

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

DADA, *et al.*,

Petitioners-Plaintiffs,

v.

WITTE, *et al.*,

Respondents-Defendants.

Civil Action No.: 1:20-cv-458

Judge Dee D. Drell

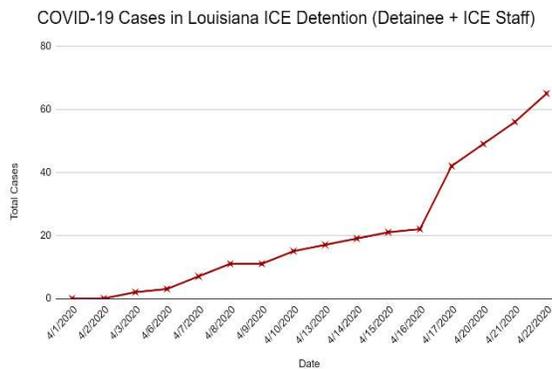
Magistrate Judge Joseph H.L. Perez-Montes

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR
MOTION FOR A TEMPORARY RESTRAINING ORDER**

I. COVID-19 Cases Have Exploded in Louisiana ICE Detention Centers.

When this action was filed, on April 14, 2020, ICE was reporting that there were six confirmed cases of COVID-19 at all of the ICE detention facilities in Louisiana, with two at Pine Prairie, and one each at Winn and Richwood.¹ As of today, April 23 – only nine days later – ICE is publicly reporting that there are 51 confirmed cases of COVID-19 at its Louisiana detention centers, with 28 at Richwood, 15 at Pine Prairie, three at LaSalle ICE Processing Center, two at Winn, and one at Catahoula – a 750% increase. Confirmed cases of COVID-19 have exploded within the Louisiana ICE detention centers.² ICE’s willful refusal to take proper public safety measures threatens Plaintiffs’ lives.



II. ICE’s Response Fails to Follow and Even Contradicts CDC Guidelines, Willfully Endangering Plaintiffs.

ICE claims to be adhering to CDC guidelines, but it is not, and, in important areas, its protocols actually contradict CDC guidelines. Both Dr. Susan Hassig³ and Dr. Homer Venters⁴

¹ ECF No. 2-2 at 6.

² ICE COVID-19 Guidance, <https://www.ice.gov/coronavirus> (Apr. 23, 2020); Huber Supp. Decl., Addendum A

³ Dr. Susan E. Hassig, MPH, DrPH is Associate Professor of Epidemiology and Director of the MPH Program in Epidemiology at the Tulane School of Public Health and Tropical Medicine. She has conducted research and taught in the area of infectious disease epidemiology for over 30 years. That time period has seen HIV, SARS, H1N1 influenza, Zika, and Ebola, as well as COVID-19. Hassig Decl. ¶1.

⁴ Dr. Homer Venters is a physician and epidemiologist whose long experience with correctional health includes two years visiting immigration detention centers and conducting analyses of physical and mental health policies and procedures for people detained by the Department of Homeland Security. It also includes working as Deputy Medical Director, Medical Director, Assistant Commissioner and Chief Medical Officer for the NYC Jail

have reviewed ICE’s April 10 Pandemic Response Requirements (“PRR”), which ICE’s declarant states is the source of ICE’s COVID-19 protocols.⁵ Both have found it highly deficient. As detailed in their attached declarations, the PRR contradict and omit critical aspects of the CDC Guidance:

- **Transfers:** To limit the spread of COVID-19, the CDC Guidance⁶ provides (at 14) that all transfers of detained persons should be suspended, and should only occur when “absolutely necessary.” The PRR’s recommendation to limit transfers (at 13), however, only applies to “non-ICE populations,” and thus does not limit transfers of Plaintiffs or others. *See also* Venters Second Supp. Decl. (“Venters Decl.”) ¶ 6(d); Hassig Decl. ¶¶ 10-11. This is critical, as ICE has continued to transfer individuals – even with confirmed COVID-19 positive tests – to and from the facilities at issue, which ICE’s declarant admits.⁷
- **Social distancing:** ICE’s PRR fails to address social distancing in critical areas of detention centers, including intake pens, clinical and medication lines, bathroom and shower areas, sally ports, and staff areas. Venters Decl. ¶ 6(a). It also only requires social distancing “whenever possible,” but a distance of 6 feet from any other people must be maintained at all times. Hassig Decl. ¶ 7. As a result, bunk beds should not be used, because they cannot guarantee the required social distancing. Hassig Decl. ¶¶ 7, 12. ICE claims that the facilities at issue here are not overcrowded, but the appropriate standard for how much space is required is what is needed for social distancing. Dr. Hassig estimates that approximately 144 square feet of space are required for each detained person. Hassig Decl. ¶ 7.
- **Washing hands:** The PRR requires everyone in detention facilities to wash their hands for 20 seconds, but does not explain how to do this in facilities that utilize metered faucets. Venters Decl. ¶ 6(e).
- **Cleaning and disinfecting protocols:** The PRR omits many critical aspects of cleaning and disinfection set forth in the CDC Guidance. Venters Decl. ¶ 6(c). *See* Hassig Decl. ¶ 6.
- **Education:** The PRR omits guidance on the importance of educating detained people about changes to their daily routine and how they can contribute to risk reduction, both of which are explicitly identified by the CDC Guidance. Venters Decl. ¶ 6(b).
- **Detained persons who have come in close contact with COVID-19:** The CDC Guidance (at 4) defines “quarantine,” which addresses confinement of people who have had “close contact” with a COVID-19 case. To safeguard people in quarantine, and to try to prevent the spread of the disease, the CDC Guidance (at 19-21) includes specific protocols that

Correctional Health Service, covering all 12 of New York City’s jails. During this time, Dr. Venters managed several infectious disease outbreaks, including the H1N1 influenza in 2009. Venters Decl. I ¶¶ 1-4.

⁵ ECF No. 8-2 ¶¶ 7-9.

⁶ CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

⁷ ECF No. 8-1 ¶ 15(i); Lopez Supp. Decl. ¶¶ 4,5; Colon Supp. Decl. ¶ 5; Nkobenei Supp. Decl. ¶ 6; Huber Supp. Decl. ¶ 9.

must be followed in quarantined areas, covering such topics as cohorting of close contacts, use of facemasks by quarantined people, use of personal protective equipment (“PPE”) by staff, *etc.* ICE’s PRR, however, has a single paragraph addressing quarantine of close contacts (at 12), omitting all of the specific safety protocols found in the CDC Guidance. *See also* Venters Decl. ¶ 1(b); Hassig Decl. ¶¶8-9.

- **Staff who have come in close contact with COVID-19:** ICE’s PRR omits several critical aspects of the CDC Guidance concerning contact between critical staff and suspected or known cases of COVID-19. Venters Decl. ¶ 1(a).
- **Facility COVID-19 mitigation plans:** Although ICE’s PRR (at 4) states that each detention facility is required to have a COVID-19 mitigation plan in place, Dr. Venters (who has reviewed policies and procedures in detention settings around the nation) has found that many facilities do not have such a plan, and thus have already failed to meet many basic elements of the COVID-19 responses recommended by the CDC. Venters Decl. ¶ 2. Importantly, Defendants have never identified, produced, or even referred to any such plans for any of the six facilities at issue in this case.
- **People with risk factors:** ICE’s PRR omits risk factors identified in the CDC Guidance and contradicts the risk factors listed in recent ICE guidance. Further, although the PRR recognizes (at 3) that people with risk factors face a higher mortality rate and a higher risk for more serious COVID-19 illness, it does not include any measures to protect those people from being infected unless and until they are in a quarantine area or are symptomatic, and does not provide for increased surveillance. Venters Decl. ¶¶ 3-5.
- **Respiratory protection program:** ICE’s PRR omits provisions from the CDC Guidance requiring a respiratory protection program ensuring that staff and detained people are fit tested for respiratory protection they will need. *Id.* ¶ 6(f).

III. ICE’s Protocols Are Not Being Followed Within These Facilities.

Moreover – and even more dangerous - as the attached declarations state, ICE is not actually implementing even its own protocols, as deficient as they are.

- **Cohorting:** The PRR says that individuals will not be cohorted together unless they have a positive test. However, in these facilities, ICE is routinely cohorting *suspected* cases together, which will lead to more infection.⁸ ICE is also cohorting people who are merely exposed to symptomatic individuals, and establishing whole dorms for such cohorting, which will only lead to more infection.⁹

⁸ Hassig Decl. ¶ 8, Huber Supp. Decl. ¶ 4; Lopez Supp. Decl. ¶ 2.

⁹ Sampath Grant Supp. Decl. ¶ 7; Nkobenei Supp. Decl. ¶ 4; Huber Supp. Decl. ¶ 8.

- **Isolation:** Nearly all the facilities lack negative-pressure rooms, which are necessary for effective isolation.¹⁰ ICE has identified only Pine Prairie as having any negative pressure rooms, and having only four at that, despite having 15 confirmed cases.¹¹
- **Social Distancing:** Although the PRR requires social distancing “where possible,” the facilities continue to lack necessary space for Plaintiffs to adequately maintain appropriate social distancing.¹²
- **Soap and PPE:** ICE reports that it is ensuring that detained persons and staff are being supplied with appropriate soap and PPE, including masks. However, detained persons are being given only one surgical mask and being told to wash it¹³; facility staff are only infrequently wearing masks or not wearing them at all¹⁴; and there are still soap shortages.¹⁵ Most disturbing, some even report being asked to sign waivers of liability before being given masks.¹⁶
- **Education:** Despite ICE’s position that it is educating detained people about proper COVID-19 public health measures, reports from the facilities are that staff are saying that COVID-19 is “fake news”¹⁷ and that detained individuals are being beaten and tear gassed when they ask for information regarding COVID-19.¹⁸
- **Testing:** ICE reports that it is testing symptomatic individuals, but others report that symptomatic individuals have not been tested.¹⁹ Further, in testimony to Congress, Acting ICE Director Albence states that ICE has tested only about 400 of some 32,000 detained individuals to date, and that ICE lacks sufficient tests to meet its needs.²⁰

IV. ICE’s Custodial Review Has Ended and Failed to Follow CDC Guidelines.

In both of his declarations, ICE’s declarant makes the claim that ICE is continuing to review detained individuals for release. On April 17, Defendant Acting ICE Director Matthew T.

¹⁰ Bazzano Decl. ¶15; Meyer Decl. ¶10.

¹¹ ECF No. 8-1 ¶14.

¹² Colon Supp. Decl. ¶ 5; Sampath Grant Supp. Decl. ¶ 8; Huber Supp. Decl. ¶ 7.

¹³ Nkobenei Supp. Decl. ¶¶2-3

¹⁴ Colon Supp. Decl. ¶4; Nkobenei Supp. Decl. ¶5; Sampath Grant Supp. Decl. ¶8; Huber Supp. Decl. ¶4.

¹⁵ Sampath Grant Supp. Decl. ¶2; Carrera Supp. Decl. ¶3; Huber Supp. Decl. ¶6.

¹⁶ Lopez Supp. Decl. ¶8; Nkobenei Supp. Decl. ¶2.

¹⁷ Nkobenei Decl. ¶ 6, Devora Espinosa Decl. ¶6, Huber Supp. Decl. ¶¶ 10-11.

¹⁸ Huber Supp. Decl. ¶15, Colon Supp. Decl. ¶8; del Bosque Decl. ¶10, Tejada Dejaso Decl. ¶¶10-11.

¹⁹ Lopez Supp. Decl. ¶3; Colon Supp. Decl. ¶6.

²⁰ Committee on Oversight and Reform, U.S. House of Representatives, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus* (April 17, 2020) available at <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>.

Albence testified before Congress that ICE had released approximately 700 individuals through its own review, out of nearly 32,000 individuals in detention.²¹ However, Defendant Albence also told Congress that ICE had finished its review and would not be releasing any additional individuals, admitting that the motivation not to release more is not because ICE believes it can actually manage this uncontrollable health crisis in its facilities; but rather to muscularly project that ICE “is enforcing our immigration laws.”²²

ARGUMENT

A. The Court Has Jurisdiction Over the Habeas Claims Because the Only Remedy Sought is Release, and it Independently Has Jurisdiction Under Rule 65.

Defendants fundamentally misunderstand the nature of Plaintiffs’ habeas claims under § 2241. First, the most recent analysis by the Fifth Circuit – which Defendants cite but mischaracterize – makes clear that the Circuit has not accepted the asserted distinction between habeas challenges to the “fact or duration” of detention and habeas challenges to conditions of confinement. *See Poree v. Collins*, 866 F.3d 235, 244 (5th Cir. 2017).²³

Even if such a distinction existed, Plaintiffs’ challenge sits at the core of the writ. Plaintiffs do not seek judicial intervention in order to improve their conditions of confinement of the sort of attempted by habeas petitioners in the cases Defendants rely upon, *see* Defs’ Br. 7.²⁴ As Judge Ellison in the Southern District of Texas recently stressed in granting a similar TRO under § 2241,

²¹ *Id.*

²² *Id.*

²³ In *Poree v. Collins*, 866 F.3d 235 (5th Cir. 2017), the court in fact emphasized that “the Supreme Court has not foreclosed” habeas challenges for conditions claims, *id.* at 244, observed that Fifth Circuit caselaw expressly rejects the distinction, *id.* (citing *Coleman v. Dretke*, 409 F.3d 665, 670 (5th Cir. 2005), and then “declin[ed] to address whether habeas is available only for fact or duration claims,” *id.* This Court should follow *Poree*’s interpretation of the state of Fifth Circuit law and not, as Defendant proposes, Def. Br. 8, the Western District of New York’s reading of Fifth Circuit law. *See Vazquez-Berrera v. Wolf*, No. 20-cv-1241, Dkt 41 at 6-7 (S.D. Tex. Apr. 17, 2020 (neither the Supreme Court nor the Fifth Circuit foreclosed habeas to address challenges to conditions).

²⁴ *Schipke v. Van Buren*, 239 F. App’x 85, 86 (5th Cir. 2007) (rejecting habeas where petitioner sought an order “modifying the conditions of her detention.”); *Hernandez v. Garrison*, 916 F.2d 291, 293 (5th Cir. 1990) rejecting habeas petition seeking access to law library and better medical treatment); *Sarres Mendoza v. Barr*, 2019 WL 1227494, at *2 (S.D. Tex. 2019) (denying habeas for two billion dollar damages claim regarding conditions).

“The mere fact that Plaintiffs’ constitutional challenge requires discussion of conditions in immigration detention does not necessarily bar such a challenge in a habeas petition.” *Vazquez-Barrera v. Wolf*, No. 20-cv-1241, Dkt 41 at 8 (S.D. Tex. Apr. 17, 2020) (attached as Exhibit 1). Here, Plaintiffs seek “accelerated release,” *Carson v. Johnson*, 112 F.3d 818, 820-21 (5th Cir. 1997), because of poor conditions, so habeas is the proper vehicle. *See Poree*, 866 F.3d at 244 (petition seeking transfer to less restrictive facility “properly sounds in habeas.) Indeed, the very premise of the habeas petition – supported by overwhelming record evidence – is that the conditions producing harm in these circumstances cannot be remediated by any reforms or judicial orders, which therefore renders the *fact* of their continued detention unlawful under due process. *See Vazquez Barrera*, 20-cv-1241, at 7 (“there are no conditions of confinement that are sufficient to prevent irreparable constitutional injury.”). Even in jurisdictions that accept a purported distinction between fact and conditions claims in habeas, the near consensus of courts have come to the same conclusion. *E.g. Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *2–3 (E.D. Mich. Apr. 5, 2020); *Coreas v. Bounds*, No. 20-0780, 2020 WL 1663133, at *7 (D. Md. Apr. 3, 2020); *Mays v. Dart*, No. 20 C 2134, 2020 WL 1812381, at *6 (N.D. Ill. Apr. 9, 2020); *A.S.M. v. Donahue*, No. 20-CV-62, 2020 WL 1847158, at *1 (M.D. Ga. Apr. 10, 2020); *Wilson v. Williams*, No. 20 cv 794, Dkt. 22 at 10-11 (N.D. Ohio, Apr. 22, 2020).²⁵

Finally, this Court is independently authorized to order release under its inherent equitable power to issue injunctions and temporary restraining orders for constitutional violations. *See*

²⁵ The more recent cases Defendant relies upon are inapposite. In *Livas v. Myers*, Judge Doughty did not hold, as Defendant asserts without citation, that the Fifth Circuit does not accept conditions claims in habeas; he merely held the court had simply had no power to order release of individuals *criminally* detained. 20 cv. 422, Dkt. 30 at 12 (W.D. La. Apr. 22, 2020). In *Sacal-Micha v. Longoria*, 2020 WL 1518861 (S.D. Tex. Mar. 27, 2020), the court did not have the benefit of fulsome briefing on the state of Fifth Circuit law regarding the purported duration-conditions distinction, or on why the claims there in fact related to the duration of detention. In addition, there was not substantial evidence before the court about conditions in the relevant Texas facility, nearly one *month* ago; here, by contrast, the undisputed evidence demonstrates, that circumstances in Louisiana detention facilities are dire and cannot be improved – that is, habeas release is the only remedy.

Brown v. Plata, 563 U.S. 493 (2011). Defendants’ curious reliance on *Bivens* case law to suggest otherwise misunderstands the fundamental distinction between generally prohibited implied damages claims, and centuries-old law permitting injunctive relief for constitutional violations of the kind Plaintiffs seek here. *Ex Parte Young*, 209 U.S. 123 (1908).

B. Plaintiffs are likely to succeed on their Fifth Amendment claim.²⁶

Defendants cursorily assert that the conditions of Plaintiffs’ continued detention satisfies the *Bell v. Wolfish*, 441 U.S. 520 (1979) reasonable-relation test, because of the government’s generalized interest “to prevent absconding and, in the cases of criminal aliens, to protect the community.” Defs’ Br. 11. The argument is tone deaf. The relevant inquiry is not whether detention in the ordinary course is excessive in relation to any purported governmental interest: we are not living in ordinary times. *See Thakker v. Doll*, No. 1:20-cv-00480-JEJ, 2020 WL 1671563 at *9 (M.D. Pa. Mar. 31, 2020) (“we must acknowledge that the status quo of a mere few weeks ago no longer applies. Our world has been altered with lightning speed, and the results are both unprecedented and ghastly.”). The relevant inquiry is whether *continued detention during COVID-19* – which exposes Plaintiffs to the substantial risk of serious illness or death – is excessive.²⁷ *See Vazquez Barrera*, 20-cv-01241 at *11-12 (“[r]equiring medically vulnerable individuals to remain in a detention facility where they cannot properly protect themselves from transmission of a highly contagious virus with no known cure is not rationally related to a legitimate government objective.”).

²⁶ Plaintiffs have not sought a TRO on their access to justice or Rehabilitation Act claims.

²⁷ In *Shepherd* and *Duvall*, the inquiry was not whether pretrial detention by itself served a legitimate government purpose, but “whether legitimate governmental purpose was served by the allowance of the MRSA infection to be present in the [...] jail,” *Duvall v. Dallas Cty., Tex.*, 631 F.3d 203, 207 (5th Cir. 2011), or whether “the inadequate medical conditions of which Shepherd complains were reasonably related to a legitimate government purpose.” *Shepherd v. Dallas Cty., Tex.*, No. CIV.A. 305CV1442-D, 2008 WL 656889, at *7 (N.D. Tex. Mar. 6, 2008).

It is in fact unquestionably excessive in relation to any purported government interest, much less a nonpunitive one. As Judge Ellison stressed, “ICE has many other means besides physical detention to monitor noncitizens and ensure that they are present at removal proceedings and at time of removal,” including routine check ins. *Id.* at *12.²⁸ Defendants admit as much in suggesting that should the court order relief, Plaintiffs be subject to supervised release. Defs’ Br. 15 n.5.

Ignoring the world around them, Defendants stress that Plaintiffs must demonstrate more than “isolated examples of illness, injury, or even death” or “incidence of disease or infection, standing alone,” *Shepherd v. Dallas Cty.*, 591 F.3d 445, 454 (5th Cir. 2009). In the real world, “the current pandemic is not mere ‘incidence of disease or infection, standing alone.’ Our currently exigent circumstances, in which our communities are engulfed by a novel and highly contagious disease, are unlike any ‘incidence of disease’ that our society has faced in generations.” *Vazquez Barrera*, 4:20-cv-01241 at *12.

Defendants also fail under the deliberate indifference standard, which applies to “episodic acts or omissions”: Defendants are choosing to put Plaintiffs in a substantial – and obvious – risk of exposure to COVID19 and subsequent likelihood of serious illness or death; a risk which cannot be sufficiently mitigated by their current, halting remedial measures. *See Hare v. City of Corinth, Miss.*, 74 F.3d 633, 647-8 (5th Cir. 1996). As described *supra*, despite the lack of testing, there are numerous confirmed cases of Covid-19, which hasn’t stopped Defendants from transferring positive cases among facilities, exacerbating the risk of spread. Any measures cited by Defendants, including the April 10 ICE ERO guidance (ECF 8-2 ¶ 9) are patently ineffective, Hassig Decl. ¶¶5-14, and contradicted by Plaintiffs’ firsthand accounts of unsanitary, crowded

²⁸ To state the obvious, Defendants can ensure that Plaintiffs are present at removal proceedings and at removal only if Plaintiffs are able to protect themselves from serious illness or death from COVID-19.

conditions, where staff ignore individuals with symptoms consistent with COVID-19, ECF 8-2 ¶¶ 12, 13, 16, 17, 21. *See Marlowe v. Leblanc*, No. 18-cv-063, Dkt. 115 at 10 (M.D. La. Apr. 23, 2020) (finding prisoner-plaintiff likely to succeed in 8th Amendment deliberate indifference claim because of inability of prison to fully comply with CDC guidelines) (Attached as Exhibit 2).

Indeed, ICE chooses to ignore known risks in its detention facilities, in order to, as ICE Director Albence recently admitted, prove that ICE is “enforcing our immigration laws.”²⁹ That ICE would prioritize public relations over the known health risks of a vulnerable population is the height of deliberate indifference and arbitrary detention.

Defendants ignore Plaintiffs’ alternate ground for relief: that inadequate access to counsel and the adjudicative process violates Plaintiffs’ procedural due process rights.³⁰

C. Absent an Injunction Plaintiffs Will Suffer Irreparable Harm, and the Public Interest in Public Health and Balance of Equities Favors Release

Contrary to Defendants’ assertion, in the Fifth Circuit, “it is not necessary to demonstrate that harm is inevitable,” only that there is a “significant threat of injury from the impending action, that the injury is imminent.” *See Humana, Inc. v. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986). According to Defendants’ own evidence, ECF. Doc. 8-2 ¶15 the injury is truly *imminent*—given the rapid, if not fully detected, spread of the virus inside Louisiana facilities. Both medical experts and the CDC establish that individuals in confined spaces such as jails and detention centers are at grave risk of injury, and the risk is heightened for these medically vulnerable plaintiffs. Meyer Decl. ¶¶ 7-17. Contrary to Defendants’ conclusory assertions, the policies and practices within detention centers make the “rapid spread of COVID-19 very likely,” (ECF. Doc.

²⁹ Committee on Oversight and Reform, U.S. House of Representatives, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus* (April 17, 2020) available at <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>.

³⁰ Pls.’ Mot. Temp. Restraining Order at 18-20.

1. ¶¶ 103-113) and the outlandish claim that Plaintiffs would be safer in these infectious detention hotspots instead of sheltering at home cannot be taken seriously.

Defendants’ asserted interest in enforcing U.S. immigration law is an insufficient counterweight to the grave public health consequences; it cannot tilt the balance of equities in its favor. First, Defendants already release from custody as a matter of course scores of immigrants—even those with criminal convictions—a practice that has not yet brought the system to its knees.³¹ Second, “ICE has a number of alternative tools available to it to ensure enforcement, which it is free to use with Plaintiffs” including “ICE’s conditional supervision program.” *Vazquez Berrera*, 20-cv-1241, at 14.³²

Finally, releasing Plaintiffs would be in the public interest because it promotes public health and safety, considerations that weigh heavily in the movant’s favor. *See Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 472 (5th Cir. 2017). As Judge Ellison explained, “an outbreak among the . . . detainee population will inevitably spread through the surrounding community, as MPC staff members, who live outside the detention facility, will be exposed to sick detainees . . . [and] will put additional strain on hospitals and health care resources in the community.” *Vasquez Berrera*, 20-cv-1241, at 15.³³

³¹ *See Detainees Leaving ICE Detention from the El Paso Service Processing Center*, TRAC <https://trac.syr.edu/immigration/detention/201509/EPC/exit/> (“ICE also has discretionary authority to “parole” individuals . . . with serious medical conditions . . . and individuals whose parole is considered by ICE in the ‘public interest.’”); *see* 8 U.S.C. § 1182(d)(5)(A).

³² This alternative supervision program is highly effective, with a 99% attendance rate at all immigration court hearings and a 95% attendance rate at final hearings among supervised individuals. U.S. Gov’t Accountability Office, GAO-15-26, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness* 30 (Nov. 2014), <https://www.gao.gov/assets/670/666911.pdf>.

³³ On April 20, 2020, in *Fraihat, et al. v. ICE*, No. EDCV 19-1546 (attached as Exhibit 3), U.S. District Judge Jesus G. Bernal of the Central District of California certified a nationwide class of medically vulnerable individuals in ICE detention and ordered ICE to undertake new custody determinations for those individuals within the class. Plaintiffs are all members of that class. On April 22, undersigned counsel asked Defendants’ counsel what ICE’s plans are for the custody redeterminations regarding Plaintiffs and when they would be completed. Defendants’ counsel has relayed those inquiries onto ICE, but, as of the submission of this brief, there has been no answer.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the motion for a temporary restraining order and order their immediate release from custody.

Dated: April 23, 2020

Respectfully submitted,

/s/ Matthew S. Vogel

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2020, I electronically filed the foregoing document and accompanying exhibits with the Clerk of the 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.

Dated: April 23, 2020

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