UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

TATALU HELEN DADA, ET. AL. *Petitioners*	CIVIL ACTION NO. 1:20-CV-00458
VERSUS	JUDGE DRELL
DIANNE WITTE, in her official capacity As Interim New Orleans Field Office Director, U.S. Immigration and Customs Enforcement, ET. AL. *Respondents*	MAGISTRATE JUDGE PEREZ-MONTES

MEMORANDUM IN OPPOSITION TO
MOTION FOR TEMPORARY RESTRAINING ORDER

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Respondents respectfully file this response in opposition to Petitioners' request for a Temporary Restraining Order and Writ of Habeas Corpus.

INTRODUCTION

Petitioners-Plaintiffs are fifteen (15) immigration detainees in various stages of immigration proceedings at various detention facilities located in the Western District of Louisiana.[1] At least five (5) of the Petitioners are subject to mandatory detention under 8 U.S.C. 1226. Together they now file the instant Writ of Habeas Corpus and Complaint for Injunctive Relief (ECF Doc. 1) and Motion for a Temporary Restraining Order ("TRO") (ECF Doc. 2) seeking their immediate release from immigration detention based upon their collective concern that they will contract the COVID-19 virus while in ICE detention.[2] Petitioners assert that, due to their ages and pre-existing medical conditions, they are at imminent risk of severe illness or death were they to become infected. (ECF Doc. 1, ¶ 6). They allege six claims for 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. (ECF. Doc. 1 at ¶¶ 189–229). Ultimately, Petitioners contend that their continued detention is unlawful under due process because their health cannot be protected in or by the faculties in which they are detained. As such, Petitioners seek immediate release from confinement because, according to Petitioners, there is no way for Petitioners to be detained in conditions that are constitutional.

[1] One of the Petitioners, Eduardo Devora-Espinosa, was granted parole and released from ICE custody subsequent to the filing of Petitioners' request for relief. *See* Gvmt. Ex. A, ¶ 34 (declaration of John Harnett, ICE Deputy Field Office Director, New Orleans Field Office).

[2] Petitioners' sought identical relief from the Eastern District of Louisiana but that Court ultimately dismissed their Petition for lack of jurisdiction because none of the Petitioners were detained in the Eastern District. See *Dada, et al. v. Witte,* et al., 20-cv-1093 2020 WL 1674129 (E.D. La. April 6, 2020).

Respondents respectfully oppose Petitioners' motion for a mandatory temporary restraining order compelling their release from custody. As both the Fifth Circuit and the Western District of Louisiana recognize, Petitioners cannot challenge the conditions of their confinement through a writ of habeas corpus. Even if such a claim were available, Petitioners' have not established, nor can they, that ICE is incapable of detaining Petitioners in a constitutional manner. Indeed, the detailed procedures in place at the ICE facilities for the screening, management, and treatment of detainees' potential exposure to COVID-19 belies Petitioners' assertions.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Petitioners are a diverse group of ICE detainees that are being detained under a variety of different statutes in five different ICE housing facilities. *See* Gvmt. Ex. A., ¶¶ 23-38. Some are subject to mandatory detention based on criminal histories. *Id.* Some have final orders of removal that ICE is seeking to effectuate while others are in the process of appealing orders from various immigration courts. *Id.* Each of the fifteen Petitioners is currently in custody in one of five detention facilities located within the jurisdictional limits of the Western District of Louisiana. *Id.* ¶ 1. Those facilities are as follows: LaSalle ICE Processing Center (LIPC), Jena, Louisiana; the Richwood Correctional Center (Richwood), Monroe, Louisiana; the Winn Correctional Center (Winn), Winnfield, Louisiana, the Catahoula Correctional Center (Catahoula), Harrisonburg, Louisiana; the Jackson Parish Correctional Center (Jackson Parish), Jonesboro, Louisiana; and the Pine Prairie ICE Processing Center (PPIPC), Pine Prairie, Louisiana. *Id.*

B. Uniform Precautionary Measures Taken Against COVID-19

In response to the COVID-19 pandemic, ICE has, consistent with Centers for Disease Control and Prevention (CDC), implemented protocols to protect all detainees in its custody and

care. *See* Gvmt. Ex. B. ¶¶ 7-9. At the outset, ICE has temporarily suspended social visitation and all staff and vendors are screened before entering each facility. *Id.* ¶¶ 19-20. At intake, detainees are screened for fever and respiratory illness, are asked whether they have had close contact with a person who has tested positive for COVID-19, or whether they have traveled in an area with sustained community transmission. *Id*. ¶ 11. Those with symptoms compatible with COVID-19 are placed in isolation to await testing. *Id*. ¶ 12. If positive, they would remain isolated and treated and, if warranted, referred to a local hospital. *Id*. ¶ 13. If detainees were to be exposed to a person with confirmed COVID-19, asymptomatic detainees would be placed in cohorts with restricted movement for an incubation period and would be monitored for symptoms. *Id*. ¶ 12. Those with the onset of symptoms would be referred to a medical provider for evaluation. *Id*. With no new cases, cohorting would be discontinued after 14 days. *Id.* ¶ 13. The same cohort process would be followed if detainees came into contact with a suspected COVID-19 patient until testing revealed the index patient did not have COVID-19.*Id.* All facilities have identified housing units for the quarantine of patients who are suspected of or test positive for COVID-19. *Id.* ¶ 22. Field units have also been instructed to educate detainees on the importance of hand hygiene, covering coughs with elbows, and requesting assistance if they feel ill. *Id*. ¶¶ 17, 21.

As of 12:00 p.m. on April 22, 2020, the ICE Health Service Corps (IHSC) had the following information:

- There are three ICE detainees confirmed cases of COVID-19 in LIPC. The three confirmed cases are isolated in the Medical Housing Unit and receiving medical treatment consistent with CDC guidelines.

- There is one ICE detainee suspected case of COVID-19 in LIPC who is on medical observation per CDC guidelines. He is isolated from all other detainees and in the infirmary under daily evaluation.

- There are seven ICE detainee confirmed cases of COVID-19 at PPIPC. They are isolated under medical observation and in negative pressure rooms when necessary.

- There is one ICE detainee suspected case of COVID-19 in PPIPC who is on medical observation per CDC guidelines. He is isolated from all other detainees and under daily medical observation.

- There was one ICE detainee confirmed case of COVID-19 in Catahoula, but that individual was isolated and transferred to Richwood.

- There were three ICE detainee suspected case of COVID-19 in Catahoula who were on medical observation per CDC guidelines. All three were isolated and tested, which came back negative.

- There are three ICE detainee confirmed cases of COVID-19 in Winn. The three confirmed cases are isolated in the negative pressure rooms and receiving medical treatment consistent with CDC guidelines.

- There is one ICE detainee suspected case of COVID-19 in Winn who is on medical observation per CDC guidelines.

- There are 29 ICE detainee confirmed cases of COVID-19 in Richwood. The cases are isolated when possible and receiving medical treatment consistent with CDC guidelines. Many of these positive cases were transferred from other facilities to Richwood. At all times, positive COVID-19 individuals have been separated from the other population.

- There are five ICE detainee suspected cases of COVID-19 in Richwood who are on medical observation per CDC guidelines.

- There are currently no suspected or confirmed cases of COVID-19 in Jackson Parish.

Id. ¶ 15.

C. Petitioners' Allegations

Petitioners allege that their detention, coupled with their various pre-existing medical conditions and co-morbidities increases their risk of COVID-19. *See generally* ECF Doc. 1. The range of alleged medical conditions is limited, with most Petitioners alleging depression, hypertension, diabetes, glaucoma, asthma, high cholesterol and heart disease. *Id.* ¶¶ 22-37. Two

of the Petitioners, however, Suresh Kumar, a 37- year old Indian detainee, and Pardeep Kumar, a 27-year old Indian detainee, allege that their co-morbidities stem from severe malnutrition as a result of their participation in a hunger strike done in "peaceful protest of ICE and federal immigration policies". *Id.* ¶¶ 30-31. Their already heightened risk of infection is magnified, according to Petitioners, by the conditions of their confinement which "make rapid spread of COVID-19 very likely." (ECF. Doc. 1. ¶¶ 103-113). Such conditions include irregular cleaning (*Id.* ¶ 105), "minimal access to soap and sinks" (*Id.* ¶106), and the lack of "negative pressure isolation units" in Louisiana (*Id.* ¶ 110). Petitioners are also critical of ICE's efforts to prevent the spread of COVID-19, which they argue are not aggressive enough. (*Id.* ¶ 128). Notwithstanding ICE's efforts, Petitioners allege that it is "impossible for detention facilities to consistently and adequately screen detained individuals and staff for new, asymptomatic infection." (*Id.* ¶ 128).

In further support of their petition and TRO, Petitioners submit three hundred and seventy-seven (377) pages of literature, including declarations from themselves, various immigration attorneys (including their own), and healthcare professionals, all of which purport to portray the infectious nature of COVID-19, the heightened risk that the Petitioners face, and the inability of ICE to protect them from it. (ECF. Doc. 2-2, pgs. 101-478).[3] Petitioners' submissions also include a list of recent district court opinions throughout the country, none of which however originate within the Fifth Circuit. *Id.* at 273-478.

At bottom, Petitioners challenge the conditions of their confinement rather than its legality or duration.

[3] Respondents note that many of the declarations represent unsubstantiated hearsay and should be assigned little, if any, weight in considering the merits of Petitioners' motion.

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

I. 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

a. 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); *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").

Although other district courts, exclusively outside this Circuit, have decided that they have

the power to order release to cure allegedly unconstitutional conditions of confinement, the District Court for the Western District of New York recently highlighted that the Fifth Circuit disagrees. In a COVID-19 case, the court noted that "[c]ourts are divided on whether section 2241 provides a vehicle for challenging (and a remedy for addressing) allegedly unconstitutional conditions of confinement," noting that the Fifth Circuit is among several circuits that affirmatively proscribe such a claim. *Jones v. Wolf*, 2020 WL 1643857, at *14 & n.11 (W.D.N.Y. Apr. 2, 2020) (*citing Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979)).

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 "unlawful *conditions* of detention." (ECF. Doc. 1 ¶ 200) (emphasis added). The Fifth Circuit has foreclosed this precise argument.

In a very recent opinion from this District, District Judge Terry Doughty correctly dismissed similar claims for immediate release brought under § 2241(a). *Brandon Livas, et al. v. Rodney Myers, et. al.*, 2:20-cv-00422 (W.D. La. April 22, 2020). In *Livas*, 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.* * 1. 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.* * 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, Petitioners did not challenge their classification or placement but sought release under § 2241 "because of the extraordinary conditions caused by COVID-19." *Id.* * 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.* * 16. The Court agreed, citing to the lack of any 5th Circuit or Supreme Court precedent permitting conditions of confinement claims under § 2241.

Similarly, 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.

b. 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.

But 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 do not allege that Respondents have failed to provide them with any medical care they may require. Rather, their 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 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).

ICE has taken steps to reduce the risk that COVID-19 will be introduced into the five facilities 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. While the methods implemented by ICE are admittedly not 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.").

c. Petitioners are unlikely to succeed on the merits of their due right to counsel and Rehabilitation Act claims

To the extent Petitioners bring additional direct constitutional claims, they have not demonstrated that they may do so in the Fifth Circuit. "Although there have been a few exceptions, the federal courts, and this Circuit in particular, have been hesitant to find causes of action arising directly from the Constitution." *Alexander v. Trump*, 753 F. App'x 201, 206 (5th Cir. 2018)

(rejecting a freestanding constitutional complaint against the FBI). S*ee 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" to the general rule). Recognizing a cause of action directly under the Fifth Amendment to order Petitioners release would be a departure from Fifth Circuit precedent. *See Sacal-Micha*, 2020 WL 1815691, at *5–6.

d. 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 Petitioners allege that they all have housing arrangements should they be released, all of the suggested locations require interstate travel.[4] (ECF. Doc. 1 ¶¶ 22-37). Moreover, it cannot be overlooked that each above referenced 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.

e. The balance of equities and the public interest in Respondents' 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 is, of course, shared by all. However, an order directing ICE to release Petitioners into the United States—especially considering that half of the

[4] The locations where Petitioners contend that that they will live upon release range from New York City to Washington State.

Petitioners have criminal histories, see Gvmt. Ex. A, ¶¶ 22-40—is clearly 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 Respondents especially considering some of Petitioners' criminal convictions and status of immigration proceedings. The disruptive effect of such an order would long survive the COVID-19 pandemic, and would serve to release many aliens slated for removal back into the general public. 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. The public interest is further served by allowing "ICE [to] continue to review its 'at risk population' in the days and weeks ahead [and] deciding whether any detainees should be released from custody. Gvmt. Ex. A, ¶ 42.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Court deny Petitioners' TRO motion seeking their immediate release from custody.[5]

Respectfully submitted,

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E. HENRY BYRD, IV (#37435)

[5] 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* Gvmt. Ex. A, at ¶¶ 23-38.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2020, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system. I also certify that there are no non-CM/ECF participants to this action.

s/E. Henry Byrd, IV
E. Henry Byrd, IV (#37435)
Assistant United States Attorney