UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY BAEZ, JONATHAN BERMUDEZ JERMAINE GONSALVES, and DEDRICK LINDSEY on behalf of themselves and all others similarly situated,	)	
Petitioners,	)	
v.	)	Civil Action No. 20-10753-LTS
ANTONE MONIZ,	)	
Respondent.	)	

RESPONDENT ANTONE MONIZ'S REPLY IN FURTHER SUPPORT OF HIS MOTION TO DENY PETITIONERS' HABEAS PETITION FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM

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Respondent respectfully submits this reply in further support of his motion to deny the Petition for lack of subject matter jurisdiction and for failure to state a claim.

ARGUMENT

I. THE PRISON LITIGATION REFORM ACT APPLIES BECAUSE THIS CASE IS A CIVIL ACTION WITH RESPECT TO PRISON CONDITIONS.

In his opening brief, Doc. # 22 ("Br."), Respondent argued that the PLRA prohibits this Court, as a single district court judge, from issuing a prison release order "in any civil action with respect to prison conditions." § 3626(a)(3)(B). The scope of that prohibition is sweeping, covering "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison. § 3626(g)(2). The *only* exception, which is not applicable here, is for "habeas corpus proceedings challenging the fact or duration of confinement in prison." *Id.* (emphasis supplied).

Petitioners have five main responses but none has merit. *First*, they cite several cases for the misleading proposition that "the PLRA does not apply" to habeas cases. Doc. # 38 ("Opp.") 5. The PLRA was codified in a many different statutory provisions, and Petitioners' cited cases discuss a different provision of the PLRA, 28 U.S.C. § 1915, which governs filing fees. Courts, including those cited by Petitioners, have said that the fees provision of the PLRA does not apply to habeas proceedings. *E.g.*, *Martin v. Bissonette*, 118 F.3d 871, 874 (1st Cir. 1997). But none of those cases addressed § 3626, which is the far broader provision at issue here.

Second, Petitioners cite numerous extra-circuit cases for the irrelevant proposition that prisoners may use "habeas corpus petitions to address constitutional deficiencies in the conditions of detainees' confinement." Opp. 5-6.[1] Respondent explained in his second motion to dismiss

[1] One of Petitioners' cited cases, Doc. # 51, *Banks v. Booth*, No. 20-849 (D.D.C. Apr. 2020), does not appear to address this issue at all. Indeed, the word "habeas" does not appear anywhere in the slip opinion. *See generally id.*

(Doc. # 40) why that proposition is wrong based on the particular allegations in this case. But that inquiry does not address the key issue here, namely, whether this case is a "civil action with respect to prison conditions." § 3626(a)(3)(B). Even if a habeas court could consider some challenges to a prisoner's conditions of confinement, it does not follow that this Court is empowered to issue a prison release order in such a case, as Petitioners request here. Doc. # 1 at 39. Indeed, the PLRA expressly forecloses a single judge from granting that relief in any case, including habeas cases, "with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison," outside of the narrow category of habeas cases "challenging the fact or duration of confinement in prison." § 3626(g)(2).[2]

Third, after suggesting that the distinction does not matter, Petitioners claim that this case is a "fact or duration" case. *Id.* at 6-7. This is so, they say, because they seek release as a remedy, even though they admit that they challenge the "conditions of confinement." *Id.* at 7. Here again, Petitioners rely only on cases describing the judge-made law on the scope of habeas, not the PLRA, where Congress expressly determined that prison release orders are foreclosed in *any case* that challenges conditions of confinement. § 3626(g)(2). Petitioners cite no authority, nor is Respondent aware of any, for the proposition that prisoners may circumvent the PLRA simply by seeking release in a case, like this one, that *admittedly* challenges conditions of confinement. In all events, any such case law would be irreconcilable with the plain text of the PLRA.

[2] Petitioners' reliance on the Justice Manual (Opp. 6) is misplaced for the same reason: its reference to habeas was made in the context of judge-made law on the scope of habeas, which is different in different circuits, and not in the context of the PLRA, which excludes from its scope only a narrow category of habeas cases not applicable here. In all events, the Justice Manual is guidance not law. *See* https://www.justice.gov/jm/jm-1-1000-introduction ("The Justice Manual provides internal DOJ guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigation prerogatives of DOJ.") (last visited Apr. 28, 2020).

Fourth, Petitioners argue that this Court is free to release prisoners because the need for social distancing in light of COVID-19, rather than "crowding" per se, is the source of the problem. Opp. 8-11. That argument is critically flawed. The PLRA defines the term "prisoner release order" broadly to "include[ ] any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison." § 3626(g)(4). That is exactly what Petitioners seek here. Doc. # 1 at 39. Their attempt to restrict that broad definition by imposing a requirement from another part of the statute that applies only to a three-judge court prior to imposing a prisoner release order, § 3626(a)(3)(E)(i), is unsupported and unsupportable.[3]

Finally, Petitioners argue that, even if prisoner releases are foreclosed, the PLRA does not preclude "less intrusive" relief, like the remedial measures proposed in the Petition. Opp. 11-14. That is true as far as it goes. But, as described in Respondent's second motion to dismiss, it would not be appropriate for this Court, as a habeas court, to order that relief in this case. Relief of that type should be sought in a civil rights case under § 1983, which provides those types of remedies for "constitutional claims that merely challenge the conditions of a prisoner's confinement." *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). Indeed, Petitioners themselves appear to concede this point by citing and relying upon § 1983 cases when making this argument. Opp. 12. Yet they, represented by sophisticated counsel, continue to insist on a dramatic expansion of habeas law.

[3] The cases that Petitioners rely on for that proposition, *e.g.*, *Reaves v. Department of Correction*, 404 F. Supp. 3d 520 (D. Mass. 2019), which are inapt because they addressed prisoner transfers for necessary medical procedures, actually *rejected* the same argument that Petitioners make here when Massachusetts attempted to prevent the transfer by invoking § 3626(a)(3)(E)(i). *See id.* at 523 ("One of two necessary conditions for entering a release order, as Defendants noted, is that the three-judge panel find by clear and convincing evidence, that 'crowding is the primary cause of the violation of a Federal right.' Accepting Defendants argument would mean that the only way a district court can order the release of a prisoner is for a violation of his constitutional rights where overcrowding caused the violation, but not if any other reason caused the violation.") (internal citation omitted). The argument is equally specious in this case.

II. HABEAS IS NOT A PROPER AVENUE TO SEEK RELEASE FOR FEDERAL CRIMINAL DEFENDANTS AWAITING TRIAL.

In their opening brief, Respondent also argued that seeking traditional remedies afforded to criminal defendants under the Bail Reform Act ("BRA") was the only appropriate way for Petitioners to obtain release due to the threat to health and safety posed by COVID-19. Br. 27-29.

Petitioners have two main responses and both fail. Their first argument, that Respondent is "simply wrong" (Opp. 24), is contradicted by:

- Every court of appeals that has addressed this question. *E.g.*, *Reese v. Warden Philadelphia FDC*, 904 F.3d 244, 246–48 (3d Cir. 2018) (holding that "federal defendants who seek pretrial release should do so through the means authorized by the Bail Reform Act, not through a separate § 2241 action"); *Medina v. Choate*, 875 F.3d 1025, 1029 (10th Cir. 2017), *cert. denied*, 138 S. Ct. 1573 (2018) ("[W]e now adopt the general rule that § 2241 is not a proper avenue of relief for federal prisoners awaiting federal trial."); *Falcon v. U.S. Bureau of Prisons*, 52 F.3d 137, 139 (7th Cir. 1995) (same); *Fassler v. United States*, 858 F.2d 1016, 1017–19 (5th Cir. 1988) (same).[4]

- The only session in this district that has ruled on this question. *Mahoney v. United States*, No. 13-11094, 2013 WL 3148653, at *2 (D. Mass. June 17, 2013) (Gorton, J.) ("Where a defendant is awaiting trial, the appropriate vehicle for violations of his constitutional rights are pretrial motions or the expedited appeal procedure provided by the Bail Reform Act, 18 U.S.C. § 3145(b), (c), and not a habeas corpus petition.").

- All treatise writers that have considered this question. *E.g.*, Brian R. Means, *Federal Habeas Manual* § 1:29 (May 2019 Update) ("Section 2241 generally is not a proper avenue of relief for federal prisoners awaiting federal trial.").

[4] Respondent refers the Court in particular to the Tenth Circuit's opinion in *Medina*, which contains a comprehensive review of the law governing the scope of habeas for federal criminal defendants awaiting trial, including the Supreme Court authority that undergirds the holdings in *Medina* and the other decisions described above. *See Medina*, 875 F.3d at 1026-28 (citing and discussing *Jones v. Perkins*, 245 U.S. 390 (1918), *Henry v. Henkel*, 235 U.S. 219 (1914), *Johnson v. Hoy*, 227 U.S. 245 (1913), *Riggins v. United States*, 199 U.S. 547 (1905), *Greene v. Henkel*, 183 U.S. 249 (1902), and *Ex parte Royall*, 117 U.S. 241 (1886)).

The notion that Petitioners and the putative class can do in the aggregate what none of the above defendants was permitted to do individually is as fanciful as it is unsupported.[5]

Petitioners' remaining argument, that individualized inquiries under the BRA would be "inefficien[t]" because there are 172 putative class members (Opp. 25), is not a valid reason for ignoring traditional remedies and expanding habeas in the unprecedented manner Petitioners seek. In all events, it is *this lawsuit* that threatens judicial economy. Every member of the putative class already has a pending criminal case, his own lawyer, and an assigned judge. Moreover, over 200 criminal defendants in this district, including members of the putative class, have already coordinated on release requests with the U.S. Attorney's Office. If every other putative class member were to request release at this time, the Office stands ready—with a compliment of over 100 Assistant U.S. Attorneys capable of working on criminal cases—to assess and respond to each release request within 72 hours of receipt.

III. A COURT-APPOINTED EXPERT IS UNWARRANTED IN THIS CASE.

Petitioners argue that "Respondent does not dispute" this Court's authority to appoint an expert under Rule 706 of the Federal Rules of Evidence. Opp. 13. Although he does not dispute that authority as a general matter, Respondent disputed the appointment Petitioners envision here. Br. 27-28. Courts cannot give anyone powers that even they do not have themselves. *See supra* Part I. Nor can they abdicate core judicial functions, *Stauble v. Warrob, Inc.*, 977 F.2d 690, 695 (1st Cir. 1992), like making individualized, case-specific custody determinations. With well over 20 judges in this district capable of making those determinations, there is no need to devolve that responsibility on anyone other than the judges already assigned to Petitioners' criminal cases.

[5] Neither of the two cases Petitioners cite (Opp. 24-25) mentioned, let alone grappled with, any of the above precedent delineating habeas rights for federal criminal defendants awaiting trial.

Respectfully submitted,

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