

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AARON HOPE,	:	1:20-cv-562
<i>et al.</i> ,	:	
Petitioners-Plaintiffs,	:	
	:	
v.	:	Hon. John E. Jones III
	:	
CLAIR DOLL, <i>in his official capacity</i>	:	
<i>as Warden of York County Prison,</i>	:	
<i>et al.</i> ,	:	
Respondents-Defendants.	:	

MEMORANDUM AND ORDER

April 7, 2020

Pending before the Court is the Motion for Temporary Restraining Order and/or Preliminary Injunction filed by Petitioners-Plaintiffs Aaron Hope, Iwan Rahardja, Jesus De La Pena, Rakibu Adam, Duc Viet Lam, Yelena Mukhina, Nashom Gebretinsae, Ismail Muhammed, Glenn Weithers, Konstantin Bugarenko, Brisio Balderas-Dominguez, Viviana Ceballos, Wilders Paul, Marcos Javier Ortiz Matos, Alexander Alvarenga, Armando AVECILLA, Coswin Ricardo Murray, Edwin Luis Crisostomo Rodriguez, Eldon Bernard Briette, Dembo Sannoh, Jesus Angel Juarez Pantoja and Alger Fracois, (collectively “Petitioners”). (Doc. 5).

For the reasons that follow, the temporary restraining order shall be granted and the Respondents shall be directed to immediately release Petitioners today on their own recognizance.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioners are a diverse group of individuals from around the world who are being held in civil detention by Immigration and Customs Enforcement, (“ICE”), at York County Prison and Pike County Correctional facility, (“the Facilities”), while they await final disposition of their immigration cases.

Each Petitioner suffers from chronic medical conditions and faces an imminent risk of death or serious injury if exposed to COVID-19. Hope is 32 years old and has serious respiratory problems that have led to his hospitalization for pneumonia. He also has sleep apnea and high blood pressure. (Doc. 1, ¶ 3).

Rahardja is 51 years old and suffers from diabetes and hypertension.

(Doc. 1, ¶ 4). De La Pena is 37 years old and suffers from severe asthma and hypertension and is over-weight. (Doc. 1, ¶ 5). Adam, 34 years old, suffers from asthma and high blood pressure. (Doc. 1, ¶ 6). Viet Lam is 50 years old and suffers from diabetes and high blood pressure. *Id.* at ¶ 7. Mukhina is 35 years old and suffers from asthma, a heart murmur, and hepatitis C, and has a history of blood clots and seizures. (Doc.1, ¶ 8). Gebretnisae is 28 years old and suffers from Cn’s arthritis and nerve pain, requiring many medications. (Doc. 1, ¶ 9).

Muhammed is 69 years old and suffers from asthma, is pre-diabetic, and has recently lost a significant amount of weight. (Doc. 1, ¶ 10). Weithers is 59 years old and suffers from emphysema and chronic obstructive pulmonary

disease. (Doc. 1, ¶ 11). Bugarenko, age 49, suffers from pre-diabetes, high blood pressure, and diverticulitis, as well as debilitating pain that inhibits his ability to walk. (Doc. 1, ¶ 12). Baldarez-Domingez is 47 years old and suffers from diabetes, atrial fibrillation, and high blood pressure. (Doc. 1, ¶ 13).

Ceballos, 56 years old, suffers from high blood pressure. (Doc. 1, ¶ 14). Paul is 32 years old and suffers from traumatic brain injury, seizures, and headaches. (Doc. 1, ¶ 15).

Matos is 32 years old and suffers from diabetes. (Doc. 1, ¶ 16).

Alvargena, age 46, suffers from diabetes, high blood pressure, atrial fibrillation, high cholesterol, and partial physical disability from a prior accident. (Doc. 1, ¶ 17). Avecilla is 53 years old and suffers from diabetes. (Doc. 1, ¶ 18). Murray is 45 years old and suffers from asthma but has been unable to obtain an inhaler. (Doc. 1, ¶ 19). Rodriguez is 31 years old and suffers from asthma. (Doc. 1, ¶ 20). Briette is 46 years old and suffers from diabetes, high blood pressure, high cholesterol, depression, and anxiety. (Doc. 1, ¶ 21). Sannoh, 41 years old, suffers from diabetes requiring daily medication. (Doc. 1, ¶ 22). Pantoja is 36 years old and suffers from asthma, sleep apnea, and high blood pressure. (Doc.

1, ¶ 23). Francois is 45 years old and suffers from hypertension, pain when he urinates, and swollen feet. (Doc. 1, ¶ 24).¹

Named as Respondents are: Clair Doll, Warden of York County Prison; Craig A. Lowe, Warden of Pike County Correctional Facility; Simona Flores-Lund, Field Office Director, ICE Enforcement and Removal Operations; Matthew Albence, Acting Director of ICE; and Chad Wolf, Acting Secretary of the Department of Homeland Security.

II. DISCUSSION

We had occasion to consider the substantially same set of circumstances less than a week ago in our opinion *Thakker v. Doll*, No. 1:20-CV00480 (M.D. Pa. Mar. 31, 2020) (Jones, J.) (discussing in-depth the potential severity of COVID-19, its prevalence across the globe, and its impact upon ICE detention facilities in particular). We now begin our analysis of Petitioners' claims guided by our previous findings.

i. Legal Standard

Courts apply one standard when considering whether to issue interim injunctive relief, regardless of whether a petitioner requests a temporary restraining order ("TRO") or preliminary injunction. *See Ellakkany v. Common Pleas Court of*

¹ We have previously held that ICE detainees have the requisite standing to bring claims based upon imminent contraction of COVID-19, and that a *habeas* petition is the proper vehicle to do so. *Thakker v. Doll*, No. 1:20-CV00480, at 5-6 (M.D. Pa. Mar. 31, 2020).

Montgomery Cnty., 658 Fed.Appx. 25, 27 (3d Cir. July 27, 2016) (applying one standard to a motion for both a TRO and preliminary injunction). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Apple Inc. v. Samsung Electronics Co.*, 695 F.3d 1370, 1373–74 (Fed. Cir. 2012) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365 (2008)).

The Supreme Court has emphasized that “a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *Apotex Inc. v. U.S. Food and Drug Admin.*, 508 F.Supp.2d 78, 82 (D.D.C. 2007) (“Because interim injunctive relief is an extraordinary form of judicial relief, courts should grant such relief sparingly.”). “Awarding preliminary relief, therefore, is only appropriate ‘upon a clear showing that the plaintiff is entitled to such relief.’” *Groupe SEC USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 197 (3d Cir. 2014) (quoting *Winter*, 555 U.S. at 22).

ii. Irreparable Harm

COVID-19 is a novel coronavirus that causes “serious, potentially permanent, damage to lung tissue, and can require extensive use of a ventilator. [20-cv-562, Doc. 3, Ex. 2]. The virus can also place greater strain on the heart muscle and can cause damage to the immune system and kidneys. (*Id.*)” *Thakker* at 10.

Because of these potentially catastrophic complications, COVID-19 has radically transformed our everyday lives in ways previously inconceivable. Most of the county can no longer leave their homes unless absolutely necessary.² “Large portions of our economy have come to a standstill. Children have been forced to attend school remotely. Workers deemed ‘non-essential’ to our national infrastructure have been told to stay home.” *Thakker*. at 4. Indeed, the World Health Organization (“WHO”) has declared a global pandemic³ in light of the

² Sarah Mervosh, Denise Lu, and Vanessa Swales, “See Which States and Cities have Told Residents to Stay at Home,” *NEW YORK TIMES*, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> (last accessed April 7, 2020).

³ The World Health Organization (“WHO”) officially declared COVID-19 as global pandemic on March 11, 2020. *See WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020*, WORLD HEALTH ORGANIZATION, (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

stark realities we now face: over one million people worldwide have contracted COVID-19. Well over sixty thousand have perished as a result.⁴

Less than one week ago, we found that the threat of a COVID-19 outbreak in the Facilities constituted irreparable harm to substantially similar Petitioners, despite the fact that there were, at that time, *no* confirmed cases of COVID-19 in the Facilities. *Thakker*, at 7-19.⁵ In so doing, we noted that “it is not a matter of *if* COVID-19 will enter Pennsylvania prisons, but *when* it is finally detected therein.” *Id.* at 8 (emphasis in original).

We have, unfortunately, been proven correct in this regard. As of the time of this writing, the Pike County Correctional Facility has officially reported that four ICE detainees housed therein have tested positive for COVID-19.⁶ Four Pike County Correctional employees have also tested positive. (Doc. 6, Ex. 3). An additional detainee at York County Prison has also tested positive. *See ICE Latest Statement*. And we can only assume that these numbers may well be much higher

⁴ See *Coronavirus Disease (COVID-19) Pandemic*, WORLD HEALTH ORGANIZATION, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> (last accessed April 7, 2020).

⁵ In *Thakker*, we considered the potential harm faced by ICE detainees in county prisons located in York, Pike, and Clinton Counties, finding that there was a high likelihood that Petitioners would face severe complications, and even death, should they contract COVID-19 in the Facilities—which we found to be a likely outcome of their continued detention. *Thakker* 7-19. Here, we again consider the likelihood of irreparable harm in two of those same facilities: those in York and Pike Counties.

⁶ *ICE Latest Statement*, ICE GUIDANCE ON COVID-19, <https://www.ice.gov/coronavirus#wcm-survey-target-id> (last accessed April 7, 2020).

than reported—we have allegations before us that requests by detainees for COVID-19 tests have not been granted, despite explicit knowledge that the virus has entered the Facilities. (Doc. 6, Ex. 7).

We also have further declarations that no effective containment measures have been put into place to protect Petitioners.⁷ Officers and medical staff, who regularly leave the confines of the Facilities and have ample opportunities to contract the virus elsewhere, do not reliably wear gloves and masks when interacting with inmates. (Doc. 3, Ex. 17; Doc. 3, Ex. 16, Doc. 3, Ex. 4; Doc. 3, Ex. 8; Doc. 3, Ex. 23). Temperature checks are infrequently conducted, even among detainees who had close contact with others who have since tested positive. (Doc. 3, Ex. 23). The cell blocks which housed those who test positive are not thoroughly evacuated and cleaned to prevent the spread. (Doc. 3, Ex. 4). We even have reports that detainees exhibiting COVID-like symptoms are remaining in general housing for days, and that once they are quarantined, no testing is being provided to those who remain. (Doc. 3, Ex. 8).

We have previously discussed in great detail how the incursion of COVID-19 into ICE detention facilities could result in catastrophic outcomes, particularly in light of the grim conditions present in these specific Facilities. *See Thakker* at

⁷ We have previously discussed the overcrowding and unsanitary conditions present at these Facilities. *See Thakker* at 14-15.

14-15. It now seems that our worst fears have been realized—COVID-19 is spreading, and not nearly enough is being done to combat it. We cannot allow the Petitioners before us, all at heightened risk for severe complications from COVID-19, to bear the consequences of ICE’s inaction. We therefore find that irreparable harm faces the Petitioners before us should they contract COVID-19.⁸

iii. Likelihood of Success on the Merits

Petitioners argue that they are “likely to establish a due process violation through conditions of confinement that expose them to the serious risks associated with COVID-19.” (Doc. 6 at 13). For the reasons that follow, we agree.

As we previously stated in *Thakker*, Petitioners must show that their conditions of confinement “amount to punishment of the detainee.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). “To determine whether challenged conditions of confinement amount to punishment, this Court determines whether a condition of confinement is reasonably related to a legitimate governmental objective; if it is not, we may infer ‘that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees *qua* detainees.’” *E. D. v. Sharkey*, 928 F.3d 299, 307 (3d Cir. 2019) (quoting *Hubbard v. Taylor*, 538 F.3d

⁸ Many of our sister courts across the nation have agreed with our conclusion. See *Thakker* at 16-19.

229, 232 (3d Cir. 2008)). We therefore ask whether the conditions imposed are rationally related to a legitimate government purpose. They are not.

We previously held, considering the present living conditions present at the *same detention Facilities* now at issue here, that, “we can see no rational relationship between a legitimate government objective and keeping Petitioners detained in unsanitary, tightly-packed environments—doing so would constitute a punishment to Petitioners.” *Thakker* at 20-21. There is no indication that there has been an improvement in conditions at the Facilities. Indeed, all indications point towards the contrary. There are now individuals who have tested positive at both Facilities,⁹ and we have further accusations that those situations are not being properly contained.¹⁰ “Considering, therefore, the grave consequences that will result from an outbreak of COVID-19, particularly to the high-risk Petitioners in this case, we cannot countenance physical detention in such tightly-confined, unhygienic spaces.” *Thakker* at 21.

We further note that Respondents previously proffered legitimate government objective holds no greater sway here than it did in *Thakker*. The Respondents had

⁹ *ICE Latest Statement, ICE GUIDANCE ON COVID-19*, <https://www.ice.gov/coronavirus#wcm-survey-target-id> (last accessed April 7, 2020).

¹⁰ *See* Doc. 3, Ex. 17; Doc. 3, Ex. 16, Doc. 3, Ex. 4; Doc. 3, Ex. 8; Doc. 3, Ex. 23 (alleging that proper medical protective equipment is not being used by Facility staff, that temperature checks and COVID-19 testing are not being performed on detainees in close contact with the virus, and that proper cleaning of housing blocks is not taking place).

maintained that “preventing detained aliens from absconding and ensuring that they appear for removal proceedings is a legitimate governmental objective.” (*Thakker*, 20-cv-480, Doc. 35 at 38). However, “we note that ICE has a plethora of means *other than* physical detention at their disposal by which they may monitor civil detainees and ensure that they are present at removal proceedings, including remote monitoring and routine check-ins. Physical detention itself will place a burden on community healthcare systems and will needlessly endanger Petitioners, prison employees, and the greater community. We cannot see the rational basis of such a risk.” *Thakker* at 21-22. We therefore find that Petitioners are likely to succeed on the merits of their due process “conditions of confinement” claim.¹¹

¹¹ As previously discussed in *Thakker*, we also think it likely Petitioners will prevail under the more exacting Eighth Amendment standards as well. To succeed on an Eighth Amendment conditions of confinement claim, the Petitioners must show: (1) the deprivation alleged must objectively be “sufficiently serious,” and (2) the “prison official must have a sufficiently culpable state of mind,” such as deliberate indifference to the prisoner’s health or safety. See *Thomas v. Tice*, 948 F.3d 133, 138 (3d Cir. 2020) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). “COVID-19 has been shown to spread in the matter of a single day and would well prove deadly for Petitioners. Such a risk is objectively ‘sufficiently serious.’” *Thakker* at n.15. Furthermore, we note that authorities can be “deliberately indifferent to an inmate’s current health problems” when they “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” including “exposure of inmates to a serious, communicable disease,” even when “the complaining inmate shows no serious current symptoms.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). There is no requirement that Petitioners show that “they actually suffered from serious injuries” to succeed on this claim. See *Helling*, 509 U.S. at 33. “The current measures undertaken by ICE, including ‘cohorting’ detainees, are patently ineffective in preventing the spread of COVID-19,” as is now evidenced by multiple positive COVID-19 tests in both Facilities. *Thakker* at n.15.

iv. Balancing of the Equities and Public Interest

The equities at issue and public interest “weigh heavily in Petitioners’ favor.” *Thakker* at 23. We have already noted that Petitioners face a very real risk of serious COVID-19 complications. We also find that Respondents face very little potential harm from Petitioner’s immediate release. While we “agree that preventing Petitioners from absconding. . . is important, we note that Petitioners’ failure to appear at future immigration proceedings would carry grave consequences of which Petitioners are surely aware. Further, it is our view that the risk of absconding is low, given the current restricted state of travel in the United States and the world during the COVID-19 pandemic.” *Id.*

Finally, the public interest strongly encourages Petitioners’ release. “As mentioned, Petitioners are being detained for civil violations of this country’s immigration laws. Given the highly unusual and unique circumstances posed by the COVID-19 pandemic and ensuing crisis, ‘the continued detention of aging or ill civil detainees does not serve the public’s interest.’” *Thakker* at 23 (citing *Basank*, 2020 WL 1481503, *6; see also *Fraihat v. U.S. Imm. and Customs Enforcement*, 5:19 Civ. 1546, ECF No. 81-11 (C.D. Cal. Mar. 24, 2020) (opining that “the design and operation of detention settings promotes the spread of communicable diseases such as COVID-19”); *Castillo v. Barr*, CV-20-00605-TJH (C.D. Cal. 2020)). Releasing these high-risk Petitioners, and therefore providing more space for effective social

distancing within the Facilities, will clearly benefit the surrounding areas. Rural hospitals will be less overwhelmed by potential detainee COVID-19 cases and there will be less of a risk that Facilities staff will carry the virus into their homes and communities. “Efforts to stop the spread of COVID-19 and promote public health are clearly in the public’s best interest, and the release of these fragile Petitioners from confinement is one step further in a positive direction.” *Thakker* at 23-24.

III. CONCLUSION

“In times such as these, 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. We now face a global pandemic in which the actions of each individual can have a drastic impact on an entire community. The choices we now make must reflect this new reality.” *Thakker* at 24.

We have before us clear evidence that the protective measures in place in the York and Pike County prisons are not working. We can only expect the number of positive COVID-19 cases to increase in the coming days and weeks, and we cannot leave the most fragile among us to face that growing danger unprotected.

We are mindful that judicial decisions such as these are both controversial and difficult for the public to absorb. It is all too easy for some to embrace the notion that individuals such as Petitioners should be denied relief simply because they lack citizenship in this country. However, Article III Courts do not operate according to

polls or the popular will, but rather to do justice and to rule according to the facts and the law.

Based on the foregoing, we shall grant the requested temporary restraining order. Respondents, and the York County Prison and Pike County Correctional Facility shall be ordered to immediately release the Petitioners **today** on their own recognizance without fail.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Petitioners' Motion for Temporary Restraining Order, (Doc. 5), is **GRANTED**.
2. Respondents, and the York County Prison and Pike County Correctional Facility **SHALL IMMEDIATELY RELEASE** the Petitioners **TODAY** on their own recognizance.
3. Petitioners will **SELF-QUARANTINE** in their respective homes for **FOURTEEN (14) DAYS** from the date of release.
4. This TRO will expire on April 20, 2020 at 5:00 p.m.
5. No later than noon on April 13, 2020, the Respondents shall **SHOW CAUSE** why the TRO should not be converted into a preliminary injunction.
6. The Petitioners may file a response before the opening of business on April 16, 2020.

s/ John E. Jones III

John E. Jones III
United States District Judge