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
SECOND MOTION TO DENY PETITIONERS' HABEAS
PETITION FOR LACK OF SUBJECT MATTER JURISDICTION

Respondent Antone Moniz, Superintendent of the Plymouth County Correctional Facility ("Respondent"), by and through his attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, respectfully files this second motion, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, to deny Petitioner Anthony Baez's, Petitioner Jonathan Bermudez's, Petitioner Jermaine Gonsalves's, and Petitioner Dedrick Lindsey's (collectively, "Petitioners") Class Action Petition Seeking Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief (the "Petition") (Doc. # 1). The grounds for this motion, and an explanation for why Respondent is filing a second motion (see footnote 1), are set forth in the accompanying memorandum of law.

WHEREFORE, Respondent respectfully requests that the Court deny the Petition and dismiss the case.

Respectfully submitted,

ANTONE MONIZ
Superintendent of the Plymouth
County Correctional Facility

By his attorneys,

ANDREW E. LELLING,
United States Attorney

By: */s/ Jason C. Weida*
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Dated: April 24, 2020

LOCAL RULE 7.1(a)(2) CERTIFICATION

I hereby certify that, by email on April 23, 2020, and by telephone on April 24, 2020, I conferred with counsel for Petitioner, who would not assent to the relief sought in this motion.

/s/ Jason C. Weida
Jason C. Weida
Assistant U.S. Attorney

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ANTHONY BAEZ, JONATHAN BERMUDEZ JERMAINE GONSALVES, and DEDRICK LINDSEY on behalf of themselves and all others similarly situated,	)	
Petitioners,	)	
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ANTONE MONIZ,	)	
Respondent.	)	

RESPONDENT ANTONE MONIZ'S MEMORANDUM OF LAW IN SUPPORT OF HIS SECOND MOTION TO DENY PETITIONERS' HABEAS PETITION FOR LACK OF SUBJECT MATTER JURISDICTION

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Dated: April 24, 2020

Attorneys for the Government

Respondent Antone Moniz, Superintendent of the Plymouth County Correctional Facility ("Respondent"), respectfully submits this memorandum of law in support of his second motion to deny Petitioner Anthony Baez's, Petitioner Jonathan Bermudez's, Petitioner Jermaine Gonsalves's, and Petitioner Dedrick Lindsey's (collectively, "Petitioners") Class Action Petition Seeking Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief (the "Petition") (Doc. # 1) for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.[1]

ARGUMENT

I. THE PETITION MUST BE DENIED FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE THE PETITION DOES NOT PROVIDE A VALID JURISDICTIONAL BASIS FOR CONDITIONS-OF-CONFINEMENT RELIEF.

The first stated jurisdictional basis for the Petition and the relief it seeks, and the only jurisdictional basis Petitioners attempt to explain, is the habeas statute.[2] *See* Doc. # 1 ¶ 17 ("Petitioners bring this action pursuant to 28 U.S.C. § 2241 for relief from Respondents' conduct in violation of the Fifth and Eighth Amendments to the U.S. Constitution."); *see also, e.g.*, *id.* ¶ 128 (describing habeas). Because Petitioners' challenge to the conditions of their confinement falls well outside the core of habeas corpus, the Petition must be denied.

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[1] The undersigned apologizes for not raising this argument in Respondent's motion filed on Tuesday. From the time he received the Petition on Saturday through his filings on Tuesday, the undersigned was under tremendous time constraints. The single argument raised in this motion did not come into focus until later, and since then the undersigned has endeavored to file this motion as soon as possible so that Petitioners would have an adequate opportunity to respond before next Thursday's hearing. In all events, challenges to jurisdiction may be raised at any time.

[2] The Petition also lists several other bases for this Court's subject matter jurisdiction, but Petitioners do not explain how any of those bases supplies jurisdiction in this case if habeas jurisdiction is lacking. Doc. # 1 ¶ 18 ("The Court has subject matter jurisdiction over this Petition pursuant to Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the Fifth and the Eighth Amendments to the U.S. Constitution; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act)."). None does so.

"Habeas is at its core a remedy for unlawful executive detention," and "[t]he typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008); see also *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."); *Allen v. McCurry,* 449 U.S. 90, 104 (1980) ("[T]he purpose of [the writ of habeas corpus] is not to redress civil injury, but to release the applicant from unlawful physical confinement."). Thus, although the question remains open, courts as a general matter have recognized that habeas corpus proceedings are the proper mechanism for challenging the "fact or duration" of confinement, while a non-habeas civil action is the proper method of challenging "conditions of confinement." *E.g.*, *Preiser v. Rodriguez,* 411 U.S. 475, 484-99 (1973).

While the circuits are not uniform on this issue, courts in this district have long observed the dichotomy described in *Preiser*. For example, in *Crooker v. Grondolsky*, Judge O'Toole denied a habeas petition that challenged the adequacy of the petitioner's medical care. No. 12-12106, 2013 WL 101588, at *4 (D. Mass. Jan. 4, 2013). The court reasoned that "judges of this Court repeatedly have held that the failure to provide adequate medical treatment is not the proper subject of a petition for a writ of habeas corpus." *Id.* at *2. "Claims for inadequate medical treatment are most properly characterized as conditions of confinement claims, which are generally not cognizable under § 2241; rather most challenges to the constitutional adequacy of medical care should proceed as a civil rights action." *Crooker*, 2013 WL 101588, at *2. Because there was no reason to depart from that longstanding view, the court denied the habeas petition. *Id.* at *4. *See also Jenkins v. Spaulding*, No. 19-10078, 2019 WL 1228093, at *1 (D. Mass. Feb. 22, 2019), *appeal dismissed*, No. 19-1307, 2019 WL 4757883 (1st Cir. July 26, 2019) (Kelley, M.J.) ("Jenkins appears to be challenging the conditions of his confinement. This claim should

be brought through a civil rights action."); *Kamara v. Farquharson*, 2 F. Supp. 2d 81, 88–89 (D. Mass. 1998) (Saris, J.) ("It is a well-settled general principle that a habeas petition is the appropriate means to challenge the 'actual fact or duration' of one's confinement, whereas a civil rights claim is the proper means to challenge the 'conditions' of one's confinement.").[3]

Respondent is not aware of a decision in this district that grappled with this precise issue in the COVID context. Courts in other districts have reached different results for different reasons, but many have insisted that the *Preiser* dichotomy hold firm when petitioners sought changes to the conditions of their confinements (as Petitioners do here) as opposed to when they sought only release (typically on the ground that no set of changes could ameliorate the alleged constitutional deprivation). *E.g.*, *Livas v. Myers*, No. 20-00422, 2020 WL 1939583, at *7–8 (W.D. La. Apr. 22, 2020); *Gayle v. Meade*, No. 20-21553, 2020 WL 1949737, at *26 (S.D. Fla. Apr. 22, 2020); *Benavides v. Gartland*, No. 20-46, 2020 WL 1914916, at *5 (S.D. Ga. Apr. 18, 2020); *Phea v. Pfeiffer*, No. 20-00283, 2020 WL 1892427, at *1 (E.D. Cal. Apr. 16, 2020); *Sacal-Micha v. Longoria*, No. 20-37, 2020 WL 1518861, at *4 (S.D. Tex. Mar. 27, 2020).

Here, the Court is presented with the former and not the later scenario. Petitioners do not seek release as their only remedy. Nor do they contend, as petitioners in other cases have argued, that no set of changes could ameliorate the alleged constitutional deprivation. Rather, Petitioners

[3] After recognizing that his view may be in tension with some of his colleagues on the bench in this district, Judge Young has pronounced *in dicta* that "habeas will in fact lie for certain conditions of confinement claims." *Kane v. Winn*, 319 F. Supp. 2d 162, 214 (D. Mass. 2004). Judge Young's analysis focused on the ways in which some cases, while technically challenging the conditions of confinement, closely resemble a challenge to the fact or duration of confinement. *Id.* None of those examples is remotely similar to this case. In all events, in order to find that it lacks habeas jurisdiction in this case (as it should), this Court need not find that it lacks habeas jurisdiction to address any conceivable challenge to the conditions of confinement.

are critical of "the ongoing and unsafe conditions in which Petitioners are being held," Doc. # 1 ¶ 1, and *seek to have those conditions changed in several ways*:

- "Ensure that each member of the Class receives an individual supply of hand soap, sufficient to allow frequent hand washing; paper towels; toilet paper; running water; and facial tissue," *id.* at 39 (Part B.4 of the prayer for relief);

- "Ensure that all members of the Class, when not in cells with access to hand soap and running water, have access to hand sanitizer containing at least 60% alcohol," *id.* (Part B.5 of the prayer for relief);

- "Require that all staff at PCCF wear personal protective equipment, including masks and gloves when interacting with visitors and residents and members of the Class or when touching surfaces in common areas," *id.* (Part B.6 of the prayer for relief); and

- "Direct Respondents to clean and disinfect all frequently touched surfaces at PCCF with disinfectant products effective against the virus that causes COVID-19 (at the manufacturer's recommended concentration), as well as surfaces in common areas, every two hours during waking hours, and at least once during the night," *id.* (Part B.7 of the prayer for relief).

This requested relief falls far outside the "core" of habeas corpus—that is, a challenge to the fact or duration of confinement. *See Preiser,* 411 U.S. at 484-99. It does not present the closer question, which many other courts have been forced to confront recently in this context, regarding whether habeas may be appropriate when no set of changes could ameliorate the alleged constitutional deprivation. Though filed in a tragic context involving a public health crisis, the Petition in this case calls for the straightforward application of this district's longstanding view that such challenges must be remedied in a civil rights action, not in a habeas action. *E.g.*, *Jenkins*, 2019 WL 1228093, at *1; *Crooker*, 2013 WL 101588, at *4; *Kamara*, 2 F. Supp. 2d at 88–89.

Because Petitioners' challenge to the conditions of their confinement falls well outside

the core of habeas corpus, the Petition must be denied.[4]

CONCLUSION

For all of the foregoing reasons, and those set forth in Respondent's first motion to deny, Respondent respectfully requests that the Court deny the Petition for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

Respectfully submitted,

ANTONE MONIZ
Superintendent of the Plymouth
County Correctional Facility

By his attorneys,

ANDREW E. LELLING,
United States Attorney

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Dated: April 24, 2020

[4] To be clear, while habeas does not provide a remedy to change the conditions of their confinement, Petitioners are not without a remedy. Petitioners are free to file a complaint under Section 1983. "Section 1983 authorizes a 'suit in equity, or other proper proceeding for redress,' against any person who, under color of state law, 'subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution.'" *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). Unlike habeas, Section 1983 provides a remedy for "constitutional claims that merely challenge the conditions of a prisoner's confinement." *Id. See also Muhammad v. Close*, 540 U.S. 749, 750 (2004) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983 action.") (internal citation omitted).