IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

ARISTOTELES SANCHEZ MARTINEZ, *et al.*	:	
	:	
Petitioner,	:	
v.	:	**Case No. 7:20-CV-62-CDL-MSH**
	:	**28 U.S.C. § 2241**
WARDEN, Stewart County Detention Center, *et al.*	:	
	:	**::**

FACTUAL BACKGROUND

The facts represented below have been compiled on an extremely short timeline. Further, because of the nature of COVID-19, the circumstances are changing rapidly. As a result, the United States represents that the facts below have been compiled based on a series of communications with representatives of SDC and ICDC, and these facts are supported generally by the attached declarations submitted to the Court for review.[1]

I. The Facilities

Pursuant to contracts with ICE, SDC and ICDC both house immigration detainees, including Petitioners, and are managed by CoreCivic and LaSalle, respectively. The clinical health o l

detainees. In testing for COVID-19, IHSC is also following guidance issued by the Centers for Disease Control (CDC) to safeguard those in its custody and care.

A. Stewart Detention Center (SDC)

As of 1:00 pm on April 9, 2020, IHSC has confirmed that there are five confirmed cases of COVID-19 among ICE detainees at SDC. These five detainees have been isolated and are

Disease 2019 (COVID-19) in Correctional and Detention Facilities. The screening area has been set up outside of SDC. If the initial health screening is inconclusive, medical staff is responsible for making any final determination on screening. If screening shows that an individual may be at risk, they are denied entry to the facility, and instructed either to remain at home for a specified quarantine period, or to consult and obtain clearance from their medical provider before they will be admitted to the facility.

Enhanced sanitization practices. As has long been the case at SDC, staff have been educated and reminded to follow universal precautions to prevent the spread of any pathogen. Signs are posted throughout SDC advising and providing instruction on how to stop the spread of germs; handwashing practices; and what to do if you are sick. In aid w94 Tw 00.1 (r)3 (e)w6 (c)6 (ilitie)6 d-12(c)

and additional disinfectants, hand sanitizer, soap, and masks are made readily available for staff and detainee use.

Additional protective measures for legal visitors. Social visits have been discontinued entirely. As to visits by legal counsel, SDC's procedures require that facility staff use personal protective equipment during all detainee escorts to reduce the risk of exposure to potential pathogens. Attorneys are now also required to bring in their own personal protective equipment and may bring sanitizing wipes for use during legal visits. Legal visitation areas are being sanitized before and after each legal visit, including wiping down chairs, tables, phones, and VTC equipment with a disinfectant. Social distancing practices are also being used with visitors.

Encouraging social distancing. SDC has taken several steps to ensure that detainees are not in groups larger than ten when outside of their housing pod. SDC has also taken steps to limit the interactions of detainees for separate housing areas by using satellite feeding in housing pods, removing contact sports like basketball and soccer from the recreation program, and eliminating crews of detainees participating in the voluntary work program. Further, SDC is at 70% of design capacity to encourage distance between detainees where possible.

2. Medical Care at SDC

SDC is equipped with the medical capabilities necessary to provide daily access to sick calls in a clinical setting for its detainees and also, when necessary, to provide access to specialty services and hospital care. With respect to medical care in the specific context of COVID-19, SDC has the capacity to effectively quarantine and medically isolate any detainee who is confirmed, presumed, or suspected positive for COVID-19. In cases of known exposure to a person with confirmed COVID-19, asymptomatic detainees are placed in cohorts with restricted movement for the duration of the most recent incubation period (*i.e.*, 14 days after most recent

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exposure to an ill detainee) and are monitored daily for fever and symptoms of respiratory illness. Cohorting is an infection-prevention strategy which involves housing detainees together who were exposed to a person with an infectious organism but are asymptomatic. This practice lasts for the duration of t--

inmates determined to be particularly vulnerable to serious illness or death if infected by COVID-19. ICDC houses those detainees whom it has determined to be particularly vulnerable to serious illness or death if infected by COVID-19 (but who are not eligible for release based on their offenses) in units with fewer detainees to create maximum social distancing opportunities. Moreover, ICDC unit counts overall have been reduced to facilitate social distancing.

Increased screening. ICDC has put a process in place that requires mandatory temperature checks and the successful completion of a questionnaire prior to entry into the facility by staff or visitors, including any newly arriving detainees. If any question on the questionnaire receives an affirmative response, or if a temperature of 100.4 or higher is recorded, then the visitor will be assessed by medical staff and must be cleared by the Medical Director before entering ICDC. Otherwise, access will be denied.

Enhanced sanitization practices. In addition to the standard cleaning procedures at ICDC, ICDC has ensured that there is increased access to disinfectants, and has ordered multiple cleanings of all housing units and common areas each day with disinfecting agents. Additionally, gloves are provided for cleaning detail usage, and all staff have been provided masks to wear while in the facility.

noted above, the requirement that anyone attempting to enter the ICDC facility take a required temperature check and complete a questionnaire before gaining access. As to visitation by legal counsel, specifically, ICDC has had a program in place to allow for attorney phone calls and skype, and that protocol remains in place. ICDC is presently looking into ways to further expand its skype capabilities. When visits with legal counsel must occur in person, any equipment used for attorney access (*i.e.*, monitors, iPads, phones, etc.) or meeting areas where detainees and their attorneys may meet are disinfected between uses with disinfecting wipes and spray, as well as a bulk chemical cleaner verified by the CDC on their list of approved products used to kill COVID-19. Per ICE, all visiting attorneys are required to bring their own personal protective equipment (PPE).

2. Medical Care at ICDC

If a detainee is presumed or confirmed to have COVID-19, that individual will be placed in isolation in a negative pressure cell, which is a room with a specialized ventilation system that removes air from the cell and releases it away from the rest of the unit. In the event of an outbreak,

II. Petitioners

Petitioners are immigration detainees housed at SDC and ICDC. Each Petitioner is discussed individually in more detail below.

A. SDC Petitioners

Aristoteles Sanchez Martinez. Mr. Martinez is housed at SDC. He is a 47-year-old with a history of recent hernia surgery, Type II diabetes, hypertension, neuropathy, avascular necrosis, non-palpable pulses in his lower extr-3 (4d5 8 (e(e)4 (r)]TJ 0 Tw 1v(tc-1 (,)-nd0.1D94.i)-2 (a11.79 0 Tdr

violence battery in violation of O.C.G.A. § 1-5-23.1, which is an aggravated felony crime of

mandatory detention of criminal aliens. Ms. Dingus's parole request was denied based on her criminal convictions on April 7, 2020, and she has not filed a bond motion.

ARGUMENT

This Court should deny Petitioners motion for a temporary restraining order. Initially, the Court lacks jurisdiction over Petitioners' claims. If the Court finds that it has jurisdiction, Petitioners motion must still be denied because Petitioners fail to meet their heavy burden of establishing that they are entitled to a temporary restraining order.

I. This Court lacks jurisdiction over Petitioners' claims.

"Article III of the U.S. Constitution limits the judicial power of the federal courts so that they may only exercise jurisdiction over "Cases" and "Controversies." *L.M.P. ex rel. E.P. v. Sch. Bd. of Broward Cty.*, 879 F.3d 1274, 1280 (11th Cir. 2018). "Accordingly, subject matter jurisdiction requires a justiciable case or controversy within the meaning of Article III.Cty.

have suffered an "injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Id.* (internal quotations omitted). Second, "the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the Court." *Id.* (internal quotation and alterations omitted). "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 quotations omitted). Petitioners do not raise a cognizable injury and the alleged injury is not redressable by this Court.

1. Petitioners lack an injury in fact.

Injury in fact is a "constitutional requirement" and is the "first and foremost of standing's three elements." *Spokeo,* 136 S. Ct. at 1547 (quotation and internal alteration omitted). To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 1548 (internal quotation omitted). "A concrete injury must be *de facto*; that is, it must actually exist," be "real," and not "abstract." *Id.* (internal quotation omitted). While the risk of 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 564 n.2 (internal quotation omitted) (emphasis in original).

Petitioners assert that, because of their age and/or medical conditions, they have elevated risk of serious, adverse outcomes if they contract COVID-19. Because of their alleged high risk status, they then assume that they will *necessarily* get COVID-19 if they remain detained. This assertion is purely speculative. SDC and ICDC have implemented procedures and protocols to

(finding standing based on fear, even one that is reasonable, “improperly waters down the fundamen

current community spread of COVID-19, it is not unlikely that Petitioners will be exposed to COVID-19 through community transmission over the coming months if released. Indeed, it is conceivable that Defendant's risk of exposure is lower in detention, because the facilities at issue strictly control outsiders' access, and have taken extensive measures to avoid the spread of COVID-19.

B. Petitioners' claims are not ripe.

"The ripeness doctrine protects federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes." *Digital Props.*, 121 F.3d at 589. It "seeks to avoid entangling courts in the hazards of premature adjudication." *Id.* "Ripeness analysis involves the evaluation of two factors: the hardship that a plaintiff might suffer without court redress and the fitness of the case for judicial decision." *Elend v. Basham*, 471 F.3d 1199, 1211 (11th Cir. 2006). "The fitness prong is typically concerned with questions of finality, definiteness, and the extent to which resolution of the challenge depends upon facts that may not yet be sufficiently developed." *Harrell v. The Fla. Bar*, 608 F.3d 1241, 1258 (11th Cir. 2010) (internal quotation marks and citation omitted). "The hardship prong asks about the costs to the complaining party of delaying review until conditions for deciding the controversy are idea." *Id.*

Petitioners' claims are premature. Petitioners state: "*If* Petitioners contract COVID-19," they are at high-risk for needing critical care and may face serious illness. Memo. in Supp. of Mot. for TRO 1, ECF No. 5-1 (emphasis added). Petitioners do not currently have COVID-19, nor is there evidence that they have been directly exposed to it. Other courts, in addressing requests for relief in light of the COVID-19 pandemic, have held that "[t]he 'possibility' of harm is insufficient to warrant the extraordinary relief of a TRO." *Dawson v. Asher*, No. C20-0409JLR-MAT, 2020 WL 1304557, at *3 (W.D. Wash. Mar. 19, 2020) (quoting *Winter*, 555 U.S. at 22); *Francisco v.*

Decker, Case 2:20-CV-02176-CCC at pgs. 3-

confinement claims are not cognizable in a habeas action. Third, if this Court reaches Petitioners' constitutional claim, it is likewise meritless. Finally, release from custody is not an appropriate remedy for Petitioners' claims.

1. Petitioners are legally detained.

Petitioners here are detained under several different provisions—pre-final order of removal under 8 U.S.C. § 1226(a) and § 1226(c), and post-final order of removal under § 1225(b) and

release Velasquez on bond pending his immigration proceedings"). Moreover, the Eleventh Circuit has determined that there is no due process interest in immigration parole. *See, e.g., Tefel v. Reno*, 180 F.3d 1286, 1300-01 (11th Cir. 1999) (explaining that "aliens lacked a liberty interest in being paroled[]" because of the "Executive's complete discretion to make parole decisions").

2. Petitioners cannot challenge their conditions of confinement in a habeas petition.

"Petitioner[s'] § 2241 petition is not the appropriate vehicle for raising an inadequate medical care claim, as such a claim challenges the conditions of confinement, not the fact or duration of that confinement." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015); *see also, e.g., Daker v. McLaughlin*, No. 5:18-cv-171, 2018 WL 5304115, at *2 (M.D. Ga. Oct. 25 2018) ("The Eleventh Circuit has since determined that habeas is not the appropriate vehicle for raising claims which challenge the conditions of a prisoner's confinement.") Although not as widely discussed

Memo. 1-5, but they are not challenging the legality of their immigration detention under the Immigration and Nationality Act, 8 U.S.C. §§ 1225, 1226, or 1231. They similarly do not challenge the duration of their detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Instead, they challenge the conditions of their confinement—claiming a lack of proper cleaning supplies, personal protective equipment, or ability to social distance. These claims are not properly asserted in a habeas action.

3. Petitioners have not established that the conditions of their confinement violate the Fifth Amendment.

Under the Fifth Amendment Due Process Clause, "a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). For conditions of confinement to constitute "punishment," the Petitioners must show either (1) "an expressed intent to punish on the part of detention facility officials," or an implied intent to punish through a condition or restriction that a "is not reasonably related to a legitimate goal—if it is arbitrary or purposeless[.]" *Id.* at 538-39. "Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.' *Id.* at 539.

Petitioners fail to show that their detention is not proportionately related to the government's non-punitive responsibilities and administrative purposes. While civil detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982), the continued immigration detention of Petitioners pending removal cannot be described as punitive or excessive in relation to the legitimate government purpose of protecting the public and ensuring their removal. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[T]his Court has

Wash. Mar. 19, 2020). The COVID-19 outbreak does not change this analysis or weaken the government's legitimate interest in Petitioners' detention pending removal. *Id.*

In denying a request for release from immigration detention in the Western District of Washington last month, when Seattle was the epicenter of the COVID-19 outbreak in this country, the court noted that "Plaintiffs do not cite to authority, and the court is aware of none, under which the fact of detention itself becomes an 'excessive' condition solely due to the risk of a communicable disease outbreak—even one as serious as COVID-19." *Dawson*, 2020 WL 1304557, at *2. As in *Dawson*, Petitioners here have not established that their conditions of detention are unconstitutional. ICE and its contractors are undertaking appropriate measures to prevent the spread of the disease, which unfortunately is found throughout our country and is certainly not unique to detention facilities. *See Dawson*, 2020 WL 1304557, at *2.

To the extent Petitioners are arguing that the facilities' populations should be reduced, ICE has already taken steps to do so, and will continue to evaluate cases that may be at high risk for COVID-19. The detainee population at both SDC and ICDC have been greatly reduced. Each facility is currently operating under capacity. That these Petitioners have not been beneficiaries of this exercise of ICE's discretion does not constitute a due process violation.

Petitioners cannot plausibly argue that Respondents are subjecting them to punishment. ICE has implemented procedures and protocols to protect the detainees in its care, including at the facilities at issue in this case, and has also exercised its discretion to reduce the detainee populations at those facilities. These precautions taken at the two facilities at issue carry far more weight than the generalized opinions expressed in the various declarations submitted by Petitioner's proffered experts about populations in immigration detention centers in general and other detention and institutional settings.

Unlike in the cases cited by Petitioners, the present situation is not one where a detainee is being exposed *because of* his detention—for example, where a communicable disease is spreading within the detention centers, while the general public remains unaffected. *See, e.g., Helling v. McKinney,* 509 U.S. 25, 28, 32-35 (finding that an inmate can assert constitutional claim for exposure to environmental tobacco smoke where he was assigned to cell with another inmate who smokes five packs of cigarettes per day); *Gates v. Collier,* 501 F.2d 1291, 1300 (5Unlf 50912 (

punishment, he is not entitled to release." *Gomez v. United* States, 899 F. 2d 1124, 1126 (11th Cir. 1990). "The appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Id; see also Vaz*, 634 F. App'x at 781 ("[E]ven if Petitioner established a constitutional violation, he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim.").

Petitioners, however, do not ask this Court to order any different medical treatment or sanitation practices for detainees at SDC and ICDC. Instead, Petitioners argue that the facilities must reduce their detainee populations in order to address the COVID-19 situation. They urge this Court to ignore ICE's statutory and regulatory authority and discretion regarding detainee release, and instead agree with Petitioners' self-selection as the detainees to be released. This Court should not oblige them.

Petitioners have not shown that they are likely to succeed on the merits and their motion for a TRO should be denied.

B. Petitioners have not shown irreparable harm.

Respectfully submitted this 9th day of April, 2020.

CHARLES E. PEELER
UNITED STATES ATTORNEY

BY: *s/ Amelia G. Helmick*
AMELIA G. HELMICK
ASSISTANT UNITED STATES ATTORNEY
Georgia Bar No. 142673