

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

DADA, *et al.*,

Plaintiff-Petitioners,

v.

WITTE, *et al.*,

Defendant-Respondents.

Civil Action No.: 1:20-cv-458

Judge Dee D. Drell

Magistrate Judge Joseph H.L. Perez-Montes

**PETITIONERS' OBJECTIONS TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

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INTRODUCTION

Plaintiff-Petitioners (“Petitioners”) fully endorse the Magistrate Judge’s Report and Recommendation (ECF No. 17) insofar as it finds the detention of 13 Petitioners unconstitutional and orders their release. However, Petitioners respectfully object to the Report and Recommendation insofar as it denies relief to two Petitioners, Sirous Asgari and Aracelio Rodriguez.

Indeed, since Petitioners filed their Motion for TRO, and even since the Magistrate Judge’s ruling, the requested relief has only become more urgent, as COVID-19 continues to spread like wildfire through the Louisiana ICE detention centers. When Petitioners commenced this action almost three weeks ago, ICE was reporting that 6 detained people in Louisiana ICE facilities had tested positive.¹ When Petitioners filed their Reply, about a week-and-a-half later, that number had grown 750% to 51.² Now, about a week-and-a-half after that, confirmed cases in Louisiana detention centers have exploded to 119, up 133% since Petitioners filed their Reply, and a staggering 1,883% since Petitioners filed this action.³ According to ICE, of the facilities at issue in this lawsuit,

- Catahoula Correctional Center now has 9 cases,
- LaSalle ICE Processing Center now has 10 cases,
- Pine Prairie ICE Processing Center now has 25 cases,
- Winn Detention Center now has 12 cases, and
- Richwood Detention Center now has 61 cases.⁴

According to ICE’s own data, nationwide, only one other detention center has more cases than Richwood, and Louisiana now ranks second among all states in terms of number of positive

¹ Petitioners’ Mem. Law Supp. their Mot. TRO, ECF No. 2-2 at 6.

² Petitioners’ Reply Supp. their Mot. TRO, ECF No. 9 at 1.

³ ICE COVID-19 Guidance, *Confirmed Cases*, available at <https://www.ice.gov/coronavirus> (May 4, 2020).

⁴ *Id.*

COVID-19 cases in immigration detention.⁵ There have been 2 deaths of staff at Richwood, largely believed to be from COVID-19.⁶ This is the “tinderbox scenario” ICE’s own doctors warned it about as early as March when they urged ICE to release medically vulnerable individuals.⁷

Petitioners, sixteen individuals in ICE detention in Louisiana who are medically vulnerable to serious injury and death from COVID-19, filed a temporary restraining order seeking immediate release. After full briefing, including the submission of several factual declarations from both Petitioners and Defendant-Respondents (“Respondents”), as well as extensive argument on the law and the facts, Magistrate Judge Joseph H. L. Perez-Montes issued a careful, thorough, and well-reasoned Report and Recommendation.

Petitioners do not object to the Report and Recommendation with the exception of its conclusions regarding two Petitioners: Sirous Asgari (ECF No. 17 at 46-47) and Aracelio Rodriguez (ECF No. 17 at 43-44). Specifically, the Magistrate Judge did not order Mr. Asgari released because of a concern about his COVID-19 diagnosis; yet, his symptoms have now progressed to a stage where, according to CDC guidelines, release would be safe and under the Magistrate Judge’s reasoning, release is warranted. Judge Perez-Montes declined to release Mr. Rodriguez, despite affirming his medical vulnerability, because there have not yet been any confirmed cases at Jackson; yet ICE’s failure to test individuals at Jackson means it is quite likely that there are – or certainly imminently will be – confirmed cases there. Neither Mr. Asgari nor

⁵ And, the difference is narrow: ICE reports that Texas has 121 cases and that Louisiana has 119 cases. *Id.*

⁶ Noah Lanard, *Two Guards at an ICE Detention Center with a Major Coronavirus Outbreak Have Died, Mother Jones* (Apr. 29, 2020) (ECF No. 16-2). There are also 14 cases amongst ICE staff at the Alexandria Staging Facility. All of the other ICE detention centers in Louisiana are run by third parties and not ICE, so ICE does not report the number of cases or deaths among those staff. See Monique D. Madan, *Two workers at ICE detention center in Miami-Dade test positive for coronavirus*, Miami Herald (Apr. 7, 2020), available at <https://www.miamiherald.com/news/local/immigration/article241791511.html>.

⁷ Letter from Dr. Scott Allen and Dr. Josiah Rich, to House Comm. on Homeland Sec., Mar. 19, 2020, available at <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>.

Mr. Rodriguez have a criminal history. Both Mr. Asgari and Mr. Rodriguez remain in grave danger and can make arrangements to shelter in place and self-isolate once released. They, too, should be released for their safety and that of the public.

STANDARD

A court conducts a *de novo* review of any portions of a magistrate judge's Report and Recommendation to which a party properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(1)(C). In reviewing a magistrate judge's report and recommendation, a court may exercise its discretion to consider both new evidence and new legal arguments. *Requena-Rodriguez v. Pasquarell*, 190 F.3d 299, 307 n.27 (5th Cir. 1999) (new arguments); *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 852 (5th Cir. 1998) (new evidence).

LEGAL SUMMARY

The Magistrate Judge rightly begins the legal analysis with the central question of jurisdiction. Specifically addressing whether Petitioners' claims are "fact claims" (challenging the fact or duration of detention) which sit at the core of habeas, or "conditions claims" (challenging the conditions of confinement)⁸, the Magistrate Judge carefully reasons that, "in the [Respondents'] cited conditions cases and others, *the conditions are the targeted harm*. When fact claims are mentioned, however, *conditions are indicators of the targeted harm: the confinement itself*." ECF No. 17 at 9 (emphasis in original). Next, the Magistrate Judge rightly notes another distinguishing feature:

⁸ Although ultimately not relevant to this core habeas "fact" challenge, it bears mention that, contrary to Respondents' position before the Magistrate Judge, the Fifth Circuit has not foreclosed "conditions" claims in habeas. In its most recent pronouncement on the subject, *Poree v. Collins*, 866 F.3d 235 (5th Cir. 2017), the Fifth Circuit in fact emphasized that "the Supreme Court has not foreclosed" habeas challenges for conditions claims, *id.* at 244, observed that Fifth Circuit caselaw expressly rejects the distinction, *id.* (citing *Coleman v. Dretke*, 409 F.3d 665, 670 (5th Cir. 2005)), and then "declin[ed] to address whether habeas is available only for fact or duration claims," *id.* See also *Vazquez-Berrera v. Wolf*, No. 20-cv-1241, Dkt 41 at 6-7 (S.D. Tex. Apr. 17, 2020) ("neither the Supreme Court nor the Fifth Circuit foreclosed habeas to address challenges to conditions"). The Magistrate Judge did not need to resolve this question because, following the emerging consensus of courts, claims such as Petitioners' challenge the fact of detention.

“the remedy for conditions claims is generally corrective. The remedy for fact claims, however, generally terminates the detention altogether, or alters it such that a new form of custody or control is imposed.” *Id.*

Indeed, there are two characteristics which distinguish fact claims from conditions claims: the nature of the claim and the relief requested. *Id.* The Magistrate Judge notes that both show that Petitioners’ claims are fact claims and thus unambiguously cognizable in habeas. First, Petitioners’ claims “center upon the fact of their detention as the harm to be redressed.” *Id.* at 12. Petitioners refer to conditions “only to establish that the fact of detention is no longer” constitutional. *Id.* Second, Petitioners seek release, which is “relief available traditionally, if not only, through habeas corpus.” *Id.* Accordingly, as Petitioners’ claims are fact claims, habeas corpus is appropriate, as the near consensus of courts to have considered the issue has also ruled.⁹

The Magistrate Judge then turns to the four preliminary injunction factors.

(1) Substantially likely to prevail on the merits: Beginning with the well-settled principle that people held in immigration detention are in civil, and not criminal, detention, and therefore are protected by the Fifth Amendment’s Due Process Clause, the Magistrate Judge then considered the appropriate standard under the Fifth Amendment. Explaining that Petitioners “challenge extended, pervasive circumstances that they claim are – by act, omission, or plain necessity – prevalent in ICE detention facilities, including the facilities housing them,” rather than isolated acts by specific officials, the Magistrate Judge, in line with long-standing Fifth Circuit case law, determined that Petitioners’ claims are subject

⁹ See, e.g. *Vazquez-Berrera v. Wolf*, No. 20-cv-1241, Dkt 41 at 7 (S.D. Tex. Apr. 17, 2020); *Malam v. Adducci*, No. 20-10829, 2020 WL 1672662, at *2–3 (E.D. Mich. Apr. 5, 2020); *Coreas v. Bounds*, No. 20-0780, 2020 WL 1663133, at *7 (D. Md. Apr. 3, 2020); *Mays v. Dart*, No. 20 C 2134, 2020 WL 1812381, at *6 (N.D. Ill. Apr. 9, 2020); *A.S.M. v. Donahue*, No. 20-CV-62, 2020 WL 1847158, at *1 (M.D. Ga. Apr. 10, 2020); *Wilson v. Williams*, No. 20 cv 794, Dkt. 22 at 10-11 (N.D. Ohio, Apr. 22, 2020), *stay denied*, No. 20-3447 (6th Cir. May 4, 2020) (affirming the district court’s determination that habeas is proper vehicle to seek release of detained persons due to dangers of COVID-19).

to the *Bell v. Wolfish* reasonable relationship test, and not the deliberate indifference standard typically associated with prisoners convicted of a crime. According to the reasonable relationship standard, Petitioners must establish that continued detention does not reasonably relate to a legitimate government objective. Petitioners “may make this showing,” the Magistrate Judge stated, “by proving that, due to their age, immune deficiencies, or other comorbidities, they face an elevated risk of contracting the virus, or suffering serious illness from it; that their particular circumstances also heighten these risks; and that preventive measures are difficult or impossible, leaving them unduly exposed to contracting the virus.” ECF No. 17 at 21. In order to distinguish Petitioners’ claims from generalized claims for release, the Magistrate Judge develops a non-exhaustive list of seven factors to consider. *Id.* at 22-23. Those factors indicated that Petitioners were likely to succeed on the merits of their substantive due process claim.

- (2) **Irreparable Harm:** Here, the Magistrate Judge explained, “[i]t is difficult to dispute that an elevated risk of contracting COVID-19 poses a threat of irreparable harm.” *Id.* at 25.
- (3) **The balance of injuries:** The Magistrate Judge correctly identified the competing interests here: Petitioners face grave injury and even death, while Respondents are responsible to protect the public and ensure Petitioners appear for future immigration proceedings. *Id.* at 26. However, the Magistrate Judge explained, detention is not necessary for Respondents to satisfy their objectives, in light of ICE’s several robust alternatives to detention.
- (4) **Public interest:** The Magistrate Judge first notes the public interest in public safety, and then also explains that the public has an interest in “preventing or mitigating outbreaks,” *id.* at 27, and how much such outbreaks weigh on facility staff, their families, and the public. The Magistrate Judge explained that, as a result, public health and safety are served by reducing the number of people held in unsafe conditions.

Applying this reasoning to each of the Petitioners, the Magistrate Judge determined that all but Sirous Asgari and Aracelio Rodriguez should be released.¹⁰ However, for the reasons below, this same reasoning should result in the release of Mr. Asgari and Mr. Rodriguez as well.

ARGUMENT

I. Sirous Asgari Should be Released.

The Magistrate Judge's recommendation not to release Mr. Asgari is predicated on the notion that Mr. Asgari currently has COVID-19 and the medical care is sufficient at Winn. The Magistrate Judge did not determine that Mr. Asgari is not medically vulnerable to COVID-19, *see* ECF No. 17 at 46 ("Asgari's medical conditions put him at great risk of complications from COVID-19"), nor did the Magistrate Judge determine that Winn Detention Center is safe for medically vulnerable individuals or that Mr. Asgari has a low risk of contracting COVID-19 there. Indeed, it is undisputed that Mr. Asgari is 59 years old, and has grade 2 fatty liver disease, hypertension, and a lung condition which has led to several lung infections and bouts with pneumonia. ECF No. 17 at 46; Asgari Decl., ECF No. 2-5 at ¶¶ 1, 3-6. These are serious conditions which leave him medically vulnerable to COVID-19. Bazzano Decl., ECF No. 2-2 at ¶ i. Critically, as described below, Mr. Asgari's symptoms have reached a stage where, according to CDC guidelines, release would be appropriate. Those new circumstances would justify release under the Magistrate Judge's reasoning.

Since the Magistrate Judge's decision, there have been important updates to Mr. Asgari's condition. According to Respondents, Mr. Asgari was taken to a negative pressure room late on Saturday, April 25, 2020 or maybe early Sunday, April 26, 2020. ECF No. 15. He had been coughing for a few days and had an elevated temperature. *Id.* There, he was given a COVID-19

¹⁰ Eduardo Devora Espinosa had already been released by ICE; his claims are moot. *See* ECF No. 17 at 47.

test. *Id.* Petitioners’ counsel learned on April 28, 2020 that the test was positive. *Id.* According to Mr. Asgari, on Thursday, April 30, in the afternoon, he was moved to a large dormitory, along with 2 other men who had been in the negative pressure room with him. Suppl. Asgari Decl. at ¶ 6. Thus, by the time the Magistrate Judge issued his decision, Mr. Asgari was no longer in the negative pressure room. *See* ECF No. 17 (“At last reporting, Asgari is reportedly under medical supervision in a negative pressure isolation unit at Winn.”). The three of them were the only people in that dorm at that time. *Id.* at ¶ 6. According to Mr. Asgari, the next day, Friday, May 1, three more men were put into that dorm (which appears to have beds for 44). *Id.* at ¶ 7. Mr. Asgari reports that his vitals are checked once per day, including his temperature and oxygen level. *Id.* at ¶ 8. According to Mr. Asgari, he no longer has a fever. *Id.* He reports that his oxygen level was 98% when he was in the negative pressure room, and is at 98% on May 4. *Id.* Apart from these reports from Mr. Asgari, the Court has no specific information before it regarding the nature of Mr. Asgari’s treatment. While Respondents claim that Mr. Asgari “has been under medical supervision,” ECF No. 17 at 46, they nowhere provide anything more detailed than that conclusory statement – there are no medical records or even sworn descriptions of his care.¹¹

Moreover, it remains impossible to socially distance or maintain vigilant hygiene at Winn. Mr. Asgari reports that his dorm housed 44 men, with only one shower and two unenclosed toilets (before he was taken out of that dorm, it was down to 29 men). Asgari Decl., ECF No. 2-5 at ¶ 18. Mr. Asgari reports that the beds were less than 2 feet apart. *Id.* Medical staff wear masks, but guards do not always wear them. *Id.* at ¶ 19. Those reports of the situation at Winn are corroborated by a recently released report by the American Civil Liberties Union, Human Rights Watch, and

¹¹ Moreover, Respondents have never provided to the Court the facility-specific plans for mitigating COVID-19 that ICE’s own protocols require. *See* Venters Second Suppl. Decl., ECF No. 9-12 at ¶ 2.

the National Immigration Justice Center (attached as Exhibit 2 to the Fifth Vogel Declaration).¹² That report addresses immigration detention centers in Louisiana, Arizona, and Mississippi, including Jackson, Winn, and Richwood – all of which are involved in this case. It is based on site visits, interviews with 150 people detained at the detention centers, and publicly available data from ICE, the Executive Office for Immigration Review (“EOIR,” which runs the immigration court system), and the U.S. Securities and Exchange Commission; documents released under the Freedom of Information Act by ICE and EOIR to the ACLU; and records provided by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University and the American Immigration Lawyers Association (AILA).¹³ Critically, the report echoes Mr. Asgari’s serious concerns about the medical care at Winn, *see* Suppl Asgari Decl. at ¶¶ 9-11:

Medical staff at Winn showed us what was described as the clinic’s “emergency room.” The room held only a stretcher and had no basic medical equipment commonly located in an emergency room, including a crash cart or defibrillator, both of which staff searched for and only several minutes later found in the hallway. . . . [T]he only doctor on staff at Winn Correctional Center had his license suspended twice before — once at an Indian health services facility and another time at the very same facility when it had housed Louisiana state prisoners. . . . Besides employing only one physician, only half of the positions for registered nurses were filled at Winn.¹⁴

The report also details serious problems with access to very basic medications, like asthma inhalers and diabetes medication, raising serious questions about the medical staff’s ability to handle more complex diseases such as complications of COVID-19.¹⁵ Nor is Mr. Asgari the first to complain that his need for a wheelchair was not taken seriously by Winn staff. *See* Suppl. Asgari Decl. at ¶

¹² Eunice Hyunhye Cho (ACLU), Tara Tidwell Cullen (HRW), and Clara Long (NIJC), *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration* (April 2020).

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 7, 31, 35, 45.

¹⁵ *Id.* at 36, 46.

9. The report describes the case of Manuel Amaya Portillo, who required a wheelchair because of a disability, but, like Mr. Asgari, was denied one by Winn staff.¹⁶ This report not only corroborates Mr. Asgari's experience, as detailed in his declarations (Asgari Suppl. Decl., and ECF No. 2-5), but it substantiates Petitioners' claims that ICE is not enforcing even its own meager COVID-19 guidance.¹⁷

There is no evidence that Mr. Asgari is immune from further COVID-19 infection.¹⁸ Based on that fact, combined with the fact that Mr. Asgari has medical conditions making him highly vulnerable to serious illness or death from COVID-19, as well as the fact that Respondents have already once failed to protect Mr. Asgari from COVID-19 infection, this Court should order him released. Further, as shown below, this Court can safely release Mr. Asgari, according to the CDC guidelines.

¹⁶ *Id.* at 37.

¹⁷ Medical and public health experts, including Dr. Susan E. Hassig and Dr. Homer Venters, have explained that ICE's COVID-19 protocols are wholly insufficient, fail to implement basic CDC guidance, and, at times incorporate guidance that actually runs counter to that called for by the CDC. Dr. Hassig is an epidemiologist at Tulane University's School of Public Health and Tropical Medicine with decades of experience with infectious disease, and Dr. Venters is a physician and epidemiologist and former medical director for the New York City jails, with decades of experience specifically in correctional healthcare. *See* ECF Nos. 9-11 and 9-12.

¹⁸ *See, e.g.,* Paula Hancocks et al., *Recovered Coronavirus Patients Are Testing Positive Again. Can You Get Reinfected?*, CNN (Apr. 18, 2020), available at <https://www.cnn.com/2020/04/17/health/south-korea-coronavirus-retesting-positive-intlhnk/index.html>; Alexa Lardieri, *South Korea Says Recovered Coronavirus Patients Test Positive Again*, U.S. News and World Report (Apr. 10, 2020), available at <https://www.usnews.com/news/world-report/articles/2020-04-10/south-korea-says-recovered-coronavirus-patients-test-positive-again>; Lee Brown, *51 recovered coronavirus patients test positive again in South Korea*, New York Post (Apr. 7, 2020), available at <https://nypost.com/2020/04/07/51-recovered-coronavirus-patients-test-positive-again-in-south-korea/>; Jackie Salo, *Whistleblower doctors say coronavirus reinfection even deadlier*, New York Post (Feb. 19, 2020), available at <https://nypost.com/2020/02/19/whistleblower-doctors-say-coronavirus-reinfection-even-deadlier/>.

CDC Guidelines ¹⁹	Mr. Asgari's Situation
(1) The individual has been free from fever for at least 72 hours without the use of fever-reducing medications; and	SATISFIED. As of May 5, 2020, Mr. Asgari will have been fever-free for three days. Suppl. Asgari Decl. at ¶ 10.
(2) The individual's other symptoms have improved (e.g., cough, shortness of breath); and	SATISFIED. Mr. Asgari is no longer reporting fever and his cough has improved. Suppl. Asgari Decl. at ¶ 10.
(3) At least 10 days have passed since the first symptoms appeared.	SATISFIED. As of today, May 4, 2020, it has been eight days since Mr. Asgari's positive test, and even longer since his first symptoms appeared days before that.

According to ICE, Mr. Asgari has no criminal history. Hartnett Decl., ECF No. 8-1, at ¶ 33. Mr. Asgari has family in the United States who can arrange for a place for him to stay and self-quarantine in Baton Rouge, with a family member caring for him. Suppl. Asgari Decl. at ¶ 12. Releasing Mr. Asgari is not only safe, but necessary in order both to protect his health and safety and to reduce the risk to staff and others in detention.

II. Aracelio Rodriguez Should be Released.

The uncontroverted facts are that Aracelio Rodriguez is a 61-year-old Cuban asylum seeker with severe asthma and a history of hospitalizations concerning his asthma. Rodriguez Decl., ECF No. 2-16 at ¶¶ 1, 4-5. He is being detained at Jackson Parish Correctional Center, and, there he has had two very serious asthma attacks which resulted in his tongue swelling so that he could not breathe and required medical attention. *Id.* Mr. Rodriguez, because of his age and his serious asthma, is at very high risk for serious illness or death from COVID-19. Bazzano Decl., ECF No. 2-20 at ¶ n.

¹⁹ CDC, *Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings* (May 4, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>. The CDC refers to this as the “symptom-based strategy.”

In recommending against the release of Mr. Rodriguez, the Magistrate Judge did not dispute any of these facts about Mr. Rodriguez. *See* ECF No. 17 at 44 (“Rodriguez is a high-risk detainee due to his advanced age and underlying medical conditions.”) The Magistrate Judge’s reasons for recommending against release for Mr. Rodriguez are that COVID-19 has not yet been detected in Jackson Parish Correctional Center, and that there are only “minor shortcomings in sanitization” there. ECF No. 17 at 44.

It is true that ICE has not reported a confirmed case of COVID-19 among the immigrants detained at Jackson. However, there is no way of knowing whether COVID-19 is actually present in Jackson Parish Correctional Center with more information about testing. We do not know how many – if any – individuals have been tested at Jackson Parish; Respondents simply have never made such information available. If nobody is tested, then there will be no reported cases. Further, because Jackson Parish is owned and operated by a private firm, LaSalle Corrections, ICE does not report any positive or suspected cases among its staff.²⁰ The coronavirus may indeed be present amongst Jackson Parish staff, but, if so, that will not be reported by ICE. Further, Jackson Parish serves not only as an ICE detention center, but also as the parish jail. ICE likewise does not report data regarding any positive or suspected cases amongst those held in the parish jail.²¹ So, ICE’s public data do not tell the full story and are insufficient to determine whether COVID-19 is present at Jackson.

²⁰ *See* LaSalle Corrections, *Our Locations*, available at <http://www.lasallecorrections.com/our-locations/> (including Jackson Parish Correctional Center as a LaSalle Corrections facility); Monique D. Madan, *Two workers at ICE detention center in Miami-Dade test positive for coronavirus*, Miami Herald (Apr. 7, 2020), available at <https://www.miamiherald.com/news/local/immigration/article241791511.html> (ICE does not report COVID-19 data regarding contractor staff).

²¹ The Jackson Parish Sheriff’s Office has not publicly reported any known or suspected cases amongst those held in the parish jail.

Moreover, there is a great risk that Mr. Rodriguez will contract COVID-19 at Jackson. Mr. Rodriguez reports that he does not routinely have enough soap to wash his hands, and sometimes must use shampoo. Rodriguez Decl., ECF No. 2-16 at ¶ 17. He reports that there are roughly 100 people in his dorm, with beds only a few feet apart. *Id.* at ¶ 13. These alone make the only known effective protections against COVID-19 – social distancing and vigilant hygiene – impossible. Indeed, it is ironic that, according to Mr. Rodriguez, facility staff have explained the need to socially distance – to a dorm full of 100 people. *Id.* at ¶ 14. As with Mr. Asgari’s experience, Mr. Rodriguez’s statements are only corroborated by the recent ACLU, Human Rights Watch, and National Immigration Justice Center report. As the report demonstrates, Mr. Rodriguez is not alone in lacking basic hygiene supplies like soap: the report states that, with respect to Jackson, researchers “received multiple reports that the facility failed to provide people with soap for bathing or cleaning supplies for their cells or bathrooms.”²² The report describes long waits for medical attention and poor access to even common medications such as antibiotics – including staff telling detained people to buy medication at commissary.²³ This raises serious questions about Jackson’s capability to respond to COVID-19. This report directly corroborates Mr. Rodriguez’s account, demonstrating that, rather than only “minor shortcomings in sanitization,” there are in fact serious deficiencies in hygiene and the ability to socially distance. There is thus a great risk that Mr. Rodriguez will contract COVID-19 at Jackson.

According to ICE, Mr. Rodriguez has no criminal history. Hartnett Decl., ECF No. 8-1, at ¶ 37. If released, Mr. Rodriguez will go to live with his son in West Palm Beach, Florida. Rodriguez Decl., ECF No. 2-16 at ¶ 20. In light of Mr. Rodriguez’s age and medical conditions,

²² *Justice-Free Zones*, *supra* n.7 at 8, 43, 54.

²³ *Id.* at 54.

which place him at a very high risk for serious illness and death from COVID-19, ICE's inability to keep medically vulnerable individuals safe, and the explosive spread of COVID-19 throughout Louisiana's ICE detention centers, this Court should release Mr. Rodriguez so that he may self-isolate and protect himself from infection and possible death.

In the alternative, should the Court decide not to release Mr. Rodriguez at this time, Petitioners respectfully request that the Court order Jackson Parish to submit to the Court within one week its protocols regarding testing for COVID-19, as well as to certify that it has sufficient access to COVID-19 tests, including a description of that access. Additionally, Petitioners respectfully request that the Court order Jackson promptly to inform the Court of any suspected or confirmed COVID-19 cases among the detained immigrants, staff, or individuals held in the parish jail there.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court adopt the Magistrate Judge's Report and Recommendation, modified only to order the release of Sirous Asgari and Aracelio Rodriguez, grant the motion for a temporary restraining order, and order Petitioners' immediate release from custody.

Dated May 4, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2020, I electronically filed the foregoing document and accompanying exhibits with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system. I also certify that there are no non-CM/ECF participants to this action.

Dated: May 4, 2020

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