

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HERAUD ST. LOUIS; LUIS MACIAS
ARREDONDO; THEOPHILUS BUCKNOR;
WILKENS DORIVAL; MARK ANTHONY
MONTAQUE; LENNOX ROBINSON; and
ROMAINE ODEAN WILSON,

Case No.: 2:20-cv-349-TPB-NPM

Petitioners-Plaintiffs,

v.

JIM MARTIN, in his official capacity as Field Office
Director, Enforcement and Removal Operations,
Miami Field Office, U.S. Immigration and Customs
Enforcement; CHAD WOLF, in his official capacity
as Acting Secretary, U.S. Department of Homeland
Security; MATTHEW ALBENCE, in his official
capacity as Deputy Director and Senior Official
Performing the Duties of the Director, U.S.
Immigration and Customs Enforcement; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; DAVID HARDIN, in his official
capacity as Sheriff of Glades County, Florida; and
SCOTTY RHODEN, in his official capacity as
Sheriff of Baker County, Florida,

Respondents-Defendants.

RESPONSE TO PETITION FOR HABEAS CORPUS AND COMPLAINT

Pursuant to the Court's May 13, 2020 Order (Doc. 4) and May 21, 2020 Order (Doc. 25), the Respondents file this response to Petitioners' Verified Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory Judgment and Injunctive Relief.

I. Introduction

Petitioners, civil detainees who are currently held at the Baker County Jail (“BCJ”), Glades County Detention Facility (“Glades”), and Krome Service Processing Center (“Krome”), filed a petition arguing that the conditions of their confinement violate their substantive Due Process rights. As explained below, the petition should be denied because the Court cannot grant release from custody in a case that challenges the conditions of confinement. Further, the petition should be denied because Petitioners’ substantive due process rights have not been violated.

II. Factual Background

A. Petitioners’ Immigration and Detention Status

Petitioner Theophilus Bucknor is a native and citizen of Nigeria. Exhibit 1, Supplemental Declaration of AFOD Cardell Smith, ¶ 26. Bucknor, who is subject to a final order of removal, is detained at BCJ pursuant to 8 U.S.C. § 1231(a)(2). *Id.*, ¶¶ 27-28. Petitioner is currently being processed for removal, and ERO has a pending request for a travel document. *Id.*, ¶ 28. ICE has identified Bucknor as a *Frailhat* class member. *Id.*, ¶ 28.

Petitioner Wilkens Dorival is a native and citizen of Haiti, who was admitted into the United States as a Lawful Permanent Resident on or about March 15, 2000. *See* Ex. 1, ¶ 29. Dorival is currently in removal proceedings, and has an upcoming hearing with the Immigration Judge on June 5, 2020 at Krome. *Id.*, ¶ 38. Due to his criminal convictions, Dorival is subject to mandatory detention under the authority of 8 U.S.C. § 1226(c). *Id.*,

¶ 39. Dorival was transferred from BCJ to Krome on May 15, 2020 due to the need to decrease the overall detainee population at BCJ and Dorival's upcoming hearing with the Immigration Judge at Krome. *Id.*, ¶ 40. ICE has identified Dorival as a *Fraihat* class member. *Id.*, ¶ 39.

Petitioner St. Louis is a native of the Bahamas and a citizen of Haiti. Exhibit 2, Declaration of AFOD Liana Castano, ¶ 25. On May 20, 2020, Petitioner was released from Glades County Detention Center and transferred to the custody of Lee County Sheriff's Office, based upon an outstanding warrant issued by the State of Florida. *Id.*, ¶ 27. Consequently, Petitioner is no longer in ICE custody. *Id.*

Petitioner Macias-Arredondo, is a native and citizen of Colombia, who was paroled into the United States in 2018. *Id.*, ¶ 34. Macias was transferred to the Glades County Detention Center on February 14, 2014. *Id.*, ¶ 35. His removal proceedings are pending, and a merits hearing is scheduled on Macias' applications for relief from removal on June 8, 2020. *Id.*, ¶ 35. Macias has no documented history of surgery, hypertension diagnosis, or smoking, and his last blood pressure reading at Glades was normal. *Id.*, ¶ 36. As such, ICE has determined that Macias is not a member of the *Fraihat* class.

Petitioner Montaque is a native and citizen of Jamaica, who was admitted to the United States in 2006 as a conditional resident. *Id.*, ¶ 32. Montaque, who is detained at Glades, is currently involved in removal proceedings, with his next appearance set for June 8, 2020. *Id.* He is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). *Id.*, ¶ 33. ICE has identified Montaque as a *Fraihat* class member. *Id.*

Petitioner Robinson is a native and citizen of Jamaica, who was admitted to the United States in 2009 as a lawful permanent resident. *Id.*, ¶ 30. Robinson is scheduled to appear before an immigration judge for a hearing on the merits of his applications for relief from removal on July 1, 2020. *Id.* He remains detained at Glades and is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). *Id.* ¶¶ 30-31. ICE has identified Robinson as a *Fraihat* class member. *Id.*

Petitioner Wilson is a native and citizen of Jamaica who was admitted to the United States in 2012. *Id.*, ¶ 28. Wilson is detained at Glades pending his removal pursuant to 8 U.S.C. § 1231. *Id.*, ¶ 29. ICE has identified Wilson as a *Fraihat* class member. *Id.*

B. Respondents efforts to combat risks associated with COVID-19¹

Respondents have taken significant steps to prevent the introduction and spread of COVID-19 in their detention facilities. *See generally*, Ex. 1, ¶¶ 1-24; Ex. 2, ¶¶ 1-23; Exhibit 3, Declaration of AFOD Liana Castano (May 31, 2020), ¶¶ 1-29. Indeed, as this Court has already recognized “[p]rotective equipment and increased cleaning protocols have been produced, measures to alter eating and sleeping arrangements to maximize social distancing have been implemented, access to the facilities from outside visitors has been reduced, and in some cases eliminated, and detailed procedures and screenings exist for personnel and new detainees.” Doc. 33 at 15.

¹ Glades, Krome, and BCJ follow the *ERO COVID-19 Pandemic Response Requirements* (PRR) and the CDC’s *Interim Guidance on Management of Coronavirus 2019 (COVID-19) in Correctional and Detention Facilities*. *See* Ex. 1, ¶¶ 6-8; Ex. 2, ¶¶ 5-7.

As a result of these procedures, the spread of COVID-19 that Petitioners say is inevitable has largely been prevented. As of the date of this filing, there are no confirmed cases of COVID-19 at Baker, Ex. 1, ¶ 14, and no confirmed cases of COVID-19 among detainees at Glades, Exhibit 4, Supplemental Declaration of AFOD Liana Castano, ¶ 5.²

II. Argument

A. The Court lacks jurisdiction over claims brought by St. Louis and Dorival

Because St. Louis is no longer in ICE custody, the Court should dismiss his claims as moot. Mootness is a jurisdictional doctrine that flows directly from the limitation, imposed by Article III of the Constitution, that federal court jurisdiction extends only to the consideration of cases and controversies. *See* U.S. Const. art. III; *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335-36 (11th Cir. 2001). “[A] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Id.* In other words, “a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Al Najjar*, 273 F.3d at 1336 (internal quotation marks omitted). Thus, “[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Id.*

² Six sheriff’s deputies have tested positive for COVID-19 at Glades. Ex. 4, ¶ 5. None are currently on the work schedule, and all of them are self-quarantining. *Id.* Two detainees and twelve staff members have tested positive for COVID-19 at Krome. Ex. 3, ¶ 12.

Here, St. Louis has challenged the conditions of his confinement at BCJ based on the on-going COVID-19 pandemic. Since he is no longer subject to those conditions, the Court cannot provide him with any meaningful relief. As such, his claims must be dismissed. *See Al Najjar*, 273 F.3d at 1336.

B. Release from confinement is not available relief in this action

Petitioners claim that the conditions of their confinement violate their substantive due process rights under the Fifth Amendment of the United States Constitution. *See* Doc. 1, ¶¶ 181-83. Based on those alleged violations, Petitioners ask the Court to order their immediate release. *See* Doc. 1 at 38-39. However, as this Court has already recognized, “Eleventh Circuit law prohibits release as a remedy for conditions of confinement claims.” Doc. 33 at 13; *Matos v. Lopez Vega*, 2020 WL 2298775, at *10 (S.D. Fla. May 6, 2020); *see Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015) (per curiam). As such, Petitioners’ request for immediate release should be denied.

C. Petitioners’ Due Process rights have not been violated

Petitioners offer two main theories for their substantive due process claims. First, they argue that the conditions of confinement are impermissible punishment not related to a legitimate government interest. Doc. 1, ¶ 163. Second, Petitioners argue that the conditions of confinement violate their substantive due process rights because they show ICE has acted with deliberate indifference. *Id.*, ¶ 164. The government will address each theory in turn.³

³ Petitioners also argue their due process rights should be evaluated under the standard set forth in *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982). But, as the Eleventh Circuit has stated, “this circuit has interpreted the

1. Petitioners’ detention furthers legitimate government interests

Petitioners have not established that the conditions of confinement amount to punishment. “Due process requires that a pretrial detainee not be punished prior to a lawful conviction.” *Magluta v. Samples*, 375 F.3d 1269, 1273 (11th Cir. 2004). “To determine whether a condition of pretrial detention amounts to punishment, [a court] must decide whether the condition is imposed for the purpose of punishment or whether it is incident to some legitimate governmental purpose.” *McMillian v. Johnson*, 88 F.3d 1554, 1564 (11th Cir. 1996). Where a condition is not reasonably related to a legitimate goal—that is, where the condition is arbitrary or purposeless—courts may infer that the purpose of government action is punishment. *See Magluta*, 375 F.3d at 1273.

Petitioners argue that the conditions of their confinement serve no legitimate purpose and are not reasonably related to the enforcement of immigration laws. Doc. 1, ¶ 163. Based on these assertions, Petitioners invite the Court to infer that the purpose behind their detention is punishment. Petitioners are wrong on two fronts.

First, Petitioners’ detention—and any conditions incident to that detention—serves a legitimate purpose. Indeed, in the immigration context, the Supreme Court has consistently upheld the constitutionality of detention, citing the Government’s legitimate interest in protecting the public and preventing aliens from absconding and failing to appear for their removal proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018) (noting that detention during immigration proceedings prevents the risk that alien will abscond or engage

Youngberg holding to apply to involuntarily, civilly committed mental patients.” *Dolihite v. Maughon*, 74 F.3d 1027, 1034 n.2 (11th Cir. 1996). As such, it does not apply here.

in criminal activity); *Demore v. Kim*, 538 U.S. 510, 520-23 (2003) (recognizing that detention during immigration proceedings serves the government’s interest in completing deportation proceedings); *Zadvydas*, 533 U.S. 678, 690-91 (2001). Here, Petitioners do not claim there is no basis for detainment. As such, their confinement furthers the government’s interest in protecting the public and avoiding the risk of flight.

Second, the factual record indicates that ICE has taken steps to protect Petitioners from risks associated with COVID-19. *See supra* Section II.B. These affirmative steps, which were taken to ensure the health and safety of those in ICE custody, belie the notion that the purpose behind Petitioners’ detention is punishment. Instead, they show that BCJ and Glades have attempted to balance their interests in detainment against Petitioners’ interests in avoiding exposure to COVID-19.

Further, courts in this circuit have found that, despite the COVID-19 pandemic, continued detention “is reasonably related to [the government’s] legitimate purpose.” *Matos*, 2020 WL 2298775, at *10-11. In *Matos*, a court was asked to consider whether the conditions of confinement at Broward Transitional Center constituted punishment in violation of the substantive due process rights of immigration detainees. *Id.* at * 5. The *Matos* court recognized that detention is inherently flawed and creates a “risk that detainees will be exposed to certain communicable diseases.” *Id.* at *10. Notwithstanding that recognition, the Court noted that “these shortcomings do not automatically translate into a constitutional violation.” *Id.* at *10. Ultimately, the court held that the conditions at Broward Transitional Center did not amount to punishment. *Id.* That decision was based,

in part, on the fact that “Respondents have made conscious efforts to create a safe environment for the detainees and BTC’s staff, despite inherent obstacles and the novel COVID-19 virus.” *Id.*

As explained above, detention serves the legitimate government interest in ensuring public safety and the smooth completion of removal proceedings. *See Jennings*, 138 S. Ct. at 836; *Demore v. Kim*, 538 U.S. at 520-23; *Zadvydas*, 533 U.S. at 690-91. Despite the COVID-19 virus, those interests continue to be served by detention, particularly where the government has taken steps to create a safe environment. *See Matos*, 2020 WL 2298775, at *10-11. Because Respondents have taken such steps here, Petitioners’ cannot show that their continued detention amounts to punishment in violation of their substantive due process rights.

2. Respondents have not been deliberately indifferent to the risks posed by COVID-19

Petitioners also argue that Respondents have violated their substantive due process rights by being deliberately indifferent to an unreasonable risk. Doc. 1, ¶ 181. However, Petitioners cannot establish a constitutional violation under this theory because the record does not support a finding that Respondents have acted with the necessary state of mind.

The Eleventh Circuit has held that “in regard to providing pretrial detainees with such basic necessities as food, living space, and medical care the minimum standard allowed by the due process clause is the same as that allowed by the eighth amendment for convicted persons.” *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1574 (11th Cir. 1985). Thus, although Petitioners are civil detainees whose rights arise under the Fifth Amendment, their conditions

of confinement claim can be analyzed under the standard for assessing Eighth Amendment violations. *See Swain v. Junior*, 2020 WL 2161317, at * 4 (11th Cir. May 5, 2020).

“An Eighth Amendment challenge to the conditions of confinement has two components: one objective and the other subjective.” *Id.* Under the objective component, a petitioner must show that they suffered “an objectively intolerable risk of harm.” *Id.* That is, a petitioner must show that the conditions being challenged “were extreme and presented an unreasonable risk of serious damage to his future health or safety.” *Id.* (internal quotation marks omitted).

Under the subjective component, petitioners must show that prison officials acted with deliberate indifference. *Id.* Prison officials act with deliberate indifference where they “know[] of and disregard[] an excessive risk to inmate health or safety.” *Id.* To establish deliberate indifference, petitioners must show that prison officials acted with a state of mind similar to that of criminal recklessness. *Id.* Accordingly, prison officials who respond reasonably may escape liability for known risks “even if the harm ultimately was not averted.” *Id.*

The Eleventh Circuit has recently ruled on a deliberate indifference claim brought by a “medically vulnerable subclass” of inmates who challenged the conditions of confinement in light of the COVID-19 pandemic. *See id.* at *1. The plaintiffs in *Swain* claimed that they “did not have enough soap or towels to wash their hands properly, waited days for medical attention, were denied basic hygienic supplies like laundry detergent and cleaning materials, and were forced to sleep only two feet apart.” *Id.* (internal quotation marks

omitted). Following the entry of a preliminary injunction by the district court, defendants appealed to the Eleventh Circuit, arguing that plaintiffs “failed to establish that they were entitled to a preliminary injunction.” *Id.* at *3.

The Eleventh Circuit ultimately granted defendants’ request to stay the district court’s preliminary injunction. *Id.* at *7. In doing so, it made two important observations regarding the subjective component of the deliberate indifference test. First, the court held that the district court likely erred “by treating [defendants’] inability to ‘achieve meaningful social distancing’ as evincing a reckless state of mind.” *Id.* at *4. According to the *Swain* Court, “the inability to take a positive action likely does not constitute a state of mind” necessary to establish deliberate indifference. *Id.* Second, the court held that “defendants’ actions likely do not amount to deliberate indifference” because the record showed that defendants “adopted extensive safety measures such as increasing screening, providing protective equipment, adopting social distancing when possible, quarantining symptomatic inmates, and enhancing cleaning procedures.” *Id.* at *5.

Here, as in *Swain*, Respondents have taken steps that preclude a finding of deliberate indifference. Both BCJ and Glades have instituted comprehensive screening policies, *see* Ex. 1, ¶ 10; Ex. 2, ¶ 9, provided masks to detainees, *see* Ex. 1, ¶ 16; Ex. 2, ¶ 15, adopted social distancing where possible, *see* Ex. 1, ¶ 17; Ex. 2, ¶ 23, quarantined symptomatic detainees, *see* Ex. 1, ¶ 11; Ex. 2, ¶ 10, and enhanced sanitation, *see* Ex. 1, ¶ 16; Ex. 2, ¶ 15. Petitioners have not offered any evidence that Respondents subjectively believe these policies are inadequate, nor have they offered any evidence that Respondents are ignoring or approving

of any lapses in enforcement of these policies. Without evidence of this kind, Petitioners cannot establish that Respondents have acted with the state of mind necessary to satisfy the subjective prong of the Fifth Amendment analysis. *See Swain*, 2020 WL 2161317, at * 4-5. As such, Petitioner's claims must fail.

Conclusion

For the reasons stated above, the petition should be denied.

Dated: May 31, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2020, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a copy to the following:

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