

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

TOURE, et al.,	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Civil Action No. 1:20-cv-395
	)	Hon. Liam O’Grady
HOTT, et al.,	)	
	)	
<i>Defendants.</i>	)	

MEMORANDUM OPINION & ORDER

This matter is before the Court upon the motion of Plaintiff-Petitioners for a temporary restraining order or preliminary injunction. Dkt. 7. They seek immediate release from two immigration detention centers, either upon their own recognizance or, alternatively, for placement into community-based alternatives to detention. Dkt. 7. The matter was fully briefed, and the Court heard oral argument by telephone on April 24, 2020.

I. Background

Plaintiff-Petitioners (“Plaintiffs”) brought this action styled as both a petition for a writ of habeas corpus and a civil complaint. They are individuals in the custody of U.S. Immigration and Customs Enforcement (“ICE”), currently detained in one of two different Virginia facilities: Farmville Detention Center (“Farmville”) and Caroline Detention Facility (“Caroline”). They are detained under various statutory provisions, and each has a unique administrative history.¹

¹ In a footnote, the Government contested the propriety of this as a single action based on the number of Plaintiffs and the differences in their individual circumstances. While Plaintiffs have slightly varying circumstances, each is similarly situated in that each: has an underlying medical condition which may increase vulnerability to COVID-19, is a civil immigration detainee, and is detained in one of two detention centers in Virginia. They have asserted a right to relief arising out of the same series of transactions or occurrences, and the Court finds questions of law and of fact are common to all Plaintiffs. Accordingly, Plaintiffs may proceed in one action. *See* Fed. R. Civ. P. 20.

Plaintiffs allege that because of an underlying health condition or their age and because of the circumstances of detention, their continued detainment exposes them to a substantial risk of infection by the COVID-19 virus, thereby endangering their health and safety. COVID-19 is a highly contagious and potentially deadly respiratory illness. The virus may be spread by symptomatic or asymptomatic carriers and has been declared a pandemic. It can cause severe damage which may necessitate advanced medical support. Certain underlying medical conditions increase the risk of serious illness or death for individuals of any age, and individuals over the age of sixty also face increased risk. There is no COVID-19 vaccine, and as a result, measures such as social distancing and vigilant hygiene are being used to reduce the spread of the virus.

There are six Plaintiffs.² Each has at least one underlying medical condition or is over the age of sixty, or both, and thus each is at increased risk of serious illness or death if they were to contract COVID-19. First, Plaintiff Francois Toure is a twenty-nine year old citizen of Guinea. Mr. Toure, who suffers from asthma and borderline diabetes, is detained at Farmville. Second, Plaintiff Sisira Kumara Kumaragamage Don is an Australian citizen over the age of sixty.³ Mr. Don suffers from diabetes and hypertension (high blood pressure). Mr. Don's request for bond has been denied by an Immigration Judge, and that order as well as his removal order are currently pending appeal before the Board of Immigration Appeals. He is detained at Farmville. Third, Plaintiff Venacio Escobar Andasol is a sixty-five year old citizen of El Salvador. He is detained at Farmville. Fourth, Plaintiff Melvin Castro is also a citizen of El

² When this case was filed there were nine Plaintiff-Petitioners. Before oral argument, two Plaintiff-Petitioners were dismissed after they were released on bond. *See* Dkt. 16. After oral argument but before this opinion issued, another Plaintiff-Petitioner was dismissed for the same reason. *See* Dkt. 28.

³ Plaintiffs' counsel, and the declaration of Prabha Ranjane Kumaramage (Mr. Don's spouse) contend he is sixty-four, but also provided a birthdate which would make him sixty-three. The Government contends he is sixty-three.

Salvador. He is thirty-seven years old, suffers from asthma, and is currently detained at Caroline. Fifth, Plaintiff Ummy Ismail Mohamed is a Tanzanian citizen, currently detained at Caroline. She is twenty-five years old. She has been ordered removed, and has until April 29, 2020 to appeal that order. She suffers from asthma. Sixth and finally, Plaintiff Faustino Romero Aguilon is a Guatemalan citizen who suffers from diabetes and hypertension. Mr. Aguilon is detained at Caroline.

The Farmville and Caroline detention centers are both located in Virginia, which has not been exempt from the COVID-19 pandemic. Virginia confirmed its first case of the illness on March 7, 2020, and more than eleven thousand additional cases have followed. As of April 22, Prince Edward County—where Farmville is located—has confirmed nineteen cases of COVID-19, and Caroline County—where Caroline is located—has confirmed seventeen cases. Caroline itself has had two confirmed cases of COVID-19 among detainees. Farmville has had zero.

Caroline is approximately 40% empty. Mros Decl. ¶ 3. It maintains a physician on-call constantly, twenty-four hours a day, seven days a week. Mros Decl. ¶ 5. A physician and other medical professionals are on-site five days per week, and some medical staff are on-site every day between 5 a.m. and 11:30 p.m. *Id.* Detainees have access to sick call every day of the week. *Id.*

Caroline has implemented changes and protocols to address COVID-19. The facility receives regular guidance from ICE, which reports guidance from the Centers for Disease Control (“CDC”). Mros Decl. ¶ 7. It is also in frequent communication with the Rappahannock Area Health District of the Virginia Department of Health which makes testing available to Caroline as the need for such testing—consistent with CDC guidelines—arises. Mros Decl. ¶ 8.

All Caroline staff and vendors are screened upon entry. Mros Decl. ¶ 11. Staff who exhibit COVID-19 symptoms are denied entry and directed to stay home. *Id.* They may return to work only once cleared by a medical professional. *Id.* In addition, social visitation at Caroline has been suspended, and professional visits are limited to noncontact visits. Mros Decl. ¶ 10. The detainees have received verbal COVID-19 prevention education, are encouraged to regularly wash their hands, and to not touch their faces. Mros Decl. ¶ 14. COVID-19 related literature is posted in the housing units in English, Spanish, and Chinese. *Id.* Communal space cleaning and disinfecting has been increased, and Caroline provides detainees with soap for their hands and disinfectants for their living areas. Mros Decl. ¶ 9. Before April 23, symptomatic detainees were provided surgical masks. Mros Decl. ¶ 12. On April 23, Caroline distributed masks to all detainees at the facility. Hr'g Tr. 19, Apr. 24, 2020. All staff have been required to wear masks inside Caroline since April 21. Mros Decl. ¶ 12.

All scheduled detainee medical encounters now incorporate a COVID-19 symptom screening. Mros Decl. ¶ 13. Also, as of April 17, Caroline either isolates or cohorts all incoming detainees for fourteen days. Mros Decl. ¶ 15. Cohorting is the practice of isolating groups of individuals who have shared exposure to a person. *Id.* The fourteen-day period is the incubation period, during which individuals may be asymptomatic but contagious. *Id.* Fourteen days is period for which the CDC recommends self-isolation due to possible COVID-19 exposure. *Id.*

If detainees develop COVID-19 symptoms, they are evaluated by a medical provider. *Id.* Detainees suspected of having COVID-19 are isolated in a negative pressure room, or another single room if one is unavailable, and monitored regularly. Mros Decl. ¶ 17. This happens until COVID-19 can be excluded or in accordance with CDC guidelines if they do not meet the testing

criteria. *Id.* That individual's housing unit would be cohorted until COVID-19 was excluded, or until the fourteen-day incubation period expires (without a new case). *Id.*

As noted above, two detainees at Caroline have tested positive for COVID-19. Mrs Decl. ¶ 18. Those detainees were isolated upon their arrival at Caroline, and were not exposed to the general detainee population. *Id.* Neither case required hospitalization for treatment, and both are stable. *Id.* Notably, both detainees were transferred to nearby hospitals for their tests, and returned to Caroline for quarantine while awaiting the results. *Id.*

One other detainee was tested for COVID-19, and his test returned negative. *Id.* He was isolated immediately upon exhibiting symptoms, and his housing unit remained cohorted until the negative test result was returned. *Id.*

Farmville, like Caroline, has implemented a number of measures in response to COVID-19. Farmville employs a physician, Dr. Moore, full-time as the facility's medical director. Moore Decl. ¶ 3. Dr. Moore is in contact with the Piedmont Health District of the Virginia Department of Health daily, and she checks for updated COVID-19 guidance from the CDC and Virginia twice each day. Crawford Decl. ¶¶ 3(c), 3(f), 22; Moore Decl. ¶ 9; *see also* Crawford Decl. ¶ 7 (discussing sharing updates daily summarizing recent information, including CDC guidance beginning on March 2). To accommodate Farmville's limited size and maintain medical readiness while also allowing new detainees a quarantine period, detainees who are newly arriving at Farmville are first quarantined at Caroline for fourteen days. Crawford Decl. ¶ 24; Moore Decl. ¶¶ 12-13. This practice has been implemented since April 17. Crawford Decl. ¶ 24.

In addition to the detainee isolation period, Farmville has implemented staff screenings. Moore Decl. ¶ 8. Staff entering Farmville are screened for temperature and symptoms every

time they enter the building. *Id.* Employees who fail a medical screening are not permitted to return to work until they meet strict conditions: either (1) resolution of fever without the use of fever-reducing medications, and improvement in respiratory symptoms, and negative results from two COVID-19 tests taken more than 24 hours apart, or (2) at least 72 hours have passed since resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms and at least 7 days have passed since symptoms first appeared. *Id.*

Detainees are also screened at intake by using both temperature screenings and questions about COVID-19 symptoms. Positive responses result in the detainee being sent to a hospital, Centra Southside Community, until they are cleared, and isolated pursuant to CDC guidance. Moore Decl. ¶ 10.

Just as in Caroline, social visitation does not occur in Farmville, and Farmville has cancelled volunteer programs to reduce the volume of people entering the facility. Crawford Decl. ¶¶ 8, 9. Farmville has also increased sanitation procedures and cleans doorknobs, toilets, sinks, and showers with a solution that disinfects COVID-19 daily. Crawford Decl. ¶¶ 3(d), 9, 17(p), 26; *see* Moore Decl. ¶ 7. Informational literature in English and Spanish is posted to encourage detainee hand washing and inform detainees of precautionary measures taken by the facility. Crawford Decl. ¶¶ 5, 26, 31. Finally, in Farmville like in Caroline, detainees who are potentially exposed are cohorted even if they are asymptomatic. *See* Crawford Decl. ¶¶ 16, 36.

Notably, Farmville has provided each staff member and each detainee two N95 masks each. Crawford Decl. ¶ 3(h); Moore Decl. ¶ 14. Posted signs explain their purpose and use in both English and Spanish. Crawford Decl. ¶ 3(h). Although several Farmville staff members and detainees have been tested for COVID-19, there have been no positive results. Crawford Decl. ¶ 3(b); Moore Decl. ¶ 5.

Plaintiffs argue their continued detention constitutes an unlawful punishment, a punitive confinement with deliberate indifference to their health and safety, and disability discrimination and a failure to accommodate. Accordingly, they have asserted that the conditions of their confinement violate their constitutional right to substantive due process under the Fifth Amendment, the right to be free from cruel and unusual punishment under the Eighth Amendment, and section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 794(a). Based only on their constitutional claims, Plaintiffs have requested a temporary restraining order or, in the alternative, a preliminary injunction, seeking “immediate[] release” or an order requiring placement “in community-based alternatives to detention.” Dkt. 7 at 1. Their requested relief is limited to release from the detention centers where they are currently located.

II. Legal Standard

Federal Rule of Civil Procedure 65 authorizes courts to issue preliminary injunctions and temporary restraining orders. Generally, preliminary injunctions aim “to preserve the relative positions of the parties” and “protect the status quo.” *United States v. South Carolina*, 720 F.3d 518, 524 (4th Cir. 2013). The Fourth Circuit defines the “status quo” as the “last uncontested status between the parties which preceded the controversy.” *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (quoting *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012)). Mandatory preliminary injunctions “alter the status quo,” and are “disfavored.” *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 235-36 (4th Cir. 2014) (quoting *Taylor v. Freeman*, 34 F.3d 266, 270 n. 2 (4th Cir. 1994)); *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216 n.8 (4th Cir.), *cert. denied sub nom. Givens v. Mountain Valley Pipeline, LLC*, 140 S. Ct. 300, 205 L. Ed. 2d 199

(2019). Mandatory preliminary injunctions are therefore subject to a heightened standard of appellate review. *Pashby*, 709 F.3d at 320.

“The standard for granting either a TRO or preliminary injunction is the same.” *Sarsour v. Trump*, 245 F. Supp. 3d 719, 728 (E.D. Va. 2017). The standard, set forth in *Winter v. Nat. Resources Def. Council, Inc.*, 555 U.S. 7 (2008), requires that a movant establish: (1) it is likely to succeed on the merits of its claim; (2) it is likely to suffer irreparable harm in the absence of a preliminary injunction; (3) the balance of equities tips in its favor; and (4) that the injunction is in the public interest. *Id.* at 20. “[C]ourts considering whether to impose preliminary injunctions must separately consider each *Winter* factor.” *Pashby*, 709 F.3d at 321.

“Because a preliminary injunction affords temporary relief *before trial* of the type that can be granted permanently *after trial*, it is an ‘extraordinary remedy’ and may be granted only ‘upon a clear showing that the plaintiff is entitled to such relief.’” *Accident, Injury & Rehab., PC v. Azar*, 943 F.3d 195, 201 (4th Cir. 2019) (quoting *Winter*, 555 U.S. at 22) (emphases in original); *see also Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991) (“Federal decisions have uniformly characterized the grant of interim relief as an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it.”) (alteration and internal quotation marks omitted).

III. Analysis

Plaintiffs bear the burden of clearly establishing each *Winter* factor, and the Court will address each factor in turn.

1. Plaintiffs Failed to Clearly Establish a Likelihood of Success on the Merits

“First, plaintiffs seeking preliminary injunctions must demonstrate that they are likely to succeed on the merits. Although this inquiry requires plaintiffs seeking injunctions to make a clear showing that they are likely to succeed at trial, plaintiffs need not show a certainty of success.” *Pashby*, 709 F.3d at 321 (internal citations and quotation marks omitted). There are two independent reasons why Plaintiffs failed to clearly establish a likelihood of success here. First, they have not shown a procedural vehicle by which they might attain release, the only relief they request. Second, even if they had such a vehicle, the substantive claims are unlikely to succeed on the merits.

A. Plaintiffs Are Not Entitled to Release

Preliminary injunctions should “be granted only if the moving party clearly establishes entitlement to the relief sought.” *Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp.*, 17 F.3d 691, 693 (4th Cir. 1994). Plaintiffs have not shown an entitlement to the only relief they seek. Primarily, Plaintiffs assert an entitlement to release based on their habeas petitions. They also assert an entitlement to release based on the nature of equitable remedies. Both assertions fail.

(i) These Claims Are Not Cognizable Under 28 U.S.C. § 2241

Plaintiffs invoked 28 U.S.C. § 2241, which empowers the district courts to grant a writ of habeas corpus. “[H]abeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody.”

Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Thus, Plaintiffs assert their claims are both properly before this Court, and release is an available remedy, based on § 2241. But § 2241 does not provide Plaintiffs with either a vehicle to present their claims or a remedy here.

Section 2241 is unavailable to Plaintiffs because they are not challenging the fact of their detention, the duration of their detention, or the authority by which they are detained. Instead, they are challenging the adequacy of disease prevention measures within two detention centers. A challenge to the constitutional sufficiency of their confinement, even when paired with a request for immediate release, is a challenge to the conditions of their confinement. The Fourth Circuit, and the majority of the Circuit Courts of Appeals, have declined to recognize conditions of confinement challenges under § 2241.

Courts recognize “‘two main avenues’ for challenging [] incarceration: petitions for habeas corpus and civil rights claims.” *Wilborn v. Mansukhani*, 795 F. App’x 157, 162 (4th Cir. 2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 579 (2006)). While challenges “to the circumstances of [] confinement” may be brought as a civil rights action, “[c]hallenges to the validity of [] confinement or to particulars affecting its duration are the province of habeas corpus.” *Hill*, 547 U.S. at 579 (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (*per curiam*)).

The Supreme Court has discussed habeas corpus petitions as dual faceted: they challenge the “fact or duration of [] physical imprisonment,” and at the same time, seek “a determination that [the petitioner] is entitled to immediate [] or a speedier release.” *Preiser*, 411 U.S. at 500. Together, these two facets have been referred to by the Court as the “core,” “heart,” and “essence” of habeas corpus. *Id.* at 487, 498, 484.

The Supreme Court has not decided whether circumstances of confinement challenges—which lie outside the heart of habeas and may be brought as civil rights actions—are also cognizable as habeas petitions. *Preiser*, 411 U.S. at 499-500. A circuit split has arisen and the Fourth Circuit has not issued a binding, precedential opinion. *See Wilborn*, 795 F. App'x at 163 (noting that the Third, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits have found that conditions of confinement claims must be brought only as a civil rights action, while the D.C., Second, and First Circuits recognize them as habeas petitions). Yet, in a recent nonprecedential opinion, the Fourth Circuit squarely confronted whether a conditions of confinement claim “that unquestionably falls outside the ‘core’ of habeas can nonetheless be brought in a habeas petition.” *Id.* There, the Fourth Circuit noted that “courts have generally held that a § 1983 suit or a *Bivens* action is the appropriate means of challenging conditions of confinement, whereas § 2241 petitions are not.” *Id.* at 164. It went on to find conditions of confinement claims outside “the scope” of habeas corpus entirely, and thus exclusively within the realm of civil rights actions. *Id.*

Here, Plaintiffs challenge the constitutionality of their confinement in light of the unique circumstances presented by the COVID-19 pandemic, and they ask for complete release. But their challenge involves the legality of their confinement only insofar as the conditions of their confinement fail to meet constitutional standards. They have not independently challenged the authority by which they are detained, the fact that they are being detained pursuant to the laws of the United States, or the duration of their detention. Instead, they argue their confinement is unconstitutional because of the conditions it imposes upon them. This is a conditions of confinement claim.

They characterize the complaint as an assertion that “the *fact* of their confinement . . . where they cannot be protected from COVID-19, violates their Fifth Amendment right[s].” Dkt. 22 at 9 (emphasis in original). This does not support their argument because it reveals they are simply asserting that, during their detention, they are being insufficiently protected from COVID-19. Since protections afforded by and during detention are conditions of detention, a complaint about a lack of COVID-19 protections, or insufficient COVID-19 protections, is a complaint of the conditions of confinement. Where the complaint is about the fact that conditions of confinement are a certain way, it is not about the fact of confinement but the fact of those conditions.

Plaintiffs have made clear, in briefing and at oral argument, that they seek release. They have made equally clear that, at the same time, they do not seek to improve the conditions of their confinement, nor do they seek monetary damages. This self-imposed limitation on their prayer for relief, restricting their request to a remedy provided by habeas, does not save their habeas petition. A prayer for relief that specifies release as a remedy is not, on its own, the “the heart of habeas corpus” because the heart of habeas is a challenge involving both “the fact or duration of [] physical confinement itself, and . . . seeking immediate release or a speedier release.” *Preiser*, 411 U.S. at 498; *accord Wilborn*, 795 F. App'x at 164. Plaintiffs have not challenged the fact or duration of their detention, and therefore, they have presented a conditions of confinement challenge outside the heart of habeas.

Absent binding precedent, this Court agrees with the weight of published authority and the Fourth Circuit’s unpublished decisions which hold that § 2241 is an improper vehicle for such a challenge.

One district court within this Circuit recently came to the opposite conclusion, finding that nearly identical challenges were cognizable under § 2241. *Coreas v. Bounds*, 2020 WL 1663133, at *7 (D. Md. Apr. 3, 2020). The *Coreas* court found it significant that, unlike in *Wilborn*, the petitioners before it were civil immigration detainees “who have traditionally had recourse to § 2241 for constitutional challenges to their detention.” *Id.* at *6 (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)). The court then concluded that immigration detainees may seek release under § 2241 because, first, the petitioners there requested “complete release from confinement, which is ‘the heart of habeas corpus,’” and second, because immigration detainees without access to § 2241 “may have no vehicle by which to seek redress for the constitutional violation they allege.” *Id.* at *7 (quoting *Preiser*, 411 U.S. at 498, and citing *Lee v. Winston*, 717 F.2d 888, 892 (4th Cir. 1983) (stating that 42 U.S.C. § 1983 “cannot be used to seek release from illegal physical confinement”)). This Court respectfully disagrees with that rationale, and indeed, finds the asserted reasons for departing from *Wilborn* actually weigh against such a departure.

First, while it is true civil immigration detainees have traditionally had access to § 2241, the availability of the writ to that group of people does not change the writ’s nature. In *Zadvydas*, which was cited in *Coreas*, the Supreme Court held the statutory scheme “does not deprive an alien of the right to rely on 28 U.S.C. § 2241 to challenge *detention that is without statutory authority.*” *Zadvydas*, 533 U.S. at 688 (emphasis added). But these are not challenging the authority by which they are detained. To do so would be to challenge the fact, rather than conditions, of confinement and would put their challenges at the heart of habeas corpus. But this is a challenge to their conditions of confinement. Conditions of confinement claims are not the

type discussed or at issue in *Zadvydas*, so that precedent does not support allowing the petitions here.

Similarly, the legal distinctions between *Coreas* and *Wilborn* do not withstand scrutiny. The District of Maryland found that because petitioners were seeking complete release, their request was within the province of—indeed, at “the heart of”—habeas corpus. But a petitioner’s mere request is not the heart of habeas. As discussed above, the “heart” is a challenge to the fact, duration, or validity of confinement, in conjunction with a request for release. *See Preiser*, 411 U.S. at 484, 487, 498 (referring to the two facets together as the “essence,” “core,” and “heart,” of habeas corpus). Here, the first aspect is missing.

Finally, it does not appear to be the case that if § 2241 is unavailable for immigration detainees they will have no redress. As an initial matter, as *Zadvydas* made clear, § 2241 is generally available to immigration detainees who “challenge detention that is without statutory authority.” *Zadvydas*, 533 U.S. at 688. Thus, the writ is available to those who challenge the fact, duration, or validity of their detention. That is not this case.

And for those immigration detainees challenging conditions of confinement, other procedural vehicles and remedies exist. *See Braddy*, 580 F. App’x. at 173 (when a petitioner alleged constitutional violations “regarding only the conditions of his confinement,” not the fact or duration of his sentence, his claims were properly brought under *Bivens*); *see also, e.g., A.S.M. v. Donahue*, 2020 WL 1847158, at *2 (M.D. Ga. Apr. 10, 2020) (finding no habeas jurisdiction in similar circumstances, but allowing amendment of a motion for a preliminary injunction to request remedies available under *Bivens*). Unfortunately for those confined by federal authorities and for those who exclusively seek the remedy of release, “release is not available under *Bivens*.” *Glaus v. Anderson*, 408 F.3d 382, 387 (7th Cir. 2005). But the unavailability of

this preferred remedy does not leave a plaintiff or petitioner without any remedy. As the Seventh Circuit has explained, for example, “[i]f an inmate established that his medical treatment amounts to cruel and unusual punishment, the appropriate remedy would be to call for proper treatment, or to award him damages.” *Id.*

This Court therefore disagrees with the reasoning of *Coreas*, and finds no basis to depart in this case from the Fourth Circuit’s *Wilborn* rationale. Nor does the Court believe the Fourth Circuit itself will depart from *Wilborn*—and its previous decisions cited therein—just six months after last declining to do so. There are at least three additional reasons to believe the Fourth Circuit would continue to hold § 2241 is an inappropriate means to challenge one’s conditions of confinement, even in the context of civil immigration detention.

First, as the Fourth Circuit already observed, the majority of the Circuit Courts that have addressed the issue in published opinions have determined conditions of confinement claims are not cognizable under § 2241. *See Wilborn*, 795 F. App’x at 163 (describing the circuit split).

Second, while *Wilborn* is not binding, its holding is not new. Instead, the Fourth Circuit has issued “several unpublished decisions relying on *Preiser* to hold that conditions-of-confinement claims are not cognizable in habeas proceedings.” *Id.* (citing *inter alia*, *Rodriguez v. Ratledge*, 715 F. App’x 261 (4th Cir. 2017) and *Braddy v. Wilson*, 580 F. App’x 172 (4th Cir. 2014)). *Wilborn* issued in November of 2019 and expressly declined to “deviate” from those past decisions, strongly indicating the Circuit Court continues to view § 2241 as an inappropriate vehicle for conditions of confinement claims. *Id.* at 164. Since then, various district courts have quoted it for its useful, albeit nonbinding, language. *See, e.g. United States v. King*, 2020 WL 1505900, at *2 (D. Md. Mar. 30, 2020) (Bennett, J.); *Elijah v. Dobbs*, 2020 WL 1899499, at *2

(D.S.C. Apr. 17, 2020) (Anderson, J.). Though the decision is nonbinding, the view which it expresses is entrenched within the Circuit.

Finally, if habeas jurisdiction applied here, the rationale for the writ would be undercut because a foundational requirement—that the complained-of custody be unlawful—would be eliminated. *See Preiser*, 411 U.S. at 486 (“in each case [a petitioner’s] grievance is that he is being *unlawfully* subjected to physical restraint, and in each case habeas corpus has been accepted as the specific instrument to obtain release from such confinement.”) (emphasis added) (footnote omitted); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for *unlawful* executive detention.”) (emphasis added). Finding habeas proper in these circumstances would reduce the jurisdictional bar to require only a request for complete release coupled with the fact of custody, instead of illegal custody.

For these reasons, the Court finds that Plaintiffs’ claims are not cognizable under § 2241. Because the claims are not cognizable as habeas petitions, they are unlikely to succeed on the merits, and the relief they seek is unavailable to them.

(ii) An Injunction Would Not Order Release, but Alter Conditions of Confinement

Plaintiffs assert in the alternative that release is an available remedy due to this Court’s equitable remedial powers. Although the action is not cognizable as a habeas petition, the complaint alleges federal questions giving rise to subject matter jurisdiction pursuant to 28 U.S.C. § 1331. There is also an “implied cause of action for equitable relief to remedy constitutional violations.” *A.S.M.*, 2020 WL 1847158, at *2 (citing *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 404 (1971) (Harlan, J., concurring)); *see also Bell v. Hood*, 327 U.S. 678, 684 (1946) (“it is established practice . . . to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution,”); *Bivens*, 403 U.S.at, 404

(Harlan, J., concurring) (discussing “the presumed availability of federal equitable relief against threatened invasions of constitutional interests”); accord *United States v. Minor*, 228 F.3d 352, 356 (4th Cir. 2000) (“Recognizing an equitable cause of action” arising from the Fifth Amendment).

But having clearly established jurisdiction and a cause of action does not entitle Plaintiffs to a particular remedy. And, while the Court’s wide *discretion* in fashioning equitable relief is undisputed, Plaintiffs have failed to identify authority which *entitles* them to the specific form of relief they seek or any authority which limits the Court’s discretion based on a prayer for relief.⁴

Injunctive relief in this instance would require that any deficient conditions of confinement be cured. See *Smith v. Bounds*, 813 F.2d 1299, 1301–02 (4th Cir. 1987) (“A district court enjoys wide discretionary authority in formulating remedies for constitutional violations. After a finding of systemic constitutional violations, a court may order necessary changes in the structures or procedures of a state institution to alleviate those violations.”); see also, e.g., *A.S.M.*, 2020 WL 1847158, at *2 (noting the remedy for these claims “is modification of the conditions of confinement to eliminate the constitutional violation.”); *Glaus*, 408 F.3d at 387 (“the appropriate remedy would be to call for proper treatment, or to award him damages; release from custody is not an option.”). And while Plaintiffs have identified cases supporting the proposition that, due to the Court’s broad equitable remedial powers, release is available as a remedy, even where it has been ordered historically such an injunction occurs when constitutional violations are otherwise unable to be cured. See *Brown v. Plata*, 563 U.S. 493, 511 (2011). And here,

⁴ The Government has identified a statutory limitation precluding release as a form of relief. Plaintiffs Don, Andaso, and Aguilon are each detained by 8 U.S.C. § 1226(a), and therefore subject to § 1226(e), which provides “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.”

while Plaintiffs have pled and argued that release is the only remedy that could cure the harm they complain of, they have not shown that to be the case. Accordingly, Plaintiffs are unlikely to succeed in pursuing release because they have not identified an entitlement to that remedy.

B. Plaintiffs' Substantive Claims Are Unlikely to Succeed on the Merits

In addition, and in the alternative, the Court finds Plaintiffs unlikely to succeed on the merits of their substantive claims even if they were entitled to release. The instant motion challenges constitutionality of Plaintiffs' detention under two theories. Plaintiffs argue their Fifth Amendment right to due process is violated by their detention, first, because their detention is punishment, and second, because it is being imposed with a deliberate indifference to substantial risk of harm, in violation of the Eighth Amendment. Both arguments fail.

The Court is cognizant of the federal defendants' argument that immigration detainees are not afforded due process protections commensurate with those of citizens. *See* Dkt. 21 at 15-16; *see also Demore v. Kim*, 538 U.S. 510, 522 (2003) (noting that "Congress may make rules as to aliens that would be unacceptable if applied to citizens."). For purposes of this analysis, the Court will assume Plaintiffs are entitled to the same substantive due process rights as citizens.

(i) Plaintiffs Are Not Being Punished Because Their Detention Is Reasonably Related to the Legitimate Government Objective of Appearances at Proceedings

Due process under the Fifth Amendment "requires that a pretrial detainee not be punished." *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). A court "evaluating the constitutionality of conditions or restrictions of pretrial detention" must first determine "whether those conditions amount to punishment of the detainee." *Id.* at 535. "[T]o prevail on a substantive due process claim, a pretrial detainee must show unconstitutional punishment by proving that the challenged conditions were either '(1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective, in which

case an intent to punish may be inferred.’” *Williamson v. Stirling*, 912 F.3d 154, 178 (4th Cir. 2018) (quoting *Slade v. Hampton Roads Reg'l Jail*, 407 F.3d 243, 251 (4th Cir. 2005)). Where “a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment.’” *Wolfish*, 441 U.S. at 539.

Here, Plaintiffs have neither argued nor shown an explicit intent to punish. Absent such an explicit intent, courts “evaluate the evidence and ascertain the relationship between the actions taken against the detainee and the custodian’s supporting rationale. That inquiry turns on whether the actions taken may validly be attributed to an alternative, nonpunitive rationale, and whether they appear ‘excessive in relation to the alternative purpose assigned.’” *Williamson*, 912 F.3d at 178 (internal citation omitted) (quoting *Robles v. Prince George's Cty., Maryland*, 302 F.3d 262, 269 (4th Cir. 2002)). The Supreme Court has cautioned courts to “be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.” *Wolfish*, 441 U.S. at 539.

Plaintiffs argue the condition of their detention constituting punishment is their continued detention itself. Dkt. 8 at 19. The argument is based two factors: the Plaintiffs’ own ages and medical conditions, which increase their risk of COVID-19-related complications, and the detention centers’ allegedly inadequate prevention measures. They argue that as a result of those two factors, their detention is not reasonably related to a legitimate governmental interest. The argument is not likely to succeed.

“[P]reventing detained aliens from absconding and ensuring that they appear for removal proceedings is a legitimate governmental objective.” *Dawson v. Asher*, 2020 WL 1304557, at *2

(W.D. Wash. Mar. 19, 2020) (citing *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018); *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at 690-91). Detention ceases to bear a reasonable relation to its purpose when the goal is no longer practically attainable. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); accord *Zadvydas*, 533 U.S. at 690. The prevention of absconding and ensuring future appearance is attainable by means of continuing to detain Plaintiffs. Indeed, they have identified no instances where the government’s goal of detaining a particular detainee became unattainable due to COVID-19 risk factors and continued detention. A reasonable relation therefore exists, and thus “does not, without more, amount to ‘punishment.’” *Wolfish*, 441 U.S. at 539.

Plaintiffs cite no binding authority, and like the Western District of Washington, “the court is aware of none,” which provides that “the fact of detention itself becomes an ‘excessive’ condition solely due to the risk of a communicable disease outbreak—even one as serious as COVID-19.” *Dawson*, 2020 WL 1304557, at *2. Thus, Plaintiffs’ continued detention may validly be attributed to the Government’s legitimate nonpunitive objective. “To adopt Petitioners’ position would be to hold that the detention of any high-risk immigration detainee during the pandemic is necessarily unconstitutional,” and like the District of Maryland, that is “a position that the Court is not presently prepared to adopt.” *Coreas*, 2020 WL 1663133, at *12.

The argument presented by Plaintiffs is premised on their claim that the detention facilities “are not equipped to take adequate measures that would prevent them from contracting COVID-19.” Dkt. 8 at 19. But the record is replete with evidence, in the form of sworn declarations based upon firsthand knowledge of the opposite: both Farmville and Caroline have increased sanitation measures, implemented quarantine procedures, and reduced foot traffic. Both centers have posted relevant virus prevention information, including in languages other

than English, for detainee reference. And, most persuasively, both facilities have provided the detainees with masks. In addition to those prevention measures, the centers have implemented treatment protocols. Farmville, in addition to having a medical area with negative pressure rooms, is in contact with Centra, a nearby hospital. Caroline has also effectively used external resources, including two other hospitals, in diagnosing COVID-19. While both facilities continue to accept new detainees and transferees, every new arrival to both facilities is quarantined for two weeks before they join the others. Notably, both Caroline and Farmville have had detainees who meet the testing criteria, were tested, and whose results came back negative. And just as importantly, although Farmville has not experienced any positive COVID-19 tests, Caroline did—but was successful in the ensuing isolation efforts, and both detainees who tested positive are in stable condition. In short, the detention facilities have taken steps to equip themselves and prepare for the COVID-19 problem. They have also taken steps to prevent the spread of the virus, and to improve their capacity to treat it. These steps appear to have been effective, undercutting Plaintiffs’ argument that their detention is not related to a legitimate government purpose.

Furthermore, Plaintiffs have provided inapposite authority in support of their position. First, they cited *Thakker*, which found conditions of confinement at three detention facilities to constitute unconstitutional punishment due to COVID-19 even though only one of those facilities had a known case—but that court “relied in part on the fact that the facilities had significant overcrowding and unsanitary conditions, including the presence of rats.” *Coreas*, 2020 WL 1663133, at *12 (discussing *Thakker v. Doll*, 1:20-cv-480-JEJ Dkt. 47 at 14, 20-21 (E.D. Pa. Mar. 31, 2020)). The detention centers here are unlike those in *Thakker*. Farmville and Caroline have taken substantial measures to improve cleanliness, and have implemented airborne

precautions—the use of masks—as well as numerous contact precautions. Contact precautions include increased sanitation, targeting likely contaminated surfaces, providing detainees with sanitizer and soap, and Farmville has begun using an additional disinfectant specifically for COVID-19. Overcrowding is also not an issue at these facilities. Caroline is approximately 40% vacant, and Farmville’s new arrivals are isolated in Caroline for the incubation period, rather than at Farmville, which maintains availability of Farmville’s single rooms for quarantines which become necessary due to symptoms, rather than arrival.

Second, Plaintiffs analogize to *Zadvydas*, arguing that “[i]f the government’s interest cannot justify indefinite detention, it also cannot justify the similarly ‘potentially permanent medical harm and death that Plaintiffs could well face.’” Dkt. 8 at 19 (quoting *Zadvydas*, 533 U.S. at 691). But *Zadvydas* is not well suited to analogy. There, the injury being discussed was indefinite civil detention, pursuant to statutory authority. That injury—which would be potentially permanent—would occur upon detention. *See Zadvydas*, 533 U.S. at 690. But unlike *Zadvydas*, the potentially permanent injury here is speculative. To the extent Plaintiffs assert an injury which is potentially permanent, that injury can occur only if they are first exposed to COVID-19, then also contract the virus, and then (due to their risk factors) develop severe symptoms.

In sum, Plaintiffs have not carried their burden of establishing a likelihood of success. The government has an established, nonpunitive, and legitimate interest in detaining Plaintiffs to ensure they appear at removal proceedings. The goal of their detention remains attainable and the evidence does not show keeping them in detention is excessive. While the *Thakker* court found that “unsanitary conditions, which include overcrowding and a high risk of COVID-19 transmission, are [not] rationally related to [a] legitimate government objective,” Plaintiffs have

not shown that those conditions exist in Caroline or in Farmville. *Thakker*, 1:20-cv-480-JEJ, Dkt. 47 at 21. They have therefore failed to show a likelihood of success in claiming continued detention is punishment.

(ii) Plaintiffs Have Not Shown a Deliberate Indifference to Medical Needs

“[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes . . . a corresponding duty to assume some responsibility for his safety and general well-being.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989) (citing *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982)). An affirmative exercise of governmental power which “so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—[] transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.” *Id.* at 200 (citing *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976); *Youngberg*, 457 U.S. at 315–316). Thus, in a “substantive due process analysis, it is the [] affirmative act of restraining the individual’s freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—which is the ‘deprivation of liberty’ triggering the protections of the Due Process Clause.” *Id.*

Civil detainees “are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg*, 457 U.S. at 322; accord *Heyer v. United States Bureau of Prisons*, 849 F.3d 202, 209 n.4 (4th Cir. 2017). The Eighth Amendment protects prisoners from “unnecessary and wanton infliction of pain.” *Estelle*, 429 U.S. at 102. “[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.”

Id. at 104 (internal citation and quotation marks omitted). Therefore, the Fourth Circuit has “held that a pretrial detainee makes out a due process violation if he shows ‘deliberate indifference to serious medical needs’” under the Eighth Amendment test. *Martin v. Gentile*, 849 F.2d 863, 871 (4th Cir. 1988).

A deliberate indifference claim may allege prison officials are “maintaining inhumane conditions of confinement, or failing to render medical assistance.” *Thompson v. Commonwealth of Virginia*, 878 F.3d 89, 97 (4th Cir. 2017). The test has two requirements: first, the alleged deprivation must be “sufficiently serious,” and second, prison officials must both “know[] of and disregard[] an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994) (internal citations and quotation marks omitted). The seriousness of medical needs is an objective prong, and the deliberate indifference prong is subjective. *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008).

Here, Plaintiffs have not clearly established the defendants are deliberately indifferent to the complained-of risk, because the officials are not disregarding that risk. “Deliberate indifference is a very high standard.” *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999). It “is a higher standard for culpability than mere negligence or even civil recklessness.” *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014). In the setting of medical care, deliberate indifference is present when treatment is “so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.” *Miltier v. Beorn*, 896 F.2d 848, 851 (4th Cir. 1990) (citing *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986)). Thus, even where “prison officials [] actually knew of a substantial risk to inmate health or safety” and that particular harm ultimately occurs, the officials “may be found free from liability if they

responded reasonably to the risk.” *Farmer*, 511 U.S. at 844. At bottom, “officials who act reasonably cannot be found liable” because they did not disregard the risk. *Id.* 845.

Plaintiffs argue that the “measures ICE has implemented thus far are clearly inadequate.” Dkt. 8 at 25. They point to their own reporting of inadequate COVID-19 guidance, Dkt. 8 at 25-26, the lack of testing, the impossibility of social distancing, purportedly inadequate symptom screening, difficulties conducting proper hygiene, and the facilities’ lack of isolation and treatment facilities, Dkt. 22 at 19. Each asserted ground is unsupported by the record. The Court carefully considered the declarations made on behalf of the Plaintiffs but found the declarations of the defendants to be more persuasive. This does not minimize the real concerns that the Plaintiffs raise and the Court shares. Both facilities have made efforts to educate detainees regarding COVID-19, personal precautions, and precautions taken by the facilities, and these efforts include postings in languages other than English. Both facilities obtain tests as needed according to testing criteria. Though the social distancing recommendation is inherently at odds with the nature of incarceration, both facilities have implemented cohorting protocols, quarantine new arrivals, have isolation rooms available, and Caroline is 40% vacant. Farmville and Caroline screen both detainees and staff for symptoms, including by checking body temperature. The facilities have provided soap and sanitizer to detainees and increased communal area sanitizing practices. And finally, both facilities have medical areas including negative pressure rooms capable of isolating and treating detainees, and both have relationships with area hospitals that can multiply their treatment capabilities. Thus, Plaintiffs failed to show inadequate COVID-19 measures in Caroline and Farmville.

The heart of Plaintiffs’ argument is simply that “there is nothing Defendants can do that would adequately protect Plaintiffs inside the walls of the” detention facilities. Dkt. 22 at 19.

This appears to be incorrect because both Caroline and Farmville have, thus far, adequately and successfully protected Plaintiffs. Farmville's success is most apparent, because it has returned no positive COVID-19 tests despite having occasion to test symptomatic detainees. Caroline's success is in the identification, isolation, and treatment of two detainees who tested positive for COVID-19, are in stable condition, and were quarantined before—apparently—infecting anyone else.

Moreover, Plaintiffs ignore the other measures undertaken by Farmville and Caroline. Both centers have distributed masks to all detainees, reduced interpersonal contact by reducing visitation and other traffic, and both centers are themselves medically prepared with negative pressure rooms.

In sum, the defendants have taken reasonable actions to protect these especially vulnerable Plaintiffs, and others like them, from COVID-19. Numerous new measures aim to prevent the virus from reaching inside the facilities, and once it is there, other measures aim to prevent its spread as well as eradicate it. For example, the facilities are being cleaned more often, detainees have sanitizer as well as masks, and traffic has been reduced. The facilities have the ability to test when necessary, and care for sick detainees in on-site negative pressure rooms or in nearby hospitals. Plaintiffs' contention, that anything short of releasing individuals at increased risk for COVID-19 complications is deliberate indifference, is therefore unavailing. The test for deliberate indifference requires reasonable action, and here the Court finds that Farmville, Caroline, and the officials at each, have undertaken extensive and reasonable measures to protect those who are at increased risk for death, serious illness, or other COVID-related complications. Accordingly, Plaintiffs have failed to show deliberate indifference.

Since the deliberate indifference test requires both elements to be met, and Plaintiffs have failed to clearly establish the subjective prong, the Court need not decide whether Plaintiffs satisfied the objective prong. They have not clearly established a likelihood of success.

2. Plaintiffs Failed to Clearly Establish a Likelihood of Irreparable Harm

The second *Winter* factor which Plaintiffs must demonstrate is irreparable harm. Here, Plaintiffs argue they are likely to suffer irreparable harm in two forms. The first harm they point to is denial of a constitutional right itself. The second harm is their likelihood of severe illness or death. Neither argument is availing, and Plaintiffs have therefore failed to clearly establish the second *Winter* factor.

First, Plaintiffs correctly note that “the denial of a constitutional right” itself “constitutes irreparable harm for purposes of equitable jurisdiction.” *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987). But as explained above, it is unlikely that Plaintiffs have been denied a constitutional right. Accordingly, they have not clearly established a likelihood of irreparable harm stemming from such a denial.

Second, Plaintiffs argue that they face imminent, irreparable harm to their health and safety based on the risk of illness or death “if they contract COVID-19” which can only be avoided by release. Dkt. 8 at 28. Yet, the standard for the second *Winter* factor “requires plaintiffs . . . to demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22. A “possibility of irreparable harm” is insufficient to warrant a preliminary injunction. *Id.* Moreover, in addition to showing it is likely, Plaintiffs must show the harm to “be neither remote nor speculative, but actual and imminent.” *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002).

The harm here is both speculative and a mere possibility. Any harm suffered by Plaintiffs here is contingent upon, first, exposure to COVID-19; second, contracting COVID-19; and third, even then, whether the complained of injury in fact occurs as a result of their age or underlying medical conditions requires speculation. This attenuation is divorced from the reality of the current situation, in which the detention centers are isolating transferees, screening for symptoms, disinfecting surfaces and providing masks. As discussed above, Caroline and Farmville have implemented significant precautionary measures, and there is no indication that they are insufficient. To the contrary, Farmville has not had any confirmed COVID-19 cases at all, and Caroline was successful in isolating and treating two. And, in any case, Plaintiffs have failed to show that the medical care they would receive within the detention centers would ultimately be inadequate.

Furthermore, “[e]very person in the United States, whether in a detention facility or not, faces COVID-19 exposure.” *Albino-Martinez v. Adducci*, 2020 WL 1872362, at *4 (E.D. Mich. Apr. 14, 2020) (citing *United States v. Steward*, 2020 WL 1468005, at *1 (S.D.N.Y. Mar. 26, 2020)). Thus, it is unclear how release—which will involve travel and exposure to unknown numbers of people who may or may not have practiced social distancing—would preclude this harm. Therefore, Plaintiffs have failed to clearly establish a likelihood, as opposed to possibility, of sufficiently imminent irreparable harm.

3. Plaintiffs Did Not Establish the Public Interest and Balance of Equities Weigh in Their Favor

The third and fourth *Winter* factors which Plaintiffs must show are that the balance of equities tip in their favor, and that an injunction is in the public interest. Here, the Government is the nonmovant. Because the Government’s interest is the public interest, the last two factors merge. *Kravitz v. United States Dep’t of Commerce*, 366 F. Supp. 3d 681, 755 (D. Md. 2019)

(citing *Pursuing Am. Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016)); see also *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Plaintiffs argue the balance of equities and public interest weigh in their favor because their detention is unconstitutional, and as a result, the Government will suffer no harm from a preliminary injunction because a court order upholding constitutional rights serves the public interest. Again, however, the Court has found above that Plaintiffs are unlikely to succeed on the merits of their claims, and a violation of constitutional rights is therefore unlikely to be found. Thus, they have failed to establish these factors.

Furthermore, the Court finds that these favors weigh against a preliminary injunction. The Government has argued it has a well-established interest in enforcement of immigration laws. See *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (“The government's interest in efficient administration of the immigration laws at the border also is weighty.”). Those laws were duly enacted by Congress after that body evaluated the public interest. See *id.* (“Further, it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.”). Thus, while a judicial order vindicating constitutional rights does not harm the public interest, an order substituting the Court’s judgment for that of the legislature does. Accordingly, these factors also weigh against granting the extraordinary relief Plaintiffs seek.

IV. Conclusion

For the reasons stated above, Plaintiffs have failed to clearly establish a likelihood of success, irreparable harm, or that the balance of the equities or public interest favor granting a preliminary injunction.

Accordingly, Plaintiffs have failed to carry their burden, and the motion for a temporary restraining order or a preliminary injunction, Dkt. 7, is hereby **DENIED**.

It is **SO ORDERED**.

April 29 2020
Alexandria, Virginia



Liam O'Grady
United States District Judge