IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROGER ERNESTO LA O MUNOZ, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CASE NO. 4:20-CV-2206**
	§	
CHAD F. WOLF, *et al.*,	§	
	§	
Defendants.	§	

O R D E R

Pending before the Court is Petitioners' Motion for a Temporary Restraining Order. (Instrument No. 9).

I.

Petitioners Roger Ernesto La O Munoz ("La O Munoz"), Jorge Luis Morales-Diaz ("Morales-Diaz"), Hugo Sanchez-Valdes ("Sanchez-Valdes"), and Kelvin Armando Ulloa Escobar ("Ulloa Escobar") (collectively, "Petitioners") filed a Petition for Writ of Habeas Corpus and this Motion for Temporary Restraining Order to seek their immediate release from detention based on their exposure to COVID-19. (Instrument No. 9 at 1). Petitioners filed their Petition against Chad F. Wolf, in his official capacity as Acting Secretary of U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE"), Patrick Contreras, in his official capacity as Field Office Director of ICE, William P. Barr, in his official capacity as Attorney General of the United States, and Randy Tate, in his official capacity as Warden at the Facility (collectively, "Respondents"). (Instrument No. 1).

A.

Petitioners have been in custody of ICE for at least six months and, for some portion of that time, detained at Joe Corley Detention Facility (the "Facility") in Conroe, Texas. (Instrument No. 11 at 2). Petitioners are seeking asylum in the United States based on physical and psychological persecution they have suffered in their home countries due to political beliefs. *Id.*

Petitioner La O Munoz is a 35-year-old citizen and national of Cuba. (Instrument No. 1 at 3). La O Munoz seeks asylum in the United States due to physical and psychological abuse inflicted upon him by Cuban authorities due to his political views and opposition of the Castro regime. *Id.* La O Munoz is a college graduate with a degree in hygiene and epidemiology. *Id.* La O Munoz entered the United States on or about July 15, 2019[1] and, shortly thereafter, was sent to Mexico as a part of the Migrant Protection Protocols ("MPP").[2] *Id.* After being beaten and robbed in Mexico, on December 3, 2019, La O Munoz demonstrated a credible fear during his non-refoulement interview[3] and returned to the United States. *Id.* He has been under ICE custody since. *Id.* La O Munoz has no criminal history in any country and has close family ties to the United States. *Id.* His individual merits hearing before the immigration court is scheduled for

[1] Respondents indicate that La O Munoz entered on July 14, 2019. (Instrument No. 19 at 8).
[2] The MPP is a U.S. Government action where individuals seeking admission to the U.S. from Mexico—either illegally or without proper documentation—will return Mexico and wait there for the duration of their immigration proceedings. *Migrant Protection Protocols*, U.S. Dep't of Homeland Sec., https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols (last visited June 30, 2020).
[3] *Non-refoulement* is a principle enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees ("1951 Convention") and its 1967 Protocol. Article 33(1) of the 1951 Convention provides,

> "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Convention Relating to the Status of Refugees, art. 33(1), July 28, 1951, 189 U.N.T.S. 137. The United States is not a party to the 1951 Convention but is a party to the 1967 Protocol.

July 2, 2020. (Instrument No. 1 at 4). Respondents indicate that La O Munoz is scheduled for a final hearing on the merits on July 9, 2020. (Instrument No. 19 at 8).

La O Munoz is receiving medication for adjustment disorder and gastro-esophageal reflux disease without esophagitis. (Instrument No. 19 at 8). Respondents have provided him treatment on eight occasions from March 2020 to June 2020. *Id.* at 8-9. La O Munoz most recently refused medical care on June 9, 2020. *Id.* at 9.

Petitioner Morales-Diaz is a 53-year-old citizen and national of Cuba who seeks asylum due to persecution he suffered in Cuba based on his political beliefs. (Instrument No. 1 at 4). No additional information has been provided as to the persecution he faced in Cuba. Morales-Diaz has been in custody of ICE since around November 4, 2019 and has been at the Facility since March 12, 2020. *Id.* Morales-Diaz has no known criminal history in any country and has close community ties to the United States. *Id.* His final hearing on the merits before the immigration court is scheduled for July 9, 2020. (Instrument No. 1 at 4).

Petitioner Sanchez-Valdes is a 31-year-old citizen and national of Cuba. (Instrument No. 1 at 4). Sanchez-Valdes seeks asylum or, alternatively, withholding of removal or protection under the Convention Against Torture, due to the persecution he suffered in Cuba as a result of being a political dissident and opponent of the Castro regime. *Id.* Sanchez-Valdes presented himself for inspection at El Paso, Texas on November 6, 2019. *Id.* There, he was detained and sent to Mexico as a part of the Migrant Protection Protocols. On February 12, 2020, during a non-refoulement interview, Sanchez-Valdes demonstrated a credible fear of returning to Mexico and was permitted to re-enter the United States. *Id.* Sanchez-Valdez has remained under ICE custody during this time. *Id.* Sanchez-Valdes has no criminal history in any country and has close family ties to the United States. *Id.* Sanchez-Valdes has been diagnosed with Post-

Traumatic Stress Disorder ("PTSD") and is on a treatment plan with medication. (Instrument No. 19 at 10). His final hearing on the merits before the immigration court is scheduled for July 7, 2020. (Instrument No. 1 at 4).

Petitioner Ulloa Escobar is a 26-year-old citizen and national of Honduras. *Id.* Ulloa Escobar is seeking political asylum for being an active member of and activist for the Liberal Party of Honduras, which he and his family have supported since 2016. (Instrument No. 11-3 at 5). On June 1, 2020 Ulloa Escobar was paroled and released. (Instruments No. 19 at 8; No. 19-1 at 2-6). Currently, Ulloa Escobar is in New Jersey. *Id.*

With the exception of Ulloa Escobar, Petitioners have sought parole and ICE has denied it. (Instrument No. 9-1 at 7).

B.

While Petitioners were detained at the Facility, the novel coronavirus that caused COVID-19 began spreading throughout the world and was declared to be a pandemic. *See, e.g.*, Jamie Ducharme, *World Health organization Declares COVID-19 a 'Pandemic.' Here's What That Means*, Time (March 11, 2020), https://time.com/5791661/who-coronavirus-pandemic-declaration/. As of July 6, 2020, there were over 2.8 million confirmed cases of COVID-19 in the United States. *Cases in the U.S.*, Coronavirus Disease 2019 (COVID 2019), https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last visited July 6, 2020). As of June 16, 2020, over 68,000 people in state and federal prisons nationwide had tested positive for COVID-19. (Instrument No. 9-1 at 14; No. 10-25 at 2). As of June 2, 2020, ICE tested 2,781 detainees under its custody and over half had tested positive for COVID-19. (Instrument No. 10-15 at 4). To date, the Facility has reported 44 confirmed cases of COVID-19—an infection rate of approximately fourteen percent—and one death due to COVID-19.

(Instrument No. 10-15 at 3). At the motion hearing, Respondents reported that there are currently only three active COVID-19 cases in the Facility.

Petitioners allege that it is impossible for detainees to take prophylactic measures recommended by the Centers for Disease Control and Prevention ("CDC") to prevent exposure to COVID-19. (Instrument No. 9 at 15). Petitioners state that there was a lack of personal protective equipment and cleaning supplies to sanitize common areas, cramped sleeping quarters, and inability to engage in social distancing. (Instrument No. 9-1 at 14-15). Petitioners allege that the Facility does not sanitize the shared toilets, sinks, and showers. *Id.* Detainees are only able to clean the common bathrooms with the rationed soap and shampoo they are given for bathing. (Instruments No. 9-1 at 15; No. 11 at 2 ¶ 7). Morales-Diaz states that he is detained with 35 other detainees in a room measuring 15 meters by 7 meters. (Instrument No. 11 at 3). La O Munoz claims that he shares a room with 33 other detainees with such proximity that it is difficult to access his bunk. *Id.* Petitioners also allege a high turnover of the detained population in the Facility and a high traffic flow consisting of staff, contractors, and vendors that engage with the Facility on a daily basis. (Instrument No. 9-1 at 13-14). Petitioners state that their dormitories are poorly ventilated and that they are not permitted to spend time outside where it is known to be less risky to contract the virus. (Instrument No. 11 at 3). Petitioners also allege that Respondents offered to provide face masks if the detainees signed a document that was neither translated into, nor explained in, Spanish. (Instrument No. 11 at 3). Petitioners contend that those who resisted signing the document faced aggression and threats from ICE agents and/or officials. *Id.*

Respondents state that the Facility has been providing consistent medical care and has had an evolving response to the growing pandemic. (Instrument No. 19 at 7, 16). This includes utilizing ICE epidemiologists to track the outbreak, preventing visitors from entering the Facility,

and holding sessions on best practices and symptoms of COVID-19. (Instruments No. 19 at 16-17; 19-3 at 2-3, 6). Respondents state that the Facility is operating at twenty percent of its maximum capacity, with only 303 detainees currently in the Facility. (Instrument No. 19-3 at 5). Each housing unit in the Facility hosts between 10 to 36 detainees each. *Id.* Bunk beds in these housing units are slightly under six feet apart from each other. *Id.* At the hearing, Respondents state that if the bunk beds are adjacent to each other, a metal divider separates the two adjoining beds and detainees sleep in every other bed to encourage social distancing. *See also* (Instrument No. 19-7 at 5). Detainees are provided meals in the housing units to minimize movement and cleaning supplies so they can clean the common showers, toilets, sinks, tables, and common areas between uses. (Instruments No. 19 at 17; No. 19-3 at 5-6). At the motion hearing, Respondents stated that detainees are able to receive additional cleaning supplies and masks upon request. Respondents also assert that they have increased sanitization of the common areas, provided masks to detainees, and limited movement between detention centers. *Id.* at 17-18. Respondents allege that incoming detainees and staff are screened for COVID-19 before entering the Facility. *Id.* Lastly, Respondents claim that the Facility has limited the transfer and movement of detainees among the detention centers and that the Facility is not allowing visitors. *Id.* at 18.

On June 23, 2020, Petitioners filed their Petition for Writ of Habeas Corpus. (Instrument No. 1). Petitioners challenge the constitutionality of their continued detention under the Fifth Amendment to the Constitution, in light of the COVID-19 pandemic. (Instrument No. 9-1 at 7).

On June 26, 2020, Petitioners filed their Motion for Temporary Restraining Order. (Instrument No. 9). On June 29, 2020, Respondents filed their Response. (Instrument No. 19).

On June 30, 2020, the Court held a hearing on the Petitioners' Motion for Temporary Restraining Order.

At the hearing, Petitioners clarified that in light of the additional information provided by Respondents, their remaining Fifth Amendment allegations were based on the following issues: 1) no hand sanitizer, 2) no gloves, 3) only one mask provided per detainee, 4) limited Facility signage in Spanish, and 5) failure to provide COVID-19 testing for all detainees and staff.

II.

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). To obtain a temporary restraining order or a preliminary injunction, a plaintiff must show the following:

> (1) a substantial likelihood that the plaintiff will prevail on the merits;
> (2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is not granted;
> (3) a showing that the threatened injury to the plaintiff outweighs the potential harm to the defendants if the injunctive relief is not granted; and
> (4) a showing that issuance of the injunction will not disserve the public interest.

Allied Mktg. Grp., Inc. v. CDL Mktg., Inc., 878 F.2d 806, 809 (5th Cir. 1989). When the government is a party, such as here, "its interest and harm merges with that of the public." *See Planned Parenthood v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013).

The decision whether to grant a temporary restraining order is within the sound discretion of the district court. *Id.* A party is not required to prove his case in full at the temporary restraining order hearing and the evidence presented at the hearing may be less complete than in a trial on the merits. *Camenisch*, 451 U.S. at 395. However, a temporary restraining order is "an

extraordinary remedy" that courts should only grant if the moving party has clearly carried its burden of persuasion with respect to all four factors. *Allied Mktg.*, 878 F.2d at 809.

As a tool of equity, temporary restraining orders can be mandatory, in that it mandates a specific course of conduct or the performance of an affirmative act. *State of Ala. v. United States*, 304 F.2d 583, 590 (5th Cir. 1962), *aff'd sub nom. Alabama v. United States*, 371 U.S. 37 (1962). Mandatory preliminary relief is "particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976); *see also United States v. Texas*, 601 F.3d 354, 362 (5th Cir. 2010).

III.

Petitioners seek a temporary restraining order, directing Respondents to release Petitioners from detention immediately as a remedy for the ongoing Fifth Amendment due process violation. (Instrument No. 9-1 at 8).

A.

Petitioners argue that their continued, prolonged detention at the Facility violates their Fifth Amendment due process rights. (Instrument No. 19-1 at 17). Petitioners further contend that Respondent violated their due process rights because during their prolonged detention they have been subjected to conditions that bear no reasonable relationship to a legitimate governmental interest. *Id.*

Respondents argue that Petitioners (1) are unable to invoke habeas corpus to challenge their conditions of confinement and (2) fail to plead a constitutional violation. (Instrument No. 19 at 11-14).

As a preliminary matter, Respondents argue that, because Ulloa Escobar was no longer detained in the Facility when Petitioners filed their Petition for Writ of Habeas Corpus, his case

is moot. (Instrument No. 19 at 8). Indeed, Petitioners conceded this point. (Instrument No. 20 at 1). Thus, the Court renders his claim moot.

1.

As a preliminary matter, during the motion hearing, parties disputed what statute governed Petitioners' detention. Respondents argued that Petitioners are presently subject to mandatory detention under 8 U.S.C. § 1225(b). *See* (Instrument No. 21). Petitioners argued that they are subject to discretionary detention under 8 U.S.C. § 1226(a). (Instruments No. 20; No. 22). In either case, habeas claims are permissible to challenge detention under both 8 U.S.C. §§ 1225(b) and 1226(a). *See Jennings v. Rodriquez*, 138 S. Ct. 830, 837-39 (2018) (considering habeas petition challenging indefinite detention under 8 U.S.C §§ 1225(b) and 1226(a)); *Demore v. Kim*, 538 U.S. 510, 517 (2003) (holding that habeas petitions are permissible to challenge detention under 8 U.S.C. § 1226(c)). Therefore, the Court need not decide this issue here.

Petitioners argue that their habeas claim involves a fact of confinement issue or, in the alternative, a conditions of confinement issue. *See generally* (Instrument No. 9). Petitioners argue that this is a fact of confinement issue because of the fact that they are confined during a pandemic and the prolonged duration of confinement. Respondents argue that Petitioners assert a conditions-of-confinement issue. (Instrument No. 19 at 11). Because of this, Respondents contend, Petitioners are unable to invoke habeas corpus when seeking injunctive relief unrelated to the unlawfulness or cause of their detention. *Id.* at 11-13. Respondents assert that a civil rights action, not habeas, is the appropriate vehicle for this issue. *Id.* at 12.

Petitioners argue that this is a fact of confinement case because they are being held at the Facility indefinitely, however, Respondents make clear that Petitioners have their final merits hearing on July 7, 2020 and July 9, 2020. *See* (Instruments No. 9-1 at 19; No. 19 at 8-9).

Moreover, central to Petitioners' argument is that they are detained during a pandemic and the Facility has taken insufficient prophylactic measures to prevent exposure to COVID-19. *See* (Instrument No. 9-1 at 18-20). Petitioners fail to point to case law—and the Court knows of none—that allows conditions of confinement to be considered for fact or duration of confinement cases. *Cf., e.g., Zadvydas v. Davis*, 533 U.S. 678, 678-702 (2001) (analyzing a fact or duration of confinement case without considering confinement conditions). Since Petitioners' argument stems from the conditions in which they are confined, the Court finds that this is a conditions-of-confinement case.

Respondents argue that habeas is not available to review conditions of confinement issues. (Instrument No. 19 at 12-13). Respondents heavily rely on district court cases to argue that precedent in the Fifth Circuit bars Petitioners' claims. *Id.* at 13; (Instrument No. 21 at 2-3) (citing to eight district court cases).

District courts have jurisdiction over petitions for writ of habeas corpus where a petitioner is "in custody in violation of the Constitution or law or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see INS v. St. Cyr.*, 533 U.S. 289, 305 (2001). While typically habeas is used to challenge the fact or duration of confinement and civil rights actions are used to challenge conditions of confinement, the line distinguishing the two is "a blurry one." *Poree v. Collins*, 866 F.3d 235, 242-43 (5th Cir. 2017) (quoting *Cook v. Tex. Dep't of Criminal Justice Transitional Planning Dep't*, 37 F.3d 166, 168 (5th Cir. 1994)). A habeas corpus petition is an appropriate vehicle for noncitizens to challenge the fact of their civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. at 688. The Supreme Court has deliberately "left open the question whether [detainees] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862-63 (2017).

Even the Fifth Circuit has been "less clear" on the categorization of claims. *See Poree*, 866 F.3d at 243-44. *Compare, e.g.*, *Carson v. Johnson*, 112 F.3d 818, 821 (5th Cir. 1997) (creating a bright line rule to determine when habeas is appropriate) *and Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir. 1993) (holding that a detainee cannot avail himself of the writ of habeas corpus when seeking injunctive relief unrelated to the cause of his detention) *with Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017) *and Coleman v. Dretke*, 409 F.3d 665, 670 (5th Cir. 2005) (per curiam) (noting that the Fifth Circuit has not held that certain claims must be brought under § 1983 rather than habeas). This blurred line has created a split amongst our district courts as well. *Compare, e.g.*, *Cureno Hernandez v. Mora*, No. 1:20-CV-000104-H, 2020 WL 3246753, at *4 (N.D. Tex. June 15, 2020) (dismissing habeas claims related to conditions of confinement because it was the improper vehicle for that issue) *with Vazquez Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 1904497, at *3 (S.D. Tex. Apr. 17, 2020) (holding that habeas was appropriate for detainee's conditions-of-confinement case). However, even when the Fifth Circuit dismissed the use of habeas corpus for conditions-of-confinement claims, the Court acknowledged that the distinction is muddled when a detainee challenges confinement conditions that affect the timing of his release from custody. *See, e.g.*, *Carson*, 112 F.3d at 821. At minimum, if a challenge to the conditions of confinement would entitle a detainee to accelerated release, "then the challenge must be pursued by writ of habeas corpus." *Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995), *cert. denied*, 516 U.S. 1059 (1996); *see Carson*, 112 F.3d at 821.

It is clear that the conditions-of-confinement issues do not neatly fall into habeas or § 1983 claims and the Court need not solve this debate today. Instead, for the purpose of resolving Petitioners' claim, the Court will follow sister district courts that have allowed habeas claims for conditions-of-confinement issues. At the very least, Petitioners' claim falls within the bright line

rule stated in *Carson*, as Petitioners seek immediate release from detention due to the inadequate conditions. A favorable determination on this issue would result in the accelerated release of Petitioners. Because Petitioners are challenging the constitutionality of their detention and seek relief in the form of their immediate relief, Petitioners appropriately invoked habeas corpus.

2.

Respondents first argue that Petitioners are unable to bring direct constitutional claims in the Fifth Circuit. (Instrument No. 19 at 14). However, Respondents fail to recognize that Petitioners are not asserting a standalone constitutional claim but, rather, a writ of habeas corpus on the basis of a Fifth Amendment due process violation. Therefore, Petitioners are appropriately bringing their constitutional claim.

Having determined that Petitioners are able to bring their Fifth Amendment claim, the Court turns to the merits of the claim. Respondents argue that even if Petitioners' direct constitutional due process claim were cognizable, Petitioners fail to plead the claim. (Instrument No. 19 at 14).

The State cannot punish pretrial civil detainees. *See Cadena v. El Paso Cty.*, 946 F.3d 717, 727 (5th Cir. 2020); *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996). Immigration detainees, as civil detainees, are entitled to the same constitutional due process protections as pretrial detainees. *See Zadvydas v. Davis*, 533 US. 678, 690 (2001). There is no special justification for indefinite civil detention. *Id.* at 690.

In situations where the constitutional violation resulted from an episodic act or omission of a state actor, a plaintiff must show deliberate indifference on the part of the municipality. *Duvall v. Dallas Cty., Tex.*, 631 F.3d 203, 207 (5th Cir. 2011). In cases based on the unconstitutional conditions of confinement, a plaintiff must show that the condition at issue has

"no reasonable relationship to a legitimate governmental interest." *Duvall*, 631 F.3d at 207. "[E]ven where a State may not want to subject a detainee to inhumane conditions of confinement or abusive jail practices, its intent to do so is nevertheless presumed when it incarcerates the detainee in the face of such known conditions and practices." *Hare*, 74 F.3d at 644. Because this case is grounded in the unconstitutional conditions of confinement, Petitioners must meet the reasonable-relationship test.

To prevail on a conditions of confinement case, a plaintiff must (1) identify "a rule or restriction," or "an identifiable intended condition or practice," or "that the jail official's acts or omissions were sufficiently extended or pervasive[,]" show that it (2) "was not reasonably related to a legitimate governmental objective," and that it (3) "caused the violation of [the plaintiff's] constitutional rights." *Duvall*, 631 F.3d at 207.

Petitioners provide evidence to identify an "intended condition." Respondents contend that Petitioners impermissibly proffer hearsay statements and newspaper articles to demonstrate the intended condition. (Instrument No 19 at 15). However, district courts are permitted to rely on hearsay evidence at the preliminary injunction stage. *See Federal Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987). Thus, the Court is permitted to consider the Petitioners' evidence at this stage of the case.

To identify an "intended condition," Petitioners' Motion presents a list of inadequacies that overwhelmed the Facility's ability to safeguard detainees from exposure to COVID-19. As detailed in the factual summary of this Order, Petitioners stated—among other things—that there was a lack of personal protective equipment and cleaning supplies to sanitize common areas, cramped sleeping quarters, and inability to engage in social distancing. (Instrument No. 9-1 at 14-15). Petitioners also observed a high turnover of the detained population in the Facility and

high traffic flow consisting of staff, contractors, and vendors that engage with the Facility on a daily basis. (Instrument No. 9-1 at 13-14). In its Response, the Government provided an updated account of the measures the Facility has taken to prevent COVID-19 exposure. *See* (Instrument No. 19 at 16-18). At the hearing, counsel amended the identified condition based on the Government's updated account. What was initially an insurmountable list of grievances has now whittled down to a handful of concerns: no hand sanitizer provided, no gloves provided, only one mask provided per detainee, limited Spanish signage throughout the Facility, and failure to provide COVID-19 testing for all detainees and staff.

The modified list of intended conditions identified at the hearing is a significant departure from those identified in Petitioners' Motion. This modified list of inadequacies fails to show an intended condition or pervasive omission to act that bears no reasonable relationship to a legitimate governmental purpose. Conversely, it demonstrates that the Facility has taken significant steps to minimize detainees' exposure to COVID-19. As stated at the motion hearing, the Facility is operating at twenty percent of its maximum capacity to accommodate for social distancing, providing cleaning supplies for detainees to sanitize shared facilities before use, holding informational sessions on COVID-19 for detainees and staff, and limiting transfers among detention centers. *See also* (Instruments No. 19 at 17; No. 19-2 at 3-4). At the motion hearing, Respondents stated that detainees can receive additional cleaning supplies and masks. Additionally, staff and detainees are screened upon entering the Facility with questionnaires and temperature checks. (Instruments No. 19 at 17; No. 19-2 at 3-4). While COVID-19 testing is limited to asymptomatic detainees, this policy reasonably relates to a legitimate governmental purpose of rationing supplies and operating within possible budgetary restrictions. The measures implemented by the Facility do not show a systemic failure of medical care that the Fifth Circuit

typically finds to be an unconstitutional condition of confinement. *See Brown v. Bolin*, 500 F. App'x 309, 313 (5th Cir. 2012). In contrast, they show that the Facility learned how to control the spread of COVID-19 and implemented known measures to control the situation. *Cf. Duvall*, 631 F.3d at 208 (holding that there was an unconstitutional condition of confinement because the County jail was aware of the spread of bacterial infection where it housed inmates but did not implement known measures to eradicate the situation). Thus, because Petitioners have not identified an intended condition that bears no reasonable relationship to a legitimate governmental purpose, Petitioners have not shown that there is an unconstitutional condition of confinement at this time.

Accordingly, Petitioners have not demonstrated a substantial likelihood of success on the merits.

B.

Even if Petitioners did show that there was a substantial likelihood of success on the merits, Petitioners fall short of showing irreparable injury. Petitioners allege that there is a threat of imminent harm that warrants immediate relief. (Instrument No. 9-1 at 20). Respondents argue that Petitioners are unlikely to suffer irreparable injury because Petitioners do not have underlying medical conditions that make them more susceptible for COVID-19 nor would cause irreparable injury if they were to contract the virus that causes COVID-19. (Instrument No. 19 at 19).

A party seeking immediate injunctive relief need only show a "significant threat" of "imminent" injury. *Humana, Inc. v. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986). However, a party need not show that the threatened harm has already occurred. *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004) (holding that a prisoner

"does not need to show that death or serious illness has yet occurred to obtain relief."). Nor does the party need to show that the harm is inevitable. *Humana*, 804 F.2d at 1394.

Petitioners have proffered evidence that there have been confirmed cases of COVID-19 in the Facility. While there is a risk that they could be exposed to COVID-19, the risk is reduced given the extensive measures Respondents have recently implemented to prevent exposure to COVID-19. Additionally, Petitioners have final hearings on the merits of their asylum case scheduled within the next few days. Sanchez-Valdes's final hearing on the merits is scheduled for July 7, 2020. (Instrument No. 19 at 9). La O Munoz and Morales-Diaz have their final hearings on the merits scheduled for July 9, 2020. *Id.* at 8-9. Because Petitioners have final merit hearings scheduled that could potentially result in their release and the Facility has taken significant steps to minimize COVID-19 exposure, there is a low likelihood of irreparable harm.

Thus, the Court finds that Petitioners have not shown irreparable injury. Because the Court finds that Petitioners have failed to satisfy the first two prongs to obtain a temporary restraining order, the Court need not address the final prong.

V.

For the foregoing reasons, Petitioners' Motion for a Temporary Restraining Order is **DENIED**. **(Instrument No. 9).**

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this 6th day of July, 2020.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE