8] In sum, continued detention during the COVID-19 pandemic does not constitute deliberate indifference to petitioners' health, well-being, and current medical needs.[9]

2. Absence of irreparable harm

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)).

As stated above, Petitioners argue that release from the detention centers will minimize their heightened risk of contracting COVID-19 due to underlying medical conditions. As discussed *supra*, Sect. III.C., however, this assertion is speculative both as to the imminence of injury/harm in detention and the future effectiveness petitioners' prayed-for mitigation measure (i.e., release to

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8 In fact, none of the detention facilities identified in petitioners' filings is at or near maximum capacity, and several are not even half-full. Ex. 1 at ¶ 6 (Lasalle 82%), ¶ 9 (Richwood 24%), ¶ 12 (Winn 50%), ¶ 15 (Adams 41%), and ¶ 18 (Etowah 35%).

9 Assuming petitioners' claim is characterized as a jail-condition case governed by *Bell*, it still fails as detention is reasonably related to the Government's legitimate interest in pre-order detention of aliens to prevent absconcion 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*, 538 U.S. at 520–22; *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Nor is detention pending removal 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).

the community). *See Dawson v. Asher*, #20-0409, 2020 WL 1304557, at *3 (W.D. Wash. Mar. 19, 2020) (denying an immigrant detainee habeas relief for a COVID-19 risk and finding "[t]he 'possibility' of harm is insufficient to warrant the extraordinary relief of a TRO. There is no evidence of an outbreak at the detention center or that Defendants' precautionary measures are inadequate to contain such an outbreak or properly provide medical care should it occur.") (internal citation omitted).

Whether viewed as an element of Article III standing or for injunctive relief under Fed. R. Civ. P. 65(b), the absence of irreparable injury requires denial of petitioners' TRO.

3. The equities and public interests in respondents' favor

When, as here, the government is a party, the third and fourth injunction factors—the balance of equities and public interests—merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). It is well-settled that the public interest in enforcement of United States immigration laws is significant. *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*, 556 U.S. at 435 ("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.").

Petitioners' claims also have no logical backstop. That is to say, if the Court releases these 17 petitioners from detention, what grounds justify keeping other civil detainees or criminal arrestees in continued custody during the COVID-19 pandemic? Indeed, petitioners' initial pleading requests a general declaratory finding from the Court that would cover many non-parties. *See* Rec. Doc. 1 at p. 58 (seeking a declaration that detaining "all people over the age of 50 and persons of any age with underlying medical conditions that increase the risk of serious illness or

death upon contracting COVID-19 violates the Due Process Clause and/or the Rehabilitation Act"). *Sacal-Micha, supra,* crystallized this legitimate governmental concern: "[A]ccepting Sacal's reasoning would logically require the release of all individuals currently detained who are elderly or suffer from certain underlying medical conditions. The law does not require such a generalized result." *Sacal-Micha* at *5; *see also United States v. Gabelman*, #2:20-cr-19, 2020 WL 1430378, at *1 (D. Nev. Mar. 23, 2020) ("The court acknowledges that the spread of COVID-19 may be acutely possible in the penological context, but the court cannot release every detainee at risk of catching COVID-19 because the court would be obligated to release every detainee.").

The public interests in this case are best served by allowing the orderly medical processes and protocols implemented by government professionals. *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). ICE has a conscientious, detailed, humane, and medically up-to-date process to address, mitigate, and treat any potential COVID-19 occurrences in its facilities. Ex. 1 at ¶¶ 38–45.

Because petitioners cannot show that the balance of hardships and public interests tip in their favor, the Court should deny the motion for a TRO.

IV. Conclusion

Petitioners' case doesn't belong in this Court. Even if it did, immediate release from detention under a writ of habeas corpus and TRO isn't justified in the absence of Article III standing, a likelihood of success on the merits, irreparable injury, or public interests in petitioners'

favor. Accordingly, the Court should deny petitioners' motion for a TRO and dismiss this case in its entirety.[10]

Respectfully submitted,

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[10] If the Court is inclined to exercise jurisdiction, find for petitioners on the merits, and order an immediate release, respondents request that the Court order petitioners to comply with applicable national, state, and local guidance to stay at home, shelter in place, and practice social distancing. Likewise, the Court should also order that, until returned to ICE detention, the petitioners be placed on home detention given that the individual was originally detained based on criminal history, flight risk, or pending deportation. *See* Ex. 1 at ¶¶ 20–36.