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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KARLENA DAWSON, et al.,

11 Petitioner-Plaintiffs,

12 v.

13 NATHALIE ASHER, et al.,

14 Respondent-Defendants.

CASE NO. C20-0409JLR

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 **I. INTRODUCTION**

16 Before the court is Magistrate Judge Mary A. Theiler’s Report and
17 Recommendation on Respondent-Defendants Nathalie Asher, Matthew Albence, Steven
18 Langford, and U.S. Immigration and Custom Enforcement’s (“ICE”) (collectively,
19 “Respondents”) return memorandum and motion to dismiss. (*See* R&R (Dkt. # 137); *see*
20 *also* Mot. (Dkt. # 94).) After Magistrate Judge Theiler issued the Report and
21 Recommendation granting Respondents’ motion, Petitioner-Plaintiffs Karlena Dawson,
22 Alfredo Espinoza-Esparza, Norma Lopez Nunez, Marjoris Ramirez-Ochoa, Maria

1 Gonzalez-Mendoza, Joe Hlupheka Bayana, Leonidas Plutin Hernandez, and Kelvin
2 Melgar-Alas (collectively, “Petitioners”) timely filed objections. (*See* Obj. (Dkt. # 141).)
3 Respondents filed a response to Petitioners’ objections in support of the Report and
4 Recommendation. (*See* Resp. (Dkt. # 144).) Finally, petitioners filed a notice of
5 supplemental authority related to the Report and Recommendation. (Notice (Dkt. 145).)
6 The court has considered Respondents’ motion to dismiss, Magistrate Judge Theiler’s
7 Report and Recommendation granting that motion, the parties’ submissions in support of
8 and in opposition to Petitioners’ motion and the Report and Recommendation, the
9 relevant portions of the record, and the applicable law. Being fully advised,¹ the court
10 ADOPTS Magistrate Judge Theiler’s Report and Recommendation and GRANTS
11 Respondents’ motion to dismiss as detailed below.

12 **II. PROCEDURAL AND FACTUAL BACKGROUND²**

13 On March 16, 2020, Petitioners initiated this action to obtain release from
14 detention at the Northwest ICE Processing Center (“NWIPC”) in Tacoma, Washington, a
15 private detention facility run by The GEO Group, Inc. (“GEO”).³ (Pet. (Dkt. # 1) at 20;
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17 ¹ No party requests oral argument (*see* Obj. at 1; Resp. at 1), and the court finds oral
18 argument unnecessary to its disposition of the motions, *see* Local Rules W.D. Wash. LCR
7(b)(4).

19 ² Because the facts and procedural background of this case are well known to the parties
20 and covered in detail by Magistrate Judge Theiler (*see* R&R at 2-13), the court offers only a brief
summary here.

21 ³ At the time of Magistrate Judge Theiler’s R&R, three Petitioners remained detained at
22 the NWIPC. (*See* R&R at 12.) On October 23, 2020, Petitioner Norma Lopez Nunez was
released from custody on an order of supervision, reducing this number to two. (*See* 10/23/20
Notice (Dkt. # 149).)

1 2d Bostock Decl. (Dkt. # 96) ¶ 4.) Petitioners represent that they are “particularly
2 vulnerable to serious illness or death if infected by COVID-19” due to their age and/or
3 medical conditions. (Pet. ¶¶ 39-66.)

4 On March 16, 2020, Petitioners also filed their first motion for a temporary
5 restraining order (“TRO”) seeking their immediate release. (1st TRO Mot. (Dkt. # 2) at
6 7.) On March 19, 2020, the court denied Petitioners’ first TRO motion. (*See* 3/19/20
7 Order (Dkt. # 33) at 4-6 (finding that Petitioners had not shown a likelihood of success on
8 the merits or a likelihood of irreparable harm).) On March 24, 2020, Petitioners filed
9 their second TRO motion. (2d TRO Motion (Dkt. # 36).) The court denied the second
10 TRO motion on April 8, 2020. (*See* 4/8/20 Order (Dkt. # 91).) At this time, the court
11 also found that Petitioners had standing and that they could pursue their Fifth
12 Amendment claims as a petition for writ of habeas corpus. (*See id.* at 18-21.) This court
13 found again found that Petitioners had not demonstrated a likelihood of success on the
14 merits (*id.* at 22), but also ordered Respondents to inform the court within 24 hours of
15 learning that an individual physically present at the NWIPC had tested positive or been
16 diagnosed with COVID-19. (*Id.* at 12 n.7.)

17 On April 30, 2020, Respondents filed a habeas return and motion to dismiss.
18 (Mot.) Petitioners filed their response on May 18, 2020 (Resp.), and Respondents filed
19 their reply on May 22, 2020 (Reply (Dkt. # 121)). On August 17, 2020 Magistrate Judge
20 Theiler entered a Report and Recommendation granting Respondents’ motion to dismiss.
21 (*See* R&R.) Magistrate Judge Theiler found that the fact that some Petitioners were no
22 longer detained did not moot those Petitioners’ claims. (*See id.* 14-16.) Magistrate Judge

1 Theiler also found that Petitioners had “not shown Respondents are detaining them under
2 conditions that violate their Fifth Amendment right to reasonable safety” (*id.* at 18) and
3 the court could “not conclude that Petitioners face imminent danger that outweighs the
4 government’s interests” (*id.* at 20). On these bases, Magistrate Judge Theiler
5 recommended granting Respondents’ motion to dismiss with prejudice. (*Id.*) Petitioners
6 filed their objections to Magistrate Judge Theiler’s Report and Recommendation. (*See*
7 *Obj.*) Petitioners only object to Magistrate Judge Theiler’s recommendation to the extent
8 that it recommends dismissal with prejudice. (*See id.* at 1 (requesting that the court
9 dismiss this action without prejudice).) The court now considers Petitioners’ objections.

10 III. ANALYSIS

11 A. Legal Standards

12 A district court has jurisdiction to review a Magistrate Judge’s Report and
13 Recommendation on dispositive matters. *See* Fed. R. Civ. P. 72(b). “The district judge
14 must determine de novo any part of the magistrate judge’s disposition that has been
15 properly objected to.” Fed. R. Civ. P. 72(b)(3). “A judge of the court may accept, reject,
16 or modify, in whole or in part, the findings or recommendations made by the magistrate
17 judge.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (“The district judge may
18 accept, reject, or modify the recommended disposition; receive further evidence; or return
19 the matter to the magistrate judge with instructions.”). The court reviews de novo those
20 portions of the Report and Recommendation to which specific written objection is made.
21 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

1 Federal Rule of Civil Procedure 41(a)(2) states that, after a defendant serves an
2 answer, and absent a stipulation by all parties who have appeared, “an action may be
3 dismissed at the plaintiff’s request, only by court order, on terms that the court considers
4 proper.” Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a)(2)
5 “is addressed to the sound discretion of the District Court, and its order will not be
6 reversed unless [it] has abused its discretion.” *Hamilton v. Firestone Tire & Rubber Co.*,
7 679 F.2d 143, 145 (9th Cir. 1982). “A district court should grant a motion for voluntary
8 dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain
9 legal prejudice as a result.” *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). “Legal
10 prejudice” is “prejudice to some legal interest, some legal claim, [or] some legal
11 argument.” *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996). The
12 court’s inquiry “focuse[s] on the rights and defenses available to a defendant in future
13 litigation.” *Id.*

14 **B. Dismissal**

15 The court finds that dismissal with prejudice is proper. Petitioners argue that this
16 action should be dismissed without prejudice because Petitioners are putative class
17 members in *Castañeda Juarez v. Asher*, No. C20-0700JLR (W.D. Wash.), also pending
18 before this court, which “raise[s] the same Fifth Amendment claims, against the same
19 Defendants, based on the same facts regarding conditions of confinement with respect to
20 COVID-19 [at NWIPC].” (Obj. at 3.) Respondents contend that dismissal without
21 prejudice is improper because it would deprive respondents of the defense of claim
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1 preclusion in *Castañeda Juarez* against Petitioners, which amounts to legal prejudice.

2 (*See Resp.* at 4-5.)

3 The court agrees with Respondents and finds that they would suffer plain legal
4 prejudice if this action is dismissed without prejudice. Petitioners do not object to
5 Magistrate Judge Theiler’s finding that the COVID-19-related conditions at NWIPC do
6 not violate their constitutional rights. (*See generally* Obj.) To allow Petitioners to join
7 parallel litigation on the same questions while denying Respondents the ability to bring a
8 claim preclusion argument in that action would deprive Respondents of a legal defense.
9 *See Westlands*, 100 F.3d at 97. Petitioners are represented by the same counsel as the
10 petitioners in *Castañeda Juarez*, and thus have been aware of that parallel matter for
11 months. But they only seek to join that putative class now that they are faced with a
12 Report and Recommendation recommending dismissal with prejudice. The court does
13 not find this to be a proper exercise of the discretion afforded to it by Rule 41. *See* Fed.
14 R. Civ. P. 41(a)(2).

15 The court is mindful of the evolving and dynamic nature of the COVID-19
16 pandemic and the potential for conditions to change in NWIPC. Should the conditions at
17 NWIPC change such that Petitioners believe they suffer new constitutional violations
18 distinct from those in Petitioners’ current claims, they may file a new action. Dismissing
19 this suit with prejudice will not prevent that course of action. Petitioners also contend
20 that dismissal with prejudice may harm their ability to pursue challenges to their
21 detention on unrelated grounds. (*See* Obj. at 5). The court disagrees. Dismissing the
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1 current matter with prejudice will do nothing to stop Petitioners from bringing unrelated
2 challenges based on non-COVID-19 related conditions of their confinement.

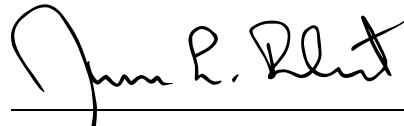
3 **IV. CONCLUSION**

4 For the reasons stated above, the court:

- 5 (1) ADOPTS the Report and Recommendation (Dkt. # 137);
6 (2) GRANTS Respondents' motion to dismiss (Dkt. # 94); and
7 (3) DENIES Petitioners' habeas petition and complaint for injunctive relief
8 (Dkt. # 1) and DISMISSES this action with prejudice.

9 The Clerk is directed to send copies of this order to the parties and to Magistrate
10 Judge Theiler.

11 Dated this 19th day of November, 2020.

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14 JAMES L. ROBART
15 United States District Judge
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