

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REYNALDO ALBINO-MARTINEZ,
et al.,

Case No. 2:20-cv-10893

Petitioners,

HONORABLE STEPHEN J. MURPHY, III

v.

REBECCA ADDUCCI, et al.,

Respondents.

**OPINION AND ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS [1] AND
GRANTING IN PART AND DENYING IN PART PETITIONERS'
MOTION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE [23]**

On April 7, 2020, Petitioners filed a petition for a writ of habeas corpus ("Petition") and argued that they are being held in violation of their Fifth Amendment rights and that Petitioner Chinchilla-Flores is being held in violation of 8 U.S.C. § 1231(a)(6). ECF 1. Petitioners also filed a motion for leave to submit additional evidence in support of the Petition. ECF 23. The Court reviewed the briefs and finds that a hearing is unnecessary.¹ See E.D. Mich. LR 7.1(f)(2). For the following reasons, the Court will deny the Petition and grant in part and deny in part Petitioners' motion for leave to submit additional evidence.

¹ The briefing was comprehensive, the evidence was significant, and, after reviewing both, the result is clear.

BACKGROUND

Petitioners are five immigrant detainees—non-United States citizens detained by the federal government for violating United States immigration laws—who were at the federal government's Monroe detention facility ("Monroe") and St. Clair detention facility ("St. Clair") at the time the Petition was filed. ECF 1, PgID 6. Respondents include the United States Immigration and Customs Enforcement ("ICE"), Attorney General William Barr, Acting Secretary of the United States Department of Homeland Security Chad Wolf, and two ICE officials—Rebecca Adducci and Matthew T. Albence. *Id.* at 11–12. The Respondents are alleged collectively to be responsible for the Petitioners' detention.

Petitioners alleged that they were particularly vulnerable to the COVID-19 pandemic because they have certain pre-existing health conditions. *See id.* at 23–27. But Respondents denied that Petitioners are high risk individuals. ECF 21, PgID 496–501. Nevertheless, Petitioners alleged that, considering the COVID-19 pandemic, their continued detention while they awaited adjudication of their immigration cases or deportation violates their Fifth Amendment due process rights. *See* ECF 1, PgID 41–42. Petitioner Chinchilla-Flores also alleged that he should be released because he is "not significantly likely to be removed in the reasonably foreseeable future," in violation of 8 U.S.C. § 1231(a)(6). ECF 1, PgID 31. Petitioners have requested that the Court issue a writ of habeas corpus and order the Respondents to effectuate immediate release.

LEGAL STANDARD

28 U.S.C. § 2241 "is an affirmative grant of power to federal courts to issue writs of habeas corpus to prisoners being held in violation of the Constitution or laws or treaties of the United States." *Rice v. White*, 660 F.3d 242, 249 (6th Cir. 2011) (internal quotations and citations omitted). To succeed on a § 2241 petition, Petitioners must prove that they are detained "in violation of the Constitution [or laws] of the United States." *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970); *see also* 28 U.S.C. § 2241(c).

DISCUSSION

I. Remaining Petitioners

The initial Petitioners were five detainees held at both the Monroe and St. Clair detention facilities. But Petitioner Albino-Martinez, the only Petitioner held at the St. Clair detention facility, was released from custody on April 14, 2020, ECF 21-6, PgID 536, and Petitioner Chavez-Vargas was deported to Mexico on April 15, 2020, ECF 21-2, PgID 521. Because Albino-Martinez and Chavez-Vargas are no longer in ICE custody, their claims are moot. *See Prowell v. Hemingway*, 37 F. App'x 768, 770 (6th Cir. 2002). And because Albino-Martinez was the only Petitioner held in the St. Clair detention facility, any claims regarding that facility are likewise moot.

Additionally, Petitioner Aparicio-Navas was transferred to Louisiana on April 21, 2020, to be deported to Guatemala on April 22, 2020. ECF 27-1, PgID 638. His flight to Guatemala was canceled, and he is currently "detained at the Lasalle Correctional Center in Olla, Louisiana." *Id.* The Court therefore no longer has jurisdiction over Aparicio-Navas because "[t]he plain language of the habeas statute

[] confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Because Aparicio-Navas is no longer confined in the Eastern District of Michigan, the Court no longer has jurisdiction over his petition. And because the Court no longer has jurisdiction, "it cannot address the merits of" Aparicio-Navas's claim. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 917 (6th Cir. 1986). The Court therefore has jurisdiction only over the claims of Petitioners Doble and Chinchilla-Flores.

II. Motion to Submit Additional Evidence

On the same day they filed their reply brief, Petitioners moved for leave to file additional evidence. ECF 23. They specifically moved to introduce declarations from Petitioner Albino-Martinez, deportation officer Levi Schultz, Dr. Dora Schriro, and My Khanh Ngo, Esq. *Id.* at 616. Respondents objected to the Albino-Martinez and Schriro declarations. ECF 24. The Albino-Martinez declaration detailed conditions in the St. Clair detention facility, ECF 22-2, and the Schriro declaration detailed findings on immigration detention facilities nationwide, ECF 22-3.

As for the Albino-Martinez declaration, the parties agreed that his experiences at St. Clair are no longer at issue because he has been released. ECF 21, PgID 501; ECF 22, PgID 567. His declaration is therefore irrelevant, and the Court will deny Petitioners leave to file it.

The remaining declarations, including the Schriro declaration, are relevant. "[R]eply affidavits that respond only to the opposing party's brief are properly filed

with the reply brief." *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 476 (6th Cir. 2002). Here, the Schriro declaration focused on COVID-19 in jails and detention centers nationwide, ECF 22-3, and it was responsive to certain generic arguments Respondents made about ICE's activities throughout the United States, *see* ECF 21, PgID 505. The Court will grant Petitioners' motion to submit additional evidence as to each declaration except that of Albino-Martinez. The Court will consider the Schultz, Schriro, and Ngo declarations, but will order that the Albino-Martinez declaration be stricken from the record.

III. The Petition

Petitioners alleged that Respondents violated their Fifth Amendment rights, and Petitioner Chinchilla-Flores alleged that Respondents violated 8 U.S.C. § 1231(a)(6), because he is unlikely to be removed in the foreseeable future. *See* ECF 1, PgID 41–43. The Court will address each claim in turn.

A. *Fifth Amendment*

Petitioners alleged that Respondents subjected them "to a substantial risk of serious harm, in violation of" their Fifth Amendment due process rights. *Id.* at 41–42. It is well established that "[t]he Fifth Amendment prohibits punishment of pretrial detainees," *Watkins v. City of Battle Creek*, 273 F.3d 682, 686 (6th Cir. 2001) (citation omitted), and "immigration detainees are entitled to the same due process protections" as pretrial detainees, *E.D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019) (collecting cases). Petitioners, as immigrant detainees, are therefore entitled to Fifth Amendment due process protections. Here, though, because Petitioners

asserted "claims relating to health concerns," their claims are properly analyzed under the Eighth Amendment's deliberate indifference standard. *See Al-Sadoon v. Adducci*, No. 20-10699, 2020 WL 1808906, at *3 (E.D. Mich. Apr. 9, 2020) (citing *Watkins v. City of Battle Creek*, 273 F.3d 682, 685–86 (6th Cir. 2001)); *see also Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013). The Court will therefore analyze Petitioners' Fifth Amendment claims using that framework.

To succeed on an Eighth Amendment deliberate indifference claim, Petitioners must prove both objective and subjective components. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To satisfy the objective component, Petitioners must "show that, absent reasonable precautions, [they were] exposed to a substantial risk of serious harm." *Richko v. Wayne Cty. Mich.*, 819 F.3d 907, 915 (6th Cir. 2016) (citations omitted). To satisfy the subjective component, Petitioners must show that Respondents "subjectively perceived facts from which to infer a substantial risk to" Petitioners, that Respondents "did in fact draw the inference," and that Respondents "then disregarded that risk." *Id.* (internal citations and quotations omitted). The Court will address each component in turn.

Petitioners did not prove that they have objectively been exposed to a "substantial risk of serious harm." *Id.* It is undisputed that the Constitution imposes a duty on Respondents "to assume some responsibility for [Petitioners'] safety and general well being" while detained. *DeShaney v. Winnebago Cty. Dept. of Soc. Serv's*, 489 U.S. 189, 199–200 (1989). And Respondents may not "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering

in the" future. *Helling v. McKinney*, 509 U.S. 25, 33 (1993). But COVID-19 is not a condition of confinement that is sure or very likely to cause Petitioners serious illness in the future. Rather, all Americans, whether detained or not, face a risk of serious illness from COVID-19. *See, e.g., United States v. Steward*, No. S1:20-cr-0052(DLC), 2020 WL 1468005, at *1 (S.D.N.Y. Mar. 26, 2020) ("there is also no reason to find that [Petitioners] release would lessen the risk to [their] health presented by COVID-19").

COVID-19 has not breached the walls of the Monroe detention facility. ECF 22-1, PgID 579. And, as the Court found in its order denying Petitioners' motion for a temporary restraining order, "detention centers throughout the country 'are implementing health organizations['] recommendations for preventing the spread of the coronavirus.'" ECF 17, PgID 472 (quoting *United States v. Taylor*, No. 5:19-CR-192-KKC-MAS, 2020 WL 1501997, at *5 (E.D. Ky. Mar. 26, 2020)). Petitioners have not shown that Monroe "is unable or failing to take measures to protect [detainees] from the spread of COVID-19." *United States v. Wright*, No. 3:18-cr-635-N, 2020 WL 1694298, at *6 (N.D. Tex. Apr. 7, 2020).

Petitioners presented numerous news articles and press releases in support of their position. *See generally* ECF 2-4. They also put forth multiple declarations from different medical and detention professionals that aver the Petitioners should be released. *See, e.g.,* ECF 2-2, 2-3, 11-3, 22-3. But the declarations focus almost entirely on ICE detention facilities throughout the United States rather than specifically on Monroe. In fact, the only professional declaration that even mentioned Monroe was that of Dr. Homer Venters, but Dr. Venters mainly discussed "ICE protocols and

guidance" rather than information specific to Monroe. ECF 11-3, PgID 424. In sum, the Court finds that the generic declarations do not demonstrate that the Petitioners face a substantial risk of harm in Monroe.

In contrast, Respondents presented fact specific declarations that described the numerous and significant steps Monroe has taken to combat COVID-19. *See, e.g.*, ECF 21-7. Detainees are screened upon entry and assessed for fevers and respiratory illnesses. *Id.* at 540. Once admitted, detainees are assigned to bunk beds with empty bunks in between assigned bunks, thereby increasing distance between detainees. *Id.* at 543. Monroe has increased its sanitization frequency and instituted the use of a "mobile Kaivac cleaning system" with "Kaibosh," a disinfectant cleaner that "is rated as effective against COVID-19." *Id.* The facility provides detainees with hand soap, Lysol wipes, cleaning solutions, and masks if requested. *Id.* at 544. Detainees may request gloves for cleaning assignments. *Id.* And, Monroe has no COVID-19 cases amongst its detainees. ECF 22-1, PgID 579–80. Finally, and perhaps most importantly, Petitioners, like all immigrant detainees at Monroe, are housed in a separate "POD" from all other inmates and pretrial detainees. ECF 21-7, PgID 542–43. They are not part of the general jail population. And Monroe stopped accepting new ICE detainees on March 13, 2020. *Id.* at 540. No new detainees have entered the ICE "POD" at Monroe in more than a month, and it is therefore highly unlikely that COVID-19 could be brought into the facility through an immigration detainee.

Monroe has also taken numerous steps to prevent a non-detainee from bringing COVID-19 into the facility. No outside, in-person visits are permitted, and

all staff are screened for COVID-19 "at the start of a shift and prior to entering the housing units." *Id.* at 545. Monroe is therefore a closed and COVID-19 free environment where only staff who are screened prior to each shift may enter.²

On the other hand, if Petitioners are released, they will be released into the community of southeast Michigan—a COVID-19 hotspot. *See, e.g., Michigan coronavirus (COVID-19) cases up to 39,262; Death toll now at 3,567*, WDIV Detroit (Apr. 28, 2020, 2:59 p.m.) <https://www.clickondetroit.com/health/2020/04/28/michigan-coronavirus-covid-19-cases-up-to-39262-death-toll-now-at-3567/>. Once in the general public, tethered Petitioners may meet, and contract the disease from, someone who is COVID-19 positive while at a supermarket, doctor's office, or pharmacy. If placed into home confinement, the individuals overseeing Petitioners' placements will not be screened like the staff at Monroe, and that contact with unscreened individuals might well cause exposure to COVID-19. In sum, Petitioners may have a higher likelihood of contracting COVID-19 if released than if they remain detained, and there is thus "no reason to find that [Petitioners'] release would lessen the risk to [their] health presented by COVID-19." *Steward*, 2020 WL 1468005, at *1.

² Respondents filed a supplemental brief and indicated that a nurse from the Monroe detention facility tested positive for COVID-19 on April 27, 2020. *See* ECF 28. But the nurse had not been at the detention facility in nearly fourteen days prior to testing positive. *Id.* at 641. Moreover, one COVID-19 positive employee not present in the immigration detention POD for more than two weeks does not impact the Court's analysis: simply put, there remain no COVID-19 cases among the detainees at Monroe, Monroe is not accepting any new ICE detainees, and working employees continue to be screened before each shift.

Petitioners have not shown that they are detained "under conditions posing a substantial risk of serious harm." *Farmer*, 511 U.S. at 834. COVID-19 has not breached the walls of the immigrant detainee population at the Monroe detention facility, and Monroe is taking numerous and significant steps to keep COVID-19 out. Petitioners, like all Americans, are at some risk of contracting COVID-19, but they did not prove that their detention poses a substantial risk of serious harm. They therefore have not satisfied the objective prong of the deliberate indifference standard.

Because Petitioners did not satisfy the objective prong, the Court need not reach the subjective prong. Petitioners did not prove that Respondents are deliberately indifferent, and their Fifth Amendment claims will be denied.

B. 8 U.S.C. § 1231(a)(6)

Petitioner Chinchilla-Flores alleged that he is detained in violation of 8 U.S.C. § 1231(a)(6) because his "removal is not reasonably likely in the foreseeable future." ECF 1, PgID 42–43. The Attorney General has a 90-day statutory period in which to remove an immigrant detainee who has been ordered to be removed. 8 U.S.C. § 1231(a)(1)(A). And "the Attorney General *shall* detain the" individual during the removal period. 8 U.S.C. § 1231(a)(2) (emphasis added); *see also Hamama v. Adducci*, 946 F.3d 875, 877 (6th Cir. 2020) ("Section 1231 requires . . . detention for up to 90 days"). Here, the evidence showed that Chinchilla-Flores's detention began on February 25, 2020, he "conceded his removability as charged" on March 13, 2020, and an Immigration Judge then ordered him removed. ECF 21-3, PgID 523. Although the

parties did not clearly brief when the 90-day mandatory detention clock started, they both agree that it did not start before February 25, 2020. ECF 1, PgID 31; ECF 21, PgID 497. The 90-day mandatory detention period will therefore not expire until May 25, 2020, at the earliest. And a writ of habeas corpus under § 2241 may not be issued "unless the [petitioner] 'is' being held 'in custody in violation of the Constitution or laws or treaties of the United States,' not merely because he likely could make that showing in the future." *Hamama*, 946 F.3d at 877 (quoting § 2241). Because the 90-day mandatory detention period has not expired, Chinchilla-Flores has only alleged a potential future violation. And because the Court cannot issue a writ of habeas corpus based on a potential future violation, it will deny Chinchilla-Flores's 8 U.S.C. § 1231 claim without prejudice. He may move to re-open the case once the 90-day mandatory detention period has expired if he remains detained.

CONCLUSION

Because Petitioners failed to show a Fifth Amendment violation, and because Petitioner Chinchilla-Flores did not show a present violation of 8 U.S.C. § 1231, the Court will deny the Petition. Petitioner Chinchilla-Flores may, however, move to reopen his claim if he remains detained after the 90-day mandatory detention period has expired.

ORDER

WHEREFORE, it is hereby **ORDERED** that Petitioners' petition for writ of habeas corpus and complaint for injunctive and declaratory relief [1] as to Albino-Martinez, Chavez-Vargas, and Aparicio-Navas's claims is **MOOT**.

IT IS FURTHER ORDERED that the Fifth Amendment claims in Petitioners' petition for writ of habeas corpus and complaint for injunctive and declaratory relief [1] are **DENIED**.

IT IS FURTHER ORDERED that Petitioner Chinchilla-Flores's 8 U.S.C. § 1231 claim is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Petitioners' motion to submit additional evidence in support of the petition [23] is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED that Petitioners' declarations by Officer Levi Schultz, Dr. Dora Schriro, and My Khanh Ngo, Esq. [22-1, 22-3, 22-4] are deemed **FILED** and included in the record for the Petition.

IT IS FURTHER ORDERED that Petitioners' declaration by Reynaldo Albino-Martinez [22-2] is **STRICKEN**.

This is a final order that closes the case.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 29, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 29, 2020, by electronic and/or ordinary mail.

s/ David Parker
Case Manager