

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

Juana GONZALEZ MORALES, *et al.*,

Plaintiff-Petitioners,

v.

Shawn GILLIS, *et al.*,

Respondent-Defendants.

Civil Action No.: 5:20-cv-00181-DCB-MTP

ORAL ARGUMENT REQUESTED

Judge David C. Bramlette
Magistrate Judge Michael T. Parker

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

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At the time that this Court denied a Temporary Restraining Order in *Espinoza v. Gillis*, No. 5:20-CV-106-DCB-MTP, 2020 WL 2949779, at *6 (S.D. Miss. June 3, 2020), Immigration and Customs Enforcement (“ICE”) acknowledged 3 active and 17 total COVID-19 cases at Adams County Detention Center (“ACDC”).¹ Now, it reports 29 presently active cases and 93 total cases.² While Respondent-Defendants (“Defendants”) claim to have taken appropriate measures to mitigate the virus’ spread, this marked increase in cases indicates that those measures have failed Defendants insist that the Court lacks jurisdiction to hear Petitioner-Plaintiffs’ (“Plaintiffs”) claim. However, this Court, and many others, have already determined that 28 U.S.C § 2241 confers jurisdiction to hear COVID-19-related habeas petitions that ultimately seek release from unlawful detention, as this petition does.

While Plaintiffs ultimately seek release on the merits of their habeas petition, the purpose of this emergency motion is narrower in that it seeks interim injunctive measures – such as testing and an expert medical inspection of the facility – to identify concretely the risks Plaintiffs face from continued detention and possible remedial measures the facility could take short of release. Because it is vested with jurisdiction to hear the habeas petition, the Court has broad equitable power under common law habeas principles and the All Writs Act to issue orders, including discovery or limited injunctive orders, to aid in the disposition of the merits of the habeas petition. The modest temporary restraining order sought by Plaintiffs not only would provide additional protection for Plaintiffs, but it also would provide this Court with specific information regarding the current realities at ACDC, information that goes to the heart of Plaintiffs’ claim that they must ultimately be released from detention. The authority to order

¹ ICE, *ICE Guidance on COVID-19, ICE Detainee Statistics*, Sep. 17, 2020, <https://web.archive.org/web/20200917123010/https://www.ice.gov/coronavirus>.

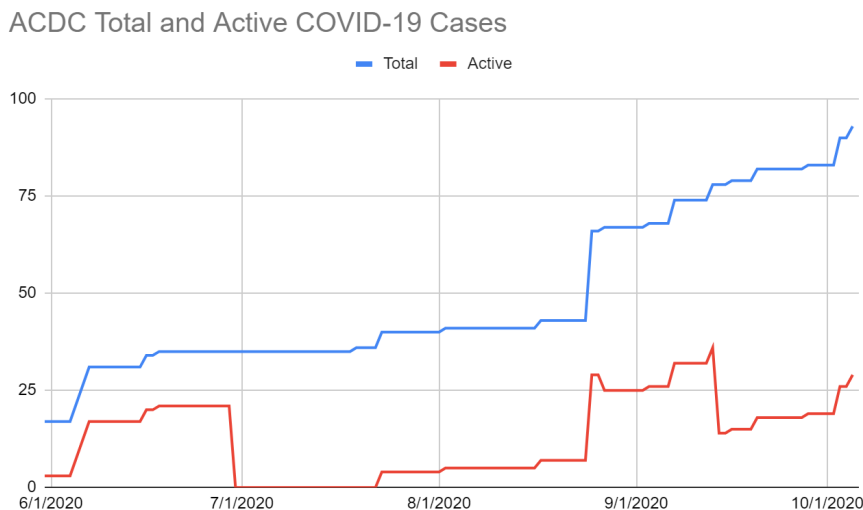
² ICE, *ICE Guidance on COVID-19, ICE Detainee Statistics*, Oct. 6, 2020, <https://www.ice.gov/coronavirus>.

ACDC to take steps that will provide this Court with “fresh” evidence rather than canned recitations of policy exists independent of the traditional requirements of Rule 65 injunctions.

In any event, Plaintiffs here do show that they face irreparable harm and that the balance of equities tips in their favor, and that they are likely to ultimately succeed on the merits of their claim that exposure to unreasonable risk of illness or death at ACDC constitutes unlawful punishment under the Due Process Clause. That Rule 65 showing likewise supports issuance of the requested interim relief – independent of its authority under its habeas jurisdiction.

SUPPLEMENTAL FACTS

Since Plaintiffs filed this motion on September 17, 2020, ICE has reported an additional 59 COVID-19 cases at ACDC.³ This increase is part of a consistent trend of continued positive tests at ACDC:⁴



Likewise, the epidemic continues to spread in Adams County, which has reported 80 new cases and 5 new deaths since September 17, 2020.⁵

³ *Id.*

⁴ See Declaration of Jeremy Jong, attached at Exhibit F Attachment A.

⁵ Compare Mississippi State Department of Health (“MSDH”), *Coronavirus (COVID-19): Cumulative Cases and Deaths by County*, updated Oct. 6, 2020, https://msdh.ms.gov/msdhsite/_static/14,0,420.html;

On October 5, 2020, the Centers for Disease Control and Prevention (“CDC”) updated its COVID-19 guidance, reflecting that COVID-19 “may be able to infect people who are further than 6 feet away from the person who is infected or after that person has left the space,” especially in “enclosed spaces that had inadequate ventilation.”⁶ This new guidance casts further doubt on Defendants’ ability to keep Plaintiffs safe.

Contrary to Defendants’ assertion that COVID-19 at ACDC is limited to transferees. At least one COVID-19 positive detained man was in close contact with Plaintiff Khamis in the days before Defendants quarantined the man in early September.⁷ However, despite Defendants’ knowledge of the contact, they have not tested Plaintiff Khamis or instructed him to isolate or monitor his symptoms.⁸ Plaintiff Mundle reports that at least 10 people have tested positive in his unit since late August.⁹

Despite the continuous stream of new positive tests and Defendants’ assertions that most of the positive cases at ACDC have come from other detention centers, Defendants continue to transfer new detained people to ACDC by the busload.¹⁰ Plaintiff Mundle, for example, asserts that Defendants have detained at least 170 new people at ACDC in the last week.¹¹

Nor have Defendants remediated hygiene and cleaning supply shortages. In particular, soap and cleaning products remain in short supply and completely unavailable on the

with MSDH, *Coronavirus (COVID-19): Cumulative Cases and Deaths by County*, updated Sep. 17, 2020, https://web.archive.org/web/20200917184432/https://msdh.ms.gov/msdhsite/_static/14,0,420.html.

⁶ See CDC, *How COVID-19 Spreads*, Oct. 5, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

⁷ See Supplemental Declaration of Abdallah Khamis ¶ 2, attached at Exhibit G.

⁸ *Id.* ¶ 4.

⁹ See Supplemental Declaration of Dwight Mundle ¶ 1, attached at Exhibit H.

¹⁰ See Supp. Khamis Decl. ¶ 8, Supp. Mundle Decl. ¶¶ 1,3; Supplemental Declaration of Edinahi Zacarias Cabrera ¶ 1, attached at Exhibit I; Supplemental Declaration of Juana Gonzalez Morales ¶ 1, attached at Exhibit J.

¹¹ See Supp. Mundle Decl. ¶ 3.

weekends.¹² Guards still do not properly wear masks and often remove them when they speak.¹³ Despite Defendants' contention that social distancing is possible at ACDC, they continue to detain Plaintiffs in crowded dorms near capacity and pack people within six feet of each other in the cafeteria.¹⁴ At least one dorm, Bravo Bravo, reached capacity.¹⁵ As COVID-19 continues to spread through the facility, Plaintiffs remain at high risk of severe harm.

ARGUMENT

I. The Court Has Jurisdiction Over Plaintiffs' Habeas Claims.

A. This Court Has Jurisdiction Over Plaintiffs' Habeas Claims Because the Claims, at Their Core, Challenge the Fact of Plaintiffs' Confinement - The Court Therefore Has Power to Issue the Interim Orders Sought Here.

At their core, Plaintiffs challenge the fact of their detention in light of the unconstitutional conditions in ACDC and demonstrate that release will be the only relief that could ultimately remedy this unconstitutional violation. As such, and contrary to Defendants' arguments, their petition properly sounds in habeas and confers jurisdiction on this court to order release pursuant to 28 U.S.C. § 2241, upon the adjudication of the merits of Plaintiffs' habeas petition. The premise of habeas jurisdiction, in turn, confers broader equitable authority upon this court to issue orders, such as the interim injunctive and discovery orders sought here, *see* Pl.'s Mot. for T.R.O., ECF. No. 2 at 1, in aid of the Court's disposition of the merits of the habeas petition.

1. The Court Has Jurisdiction Over this Habeas Petition.

¹² *See* Supp. Mundle Decl. ¶¶ 5-6, Supp. Khamis Decl. ¶¶ 6,7,10, Supp. Decl. Gonzalez Morales ¶ 2-3; Supp. Decl. Zacarias Cabrera ¶¶ 3-4.

¹³ *See* Supp. Khamis Decl ¶ 6; Supp. Decl. Gonzalez Morales ¶ 4.

¹⁴ *See* Supp. Mundle Decl. ¶ 2; Supp. Khamis Decl ¶ 9; Supp. Decl. Gonzalez Morales ¶ 4; Supp. Decl. Zacarias Cabrera ¶ 5

¹⁵ *See* Supp. Mundle Decl. ¶ 1.

Plaintiffs challenge the very fact of their confinement owing to the excessiveness of their continued detention in a setting in which COVID-19 continues to spread around them; as such, it lies at the core of habeas. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (“a determination that [the petitioner] is entitled to immediate release or a speedier release” is proper habeas claim); *Poree v. Collins*, 866 F.3d 235, 244 (5th Cir. 2017) (petition seeking transfer to less restrictive facility “properly sounds in habeas.”). As this Court emphasized in *Espinoza*, a similar case in which Plaintiffs alleged that COVID-19 conditions at ACDC violated their Fifth Amendment rights, “the requested relief, immediate release from detention, permits the petitioners to proceed with their habeas petition.” 2020 WL 2949779 at *2; *see also Beswick v. Barr*, No. 5:20-CV-98-DCB-MTP, 2020 WL 3525196, at *3 (S.D. Miss. May 18, 2020), *report and recommendation adopted*, No. 5:20-CV-98-DCB-MTP, 2020 WL 3520312 (S.D. Miss. June 29, 2020) (finding in a COVID-19 due process case that “[i]f the Court granted Petitioner's requested relief, it would result in his immediate release. The undersigned finds that the Petitioner has brought a habeas matter because the requested relief challenges the fact or duration of his confinement.”); *Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at *4 (S.D. Tex. April 17, 2020) (holding that “[b]ecause Plaintiffs are challenging the fact of their detention as unconstitutional and seek relief in the form of immediate release, their claims fall squarely in the realm of habeas corpus”). Here, the very premise of the current habeas petition is that the conditions at ACDC have grown so severe that they have rendered the *fact* of Plaintiffs’ continued detention unlawful under due process. Numerous courts are in accord.¹⁶

¹⁶ *See, e.g., Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 2614616, at *1 (W.D.La. May 22, 2020); *Gatu Njuguna v. Staiger*, No. 6:20-CV-00560, 2020 WL 3425289, at *5 (W.D.La. Jun. 3, 2020); ; *Essien v. Barr*, No. 20-CV-1034-WJM, 2020 WL 1974761, at *3 (D. Colo. Apr. 24, 2020); *Mays v. Dart*, 453 F. Supp. 3d 1074, 1089-90 (N.D. Ill. 2020); *Malam v. Adducci*, 542 F. Supp. 3d 643, 650-51 (E.D. Mich. 2020); *Basank v. Decker*, 449 F. Supp. 3d 205, 214 (S.D.N.Y. 2020)..

2. Habeas Confers Broad Equitable Authority to Issue Orders in Aid of the Court's Jurisdiction.

This motion seeks interim emergency injunctive orders to protect Plaintiffs from potentially lethal harm – which would otherwise destroy the court's jurisdiction – as well as limited discovery to aid in the resolution of the ultimate merits of the habeas petition's request for release. As the Supreme Court has repeatedly stressed, courts have broad, equitable authority in habeas cases to “dispose of the matter as law and justice require.” 28 U.S.C. § 2243. The “very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

For example, because “the power of inquiry on federal habeas corpus is plenary,” *id.* at 293, courts may enjoin transfer or grant bail in habeas cases if necessary to make ultimate relief effective should a petitioner prevail. *See Calley v. Callaway*, 496 F.2d 701, 703 (5th Cir. 1974); *see also N.Z.M. v. Wolf*, No. 5:20-CV-24, 2020 WL 2813557, at *3 (S.D. Tex. May 28, 2020) (ordering bail in immigration habeas case). In addition, when a habeas petitioner makes a prima facie case for relief, a court “may use or authorize the use of suitable discovery procedures . . . reasonably fashioned to elicit facts necessary to help the court to ‘dispose of the matter as law and justice require.’” *Harris*, 394 U.S. at 290 (quoting 28 U.S.C. § 2243).

Further, the All Writs Act (“AWA”), which merely codifies the court's underlying equitable habeas power, also authorizes the limited relief Plaintiffs seek, in order to preserve the court's jurisdiction to adjudicate the claims before it – claims that are jeopardized by the Defendants' failure to safeguard Plaintiffs' lives. *See* 28 U.S.C. § 1651(a) (authorizing courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”); *see also F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603-04

(1966). As explained in *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004), the AWA authorizes a court to enjoin almost any conduct “which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion” (internal quotation and citation omitted). The power includes issuance of discovery orders. See *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 173 (1977); *El-Banna v. Bush*, No. Civ.A. 04-1144 (RWR), 2005 WL 1903561, at *1–3 (D.D.C. July 18, 2005) (ordering the government to “preserve and maintain all evidence, documents and information relating or referring to” habeas petitioners).

In aid of the Court’s power to preserve its jurisdiction over the case, adjudicate the merits of Plaintiffs habeas claims, and otherwise “bring the litigation to a natural conclusion,” Plaintiffs ask the Court to enjoin Defendants from continuing to violate Center for Disease Control and Prevention (“CDC”) guidelines, and to order periodic universal testing and independent inspection of the facility so as to determine the extent of their noncompliance and steps to halt the spread of COVID-19 within ACDC.

B. The Court Has Jurisdiction Over This TRO Pursuant to 28 U.S.C. § 1331.

Independent of habeas, this Court has subject matter jurisdiction under 28 U.S.C. § 1331, *Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979), and federal courts enjoy equitable authority to fashion injunctive relief to remediate unconstitutional governmental action. See *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 337 (2015); *Ex Parte Young*, 209 U.S. 123 (1908). That authority includes, independent of habeas, issuing “orders placing limits on a prison’s population” to remediate unconstitutional conditions. *Brown v. Plata*, 563 U.S. 493, 511 (2011). The Ninth Circuit recently explained in *Roman v. Wolf*, No. 20-55436, 2020 WL 5683233 (9th Cir. Sept. 23, 2020) that jurisdiction over those plaintiffs’ COVID-19 claims were appropriate

because they “invoked 28 U.S.C. § 1331, which provides subject matter jurisdiction irrespective of the accompanying habeas petition.” *Id.* at 3. As in *Roman*, Plaintiffs here both invoked 28 U.S.C. § 1331 and requested declaratory and injunctive relief requesting conditions reform. *Id.*; Pet., ECF No. 1, at ¶¶ 9, 35. As such, the Court has jurisdiction, irrespective of Plaintiffs’ habeas claim, to decide this motion.

II. Plaintiffs Satisfy the Elements of a TRO.

Plaintiffs satisfy the traditional elements for preliminary relief, which supports issuance of injunctive relief under the court’s (non-habeas) equitable powers.

A. Plaintiffs Are Likely to Succeed on the Merits.

Defendants erroneously claim that Plaintiffs “do not choose” whether their Fifth Amendment claims should be analyzed under *Wolfish*’s “reasonable relationship” test or under a deliberate indifference test. Def.’s Resp, ECF No. 15 at 18. Plaintiffs do make clear that because they challenge the general conditions, practices, rules, or restrictions of pretrial confinement, they therefore proceed under the reasonable relationship test. Pl.’s Mot. for T.R.O., ECF. No. 2 at 15-18; accord *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 643 (5th Cir. 1996).

Defendants also assert that Plaintiffs’ detention is lawful because “detention pending removal process” is not excessive when compared to the governmental interests of “protecting the public and preventing aliens from absconding.” Resp. at 19. However, Defendants have not successfully refuted Plaintiffs’ assertions that the particular conditions at ACDC, created by Defendants’ failures to institute proper safeguards, are unreasonable or excessive in relation to those interests. The relevant inquiry is whether continued detention during COVID-19 at ACDC – which exposes Plaintiffs to the substantial risk of serious illness or death – is excessive or reasonable. See *Vazquez Barrera*, 2020 WL 1904497 at *6 (“[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.”); *Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 5510706, at *11 (W.D. La. Apr. 30, 2020), *report and recommendation adopted in part, rejected in part*, No. 1:20-CV-00458, 2020 WL 2614616 (W.D. La. May 22, 2020).

While Defendants assert that they have the ACDC outbreak under control, those assertions are either so vague as to be completely meaningless or controverted by Plaintiffs’ declarations and their own public facing website. First, Defendants purport that as of September 30, 2020, there were eight active COVID-19 cases at ACDC. *See* Resp. at 4. However, Defendants’ own COVID-19 website reported 19 active cases on that date.¹⁷ Defendants make no representation as to why those numbers differ and remain silent as to the number of staff infections. Defendants cannot begin to isolate and track COVID-19 at ACDC if they cannot accurately determine who is infected. Indeed, the reporting discrepancies alone support Plaintiffs’ request for relief. *See Valentine v. Collier*, 4:20-cv-01115 (S.D. Tex. Sept. 29, 2020), ECF No. 409 at 9-11, 82-83 (attached as Exhibit L) (noting discrepancies in Defendants’ counts of COVID-19 positive cases and ordering, *inter alia*, regular testing and provision of sufficient cleaning supplies).

The confusions in Defendants’ submissions are not limited to contradictions in the number of positive cases. Defendants correctly assert that on “September 3, 2020, all detainees at ACDC were tested for COVID-19.” Resp. at 3. However, despite the increase in positive tests immediately following that test, Defendants do not indicate any plan for regular mass testing. This places Plaintiffs at risk because “[w]ithout regular testing, there is simply no way to confirm

¹⁷ ICE, *ICE Guidance on COVID-19, ICE Detainee Statistics*, Sep. 30, 2020, <https://web.archive.org/web/20200930185306/https://www.ice.gov/coronavirus#tab2>.

that a facility that once housed those with a highly infectious disease is now infection free.” *Dada*, 2020 WL 2614616, at *2. Approximately 30 percent of people with COVID-19 test negative in any given test and because of the risk of new infections from new detained people, staff, and community spread.¹⁸

Likewise, Defendants continue that “none of the Petitioners here are housed in the same unit with any of the confirmed cases.” Resp. at 4. These statements beg the critical question of whether the positive cases *were* in the same units as Plaintiffs, given that, as Defendants concede, it takes 2-7 days to receive testing results.¹⁹ For example, although he is a close contact of a man who tested positive and, Plaintiff Khamis did not receive a subsequent test or any education regarding symptom monitoring or isolation.²⁰ Plaintiff Mundle reports that at least 10 people in the two dorms adjacent to his have tested positive.²¹ Defendants are completely silent as to whether Plaintiffs themselves have been exposed to COVID-19, nor have Defendants identified the precautions that they have taken to isolate and test close contacts.

Defendants also claim that “the vast majority of those cases are from individuals who transfer into ACDC.” Resp. at 4. As noted above, this statement omits the fact that people in the same units as Plaintiffs have recently tested positive. The admission is also concerning because of ACDC’s open disregard of CDC recommendations. Defendants continue to transfer loads of detained people into ACDC despite the fact that the CDC has recommended suspension of “all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including

¹⁸ Supplemental Declaration of Anjali Niyogi, attached at Exhibit K ¶¶ 2-6.

¹⁹ See Declaration of Robert G. Hagan, ECF No. 15-1 ¶ 23.

²⁰ See Supp. Decl. Khamis ¶ 2.

²¹ See Supp. Decl. Mundle ¶ 1.

work release), unless necessary for medical evaluation, medical isolation/quarantine, health care, extenuating security concerns, release, or to prevent overcrowding.”²²

Defendants purport that “benches and seating is marked to show detainees where they should not sit to maintain social distances.” Resp. at 4. However, despite those markings, detained people sit at small tables less than six feet away from each other and Defendants make no effort to enforce social distancing in the cafeteria.²³

Defendants claim that “[t]here is daily monitoring of the population percentage at each housing unit, with the goal of facilitating social distancing as much as practicable.” Resp. at 4. Even if true, this measure is as meaningless as to the actual conditions in which Plaintiffs are detained. While Defendants assert that ACDC is detaining 797 people in a facility with capacity for more, Plaintiffs report that they are packed into dorms with up to 90 others and that at least one dorm is at capacity.²⁴ Population percentages are meaningless if Plaintiffs are unable to maintain proper distancing in their own dorms or in common spaces.

Defendants claim that they use “a chemical that kills COVID-19” to clean, that they clean living areas hourly, provide masks to detained people three times a week, and distribute hygiene products twice a week. Resp. at 5. However, Plaintiffs, who are the only people responsible for cleaning, maintain that soap and cleaning supplies are available only a few days a week.²⁵ For example, Plaintiff Khamis has been without soap for five days.²⁶ Plaintiff Gonzalez Morales has

²²CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, updated Jul. 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>; Supp. Khamis Decl ¶ 8, Supp. Mundle Decl. ¶¶ 1,3; Supp. Decl. Gonzalez Morales ¶ 1, Supp. Decl. Zacarias Cabrera ¶ 1.

²³ See Supp. Mundle Decl. ¶ 2; Supp. Khamis Decl ¶ 9; Supp. Decl. Gonzalez Morales ¶ 4; Supp. Decl. Zacarias Cabrera ¶ 5.

²⁴ See Hagan Decl. ¶ 12, Supp. Khamis Decl ¶ 2, Supp. Mundle Decl. ¶ 1.

²⁵ See Supp. Mundle Decl. ¶¶ 5-6, Supp. Khamis Decl. ¶¶ 6,7,10, Supp. Decl. Gonzalez Morales ¶ 2-3; Supp. Decl. Zacarias Cabrera ¶ ¶ 3-4.

²⁶ See Supp. Khamis Decl. ¶ 7.

not received hygiene products in nearly two weeks and was told by staff that the products are too expensive when she asked for more.²⁷ Plaintiff Zacarias Cabrera, who is paid to clean the bathrooms in her dorm, is forced to clean with water only four days a week.²⁸ No Plaintiff has received new masks in months.²⁹

As Defendants' claims regarding COVID-19 precautions are unreliable and vague, this Court should afford them limited weight. The facts not in dispute are clear. Defendants have flouted CDC recommendations, and whatever measures they have implemented have not stemmed the tide of COVID-19 cases at ACDC. Despite the steady rise in cases, 93 reported since ICE began tracking cases, Defendants continue to transfer people into ACDC, pack Plaintiffs into crowded dorms, and refuse to enable proper hygiene. Those conditions are excessive in relation to their interests in detention. As such, Plaintiffs are likely to succeed on the merits of their claim that their continued detention violates their due process rights.

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

Defendants argue that Plaintiffs' claims of impending irreparable harm and risk to the public of continued outbreaks are speculative because ACDC has "dealt effectively, even if not perfectly, with coronavirus for more than six (6) months and there have been no widespread outbreaks." Resp. at 21. ACDC is now dealing with 29 active and 93 total cases. As noted above, Defendants' policies continue to flout CDC guidance. Given the rising number of cases at ACDC, the potentially explosive nature of COVID-19 transmission in congregate settings, and Defendants' flouting of CDC guidelines, the risk to Plaintiffs is anything but speculative.

²⁷ See Supp. Decl. Gonzalez Morales ¶ 3.

²⁸ See Supp. Decl. Zacarias Cabrera ¶ 3.

²⁹ See Supp. Khamis Decl ¶ 6, Supp. Mundle Decl. ¶ 6; Supp. Decl. Gonzalez Morales ¶ 5, Supp. Decl. Zacarias Cabrera ¶ 2.

Defendants also argue that widespread testing cannot protect Plaintiffs. Resp. at 21. However, experts countrywide, including the CDC and the White House have emphasized that testing, especially in congregate settings, is the cornerstone to protection.³⁰ Periodic mass testing, in particular, is necessary to identify and isolate positive cases.³¹ This refusal to grapple with the scope of the outbreak within ACDC is precisely why the Court's intervention is necessary. Unless ordered to regularly test, comply with CDC guidelines, halt transfers, and submit a health inspection, Defendants will continue to bury their heads in the sand and subject Plaintiffs to imminent risk of significant injury while subjecting the surrounding communities to which ACDC staff return to a further taxing of already stretched intensive care resources.

CONCLUSION

As they have done repeatedly in this Court and around the country, ICE has produced a pre-fab declaration in opposition to Plaintiffs' requested relief that makes sweeping claims about compliance with CDC guidance and implementation of a multitude of policies intended to prevent the spread of COVID at ACDC. Plaintiffs' detailed, specific declarations and ICE's own public reports are inconsistent with ICE's boilerplate declaration and make clear that more must be done in order for this Court to possess the kind of "real-time" information it needs in order to make informed decisions regarding whether the hundreds of people housed at ACDC are indeed as safe as ICE claims and whether the relief sought by Plaintiffs in this action should be granted. Accordingly, Plaintiffs respectfully request that this Court grant the motion for a temporary

³⁰ See Liesl M. Hagan, MPH1; Samantha P. Williams, PhD1; Anne C. Spaulding, MD, *et. al*, *Mass Testing for SARS-CoV-2 in 16 Prisons and Jails — Six Jurisdictions, United States, April–May 2020*, CDC, Morbidity and Mortality Weekly Report, Aug. 21, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6933a3.htm> (“mass testing irrespective of symptoms, combined with periodic retesting, can identify infections and support prevention of widespread transmission in correctional and detention environments.”); White House, CDC & FDA, *Testing Blueprint 3 & n.1*, Apr. 27, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/Testing-Blueprint.pdf>.

³¹ See Supp. Decl. Niyogi ¶¶ 2-6.

restraining order and order Defendants to immediately conduct periodic widespread testing, to abide by all CDC guidelines, to stop all transfers into and out of ACDC, and to submit to a health inspection of ACDC at the earliest possible date.

Dated: October 6, 2020

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 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: October 6, 2020

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