UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 (ER)

PETITIONERS' MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT'S PARTIAL MOTION TO DISMISS

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I. INTRODUCTION

Petitioners Cesar Fernandez-Rodriguez, Rober Galvez-Chimbo, Sharon Hatcher, and James Woodson, individually and on behalf of all others similarly situated, submit this Memorandum of Law in Opposition to Respondent's Partial Motion to Dismiss their claims for release-related relief (ECF 47).

Contrary to Respondent's argument, 18 U.S.C. § 3626 does not apply to a hybrid habeas action like this one, where Petitioners challenge both prison conditions and the fact of their confinement. The relief sought here is also not a "prisoner release order" within the meaning of Section 3626, given that Petitioners are targeting overcrowding as one means of remedying prison officials' deliberate indifference to the risks of a potentially deadly disease.

Nor can Respondent defeat Petitioners' release-based claim for relief by relying on the Bureau of Prisons' discretion with respect to the designation of an inmate's place of imprisonment. Nothing about that discretion, or "comity" principles, prevents this Court from reviewing and remedying fundamental constitutional violations pursuant to the habeas powers that are well established under 18 U.S.C. § 2241.

For these reasons, as explained more fully below, Respondent's motion should be denied.

II. BACKGROUND

On March 26, 2020, as the COVID-19 virus was spreading through the Metropolitan Correctional Center, Attorney General William Barr directed the Bureau of Prisons to "prioritize the use of [its] various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic."[1] That directive, like many others issued in

[1] ECF 54, Kala Decl. Ex. 21 (Mar. 26, 2020 Mem. of Attorney General William Barr); *see* ECF 53, Mem. of Law in Supp. of Petitioners' Mot. for Prelim. Inj. ("P.I. Mot."), at 11.

the weeks to come, was intended to combat the "dangers that COVID-19 poses to … vulnerable inmates."[2] By the middle of April, the Bureau of Prisons recognized that these dangers also amounted to an "urgent situation that may warrant an emergency furlough" of inmates.[3]

The need to release inmates through home confinement and furlough, among other release measures, is especially urgent at the MCC. Indeed, without such measures, it is simply impossible for Petitioners and other inmates—many of whom are packed into 26-person dormitories—to practice social distancing in an effort to prevent the spread of this highly contagious virus.[4] In addition, the MCC has shown itself unwilling to implement basic screening, testing, contact tracing, hygiene, and sanitation practices.[5] These inexcusable conditions, which pour fuel on the fire for the proliferation of this disease, make prioritizing the release of inmates all the more critical.

Yet despite directives from the Attorney General and the dangerous conditions inside the jail, the MCC has shirked its responsibility to consider inmate release. In fact, the MCC—in the face of the Attorney General's extraordinary and explicit directive—even reassigned staff who were ordinarily tasked with reviewing inmate release options so that they were instead working guard duty for virtually all of April.[6] During this time, then-Acting Warden Hazlewood did not recommend a single inmate for home confinement, and a backlog of compassionate release requests (nearly 70 of them) formed.[7] Similarly, neither Mr. Hazlewood nor Respondent has

[2] ECF 54, Kala Decl. Ex. 22 (April 3, 2020 Mem. of Attorney General William Barr).

[3] ECF 54, Kala Decl. Ex. 34 (April 15, 2020 BOP Mem. re Furlough and Home Confinement).

[4] *See* ECF 53, P.I. Mot. at 7 & sources cited therein.

[5] *See* ECF 53, P.I. Mot. at 14–18 & sources cited therein.

[6] *See* ECF 53, P.I. Mot. at 13–14 & sources cited therein.

[7] Although the Bureau of Prisons does not have the authority to grant compassionate release itself, it can move the Court to grant such relief, and, should it decline to do so, its timely response to such requests is

considered releasing a single inmate on furlough since the start of the COVID-19 pandemic, despite a BOP directive that they do so because of the "urgent situation" created by COVID-19.[8]

On April 28, 2020, with no indication that Respondent would take reasonable and necessary steps to improve conditions or exercise her release authority, Petitioners commenced this habeas action pursuant to 18 U.S.C. § 2241 on behalf of themselves and all similarly situated inmates at the MCC.[9] Petitioners alleged that Respondent was engaging in ongoing violations of their rights under the Fifth and Eighth Amendments of the Constitution by acting with deliberate indifference to the substantial risk of serious harm posed by the COVID-19 virus. *See Darnell v. Pineiro*, 849 F.3d 17, 21 n.3, 29 (2d Cir. 2017). The petition sought various forms of relief, including an order directing Respondent to "release [inmates] from MCC confinement, with such conditions as may be appropriate."[10]

On May 20, 2020, Respondent filed a partial motion to dismiss directed solely at Petitioners' request for release-related relief.[11] Respondent argues that Section 3626 of the Prisoner Litigation Reform Act ("PLRA") precludes such relief—an argument Judge Shea persuasively rejected in virtually identical circumstances two weeks ago. *See Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 WL 2405350, at *16–17 (D. Conn. May 12, 2020). Respondent also argues that her own statutory release discretion, which she has sparingly used,

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needed so that inmates can fully exhaust their administrative remedies, as required by the First Step Act, in order to then seek relief from the Court. 18 U.S.C. § 3582(c)(1)(A); *see United States v. Woodson*, No. 18-cr-845 (PKC), 2020 WL 1673253, at *2 (S.D.N.Y. Apr. 6, 2020) (denying Petitioner Woodson's motion for compassionate release because the MCC had not yet responded and the thirty-day statutory period had not yet elapsed).

[8] ECF 54, Kala Decl. Exs. 7 (Licon-Vitale Dep. Tr., at 147: 15–19); 6 (Hazlewood Dep. Tr., at 77:5–8).

[9] ECF 1.

[10] ECF 1 at 27–28.

[11] ECF 47 (hereinafter, "Resp. Mem.").

nonetheless prevents this Court from granting habeas relief to remedy constitutional violations. Finally, Respondent advances a novel and amorphous "comity" argument in support of dismissal.

For the reasons set forth below, each of these arguments should be rejected.

III. PROCEDURAL STANDARD

"On a motion to dismiss, all factual allegations in the complaint are accepted as true and all inferences are drawn in the [petitioner's] favor." *Littlejohn v. City of New York*, 795 F.3d 297, 306 (2d Cir. 2015). The Federal Rules of Civil Procedure apply to habeas proceedings brought pursuant to 18 U.S.C. § 2241. Fed. R. Civ. P. 81(a)(4); *see also, e.g.*, *Vargas v. Davies*, No. 15-cv-3525 (ER), 2016 WL 3044850, at *4 (S.D.N.Y. May 27, 2016). Under Rule 12(b)(1), dismissal of a claim is proper where the "district court lacks the statutory or constitutional power to adjudicate" it. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). To survive a motion to dismiss under Rule 12(b)(6), the petition must only "state a claim to relief that is plausible on its face." *Kolbasyuk v. Capital Mgmt. Servs., LP*, 918 F.3d 236, 239 (2d Cir. 2019).

IV. ARGUMENT

A. Section 3626 Does Not Bar the Relief Sought Here.

Section 3626 does not apply to, let alone preclude, Petitioners' habeas claim for release-related relief. The plain language of Section 3626 states that this provision only applies to habeas actions that do *not* challenge the "fact" of an inmate's confinement. 18 U.S.C. § 3626(g)(2). Here, Petitioners are challenging both the conditions of their confinement and the fact of their confinement, as both of these put Petitioners at grave risk of suffering serious harm from the COVID-19 virus in jail. Furthermore, the remedial constraints relied upon by Respondent also do not bar relief, since Petitioners do not seek a "prisoner release order" under 18 U.S.C. § 3626(g)(4).

1. Section 3626 Does Not Apply to this Action.

The provisions of Section 3626 apply only to a "civil action with respect to prison conditions," 18 U.S.C. § 3626(a), a statutorily-defined phrase that expressly excludes habeas proceedings such as this one. A "civil action with respect to prison conditions" means "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, ***but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison***." 18 U.S.C. § 3626(g)(2) (emphasis added).

The statute exempts habeas proceedings, like this one, that properly challenge both conditions of confinement *and* the fact or duration of confinement. *See Martinez-Brooks*, 2020 WL 2405350, at *17. This is because, as Judge Shea correctly held, pure "fact or duration" claims—those challenging the validity of a conviction or the length of a sentence—are "already excluded from the scope" of Section 3626 by the first part of Section 3626(g)(2). *Id.* In other words, even without the specific habeas corpus carve-out in the second part of Section 3626(g)(2), pure "fact or duration" challenges are not actions "with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." 18 U.S.C. § 3626(g)(2). Because the habeas clause would thus serve no purpose if it were limited to pure "fact or duration" claims, in order to "give effect" to the clause, *United States v. Kozeny*, 541 F.3d 166, 174 (2d Cir. 2008), it must be read as covering hybrid habeas actions like this one, *see Martinez-Brooks*, 2020 WL 2405350, at *17 ("[T]o interpret the habeas clause of the definition to refer only to [pure 'fact or duration'] petitions would make the clause superfluous.").

The text of Section 3626(g)(2) thus supports "that there are habeas proceedings that challenge both the conditions of confinement *and* the 'fact or duration of confinement,' and that such petitions are exempt from the statute." *Martinez-Brooks*, 2020 WL 2405350, at *17; *see also*

Wilson v. Williams, No. 20-3447 (6th Cir. May 4, 2020), Order at 3 (holding that habeas action seeking release-related relief based in part on conditions of confinement due to COVID-19 was exempt from Section 3626), *stay denied*, No. 19A1041, 2020 WL 2644305 (U.S. May 26, 2020); *Baez v. Moniz*, No. 20-cv-10753 (LTS), 2020 WL 2527865, at *2 (D. Mass. May 18, 2020) (holding that Section 3626 did not apply to habeas action that was "at least in part … a challenge to the fact or duration of the petitioners' confinement" in light of the conditions posed by COVID-19).

Respondent does not take issue with this common-sense reading of the statute. Instead, Respondent contends that *Martinez-Brooks* and other cases are "distinguishable" because the petitioners there claimed that "nothing could resolve the alleged constitutional violations other than a release order." Resp. Mem. at 14. This argument does not withstand scrutiny because, for purposes of applying Section 3626, there is no material difference between the nature of the release claims asserted in this case and those cited above.

Here, just as in the cases Respondent seeks to distinguish, Petitioners challenge the conditions of their confinement as well as the "fact" of their confinement. Petitioners seek injunctive relief both to improve prison conditions and to facilitate their release from confinement at the MCC in order to safeguard their health and that of other inmates. *See* Petition (ECF No. 1) at 27–28; Order to Show Cause (ECF No. 4) at 4–5; *see also* Petition, *Martinez-Brooks*, No. 3:20-cv-00569 (MPS) (D. Conn. Apr. 27, 2020), ECF No. 1 at 66–67 (seeking relief "requiring Respondents to release from custody or to home confinement members of the [medically vulnerable] Subclass," in addition to non-release forms of relief); Petition, *Wilson*, No. 20-cv-794 (N.D. Ohio Apr. 13, 2020), ECF No. 1 (similar); Petition, *Baez* No. 20-cv-10753 (LTS), ECF No. 1 (D. Mass Apr. 17, 2020) (similar).

In addition, Petitioners' release claims are directly tied to the allegations in the Petition. For example, Petitioners allege that "[t]he MCC's failure to release or transfer inmates has … made it effectively impossible for inmates to maintain a six-foot distance from others." Doc. No. 1 at 15; *see also Martinez Brooks*, ECF No. 1 at 21 (alleging that, "at current facility population levels, prisoners at FCI Danbury cannot comply with the [CDC] guidelines for physical distancing, a cornerstone of risk reduction in prisons." (internal quotation marks omitted)). Given the nature of these allegations and release requests, Petitioners here, as in *Martinez-Brooks*, *Baez*, and *Wilson*, squarely challenge the "fact … of [their] confinement" within the ordinary meaning of that phrase.[12] 18 U.S.C. § 3626(g)(2); *see Martinez-Brooks*, 2020 WL 2405350, *16 (applying dictionary definitions to conclude that the "'the fact … of confinement' refers generally to the existence of the state of being imprisoned" (alteration omitted)).

Contrary to Respondent's argument, Petitioners' claim for release does not turn on whether they specifically alleged that "nothing could resolve the alleged constitutional violations other than a release order." Resp. Mem. at 14. Indeed, as noted above, the petitioners in each of the cases Respondent attempts to distinguish in fact also sought non-release relief. That is eminently sensible: a combination of release and non-release measures is plainly needed in the extraordinary circumstances of the COVID-19 pandemic, where social distancing is a critical public health measure that is difficult to achieve in prisons or jails. The gravamen of Petitioners' challenge in this case thus is no different from *Martinez-Brooks* or other cases where release and non-release

[12] The California district court case cited by Respondent, *Alvarez v. Larose*, did not consider the textual analysis that the Court relied on in *Martinez-Brooks*. *See Alvarez v. Larose*, No. 20-cv-782 (DMS) (AHG), 2020 WL 2315807, at *2 (S.D. Cal. May 9, 2020). For the reasons explained above, the *Alvarez* court's characterization of a similar habeas action as a pure "conditions of confinement" challenge is inconsistent with the plain meaning of the statute, unpersuasive, and should not be followed—and, in any event, is distinguishable from Petitioners' claims and the relief sought here.

relief was sought—and granted—to vindicate Petitioners' constitutional rights and mitigate the risk of serious harm posed by the virus. *See Martinez-Brooks*, 2020 WL 2405350, at *32–34; *Wilson*, 2020 WL 1940882, at *10–11 (N.D. Ohio Apr. 22, 2020), *stay denied*, No. 20-3447 (6th Cir. May 4, 2020), *stay denied*, 2020 WL 2644305 (U.S. May 26, 2020); *see also Wilson*, 2020 WL 2542131, at *4 (N.D. Ohio May 19, 2020) (enforcing preliminary injunction).

For all these reasons, Section 3626 does not apply to the release-related relief sought in this action.

2. Petitioners Are Not Seeking "Prisoner Release Orders."

Even assuming *arguendo* that Section 3626 did apply, the special remedial provisions relied upon by Respondent—*i.e.,* the convening of a three-judge court, and a prior order for "less intrusive relief," 18 U.S.C. § 3626(a)(3)—would not. The provisions of subsection (a)(3) apply only to a "prisoner release order," which is statutorily defined as "any order, including … 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." *Id.* § 3626(g)(4). Courts have recognized that this definition should not be given an overbroad interpretation such that it would extend to any order that has *any* effect of reducing a prison population or that directs the release of an inmate for any reason. *See Reaves v. Dep't of Correction*, 404 F. Supp. 3d 520, 522 (D. Mass. 2019); *Plata v. Brown*, 427 F. Supp. 3d 1211, 1224 (N.D. Cal. 2013); *see also Conboy v. AT & T Corp.*, 241 F.3d 242, 255 (2d Cir. 2001) ("Congress must speak clearly of its intent to interfere with the historic equitable powers of the courts.") (internal quotation marks omitted)). Rather, "prisoner release order" should be afforded a common-sense meaning in light of the statute as a whole, which by its terms is intended to govern classic prison overcrowding claims—not claims that target overcrowding as one means of remedying prison officials' deliberate indifference to the risks of a potentially deadly disease.

As relevant here, Section 3626(a)(3) provides that only a three-judge court can enter a "prisoner release order," and only where "crowding is *the primary* cause of the violation of a Federal right." 18 U.S.C. § 3626(a)(3)(E)(i) (emphasis added). But nothing in the statute or its legislative history suggests that Congress, in imposing these requirements, intended to strip federal courts of their power to order release-related relief primarily for reasons *other* than overcrowding. *See Reaves*, 404 F. Supp. 3d at 523 (rejecting the argument 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"); *Plata*, 427 F. Supp. 3d at 1224–25 (similarly rejecting an expansive interpretation of Section 3626(g)(4) and explaining that such an interpretation would impermissibly "prevent vindication of the inmates' constitutional rights"). To the contrary, "the sponsors of the PLRA were primarily concerned with courts setting 'population caps' and ordering the release of inmates as a sanction for prison administers' failure to comply with the terms of consent decrees designed to eliminate overcrowding." *Reaves*, 404 F. Supp. 3d at 523 (internal quotation marks omitted). This is plainly not the essence of Petitioners' claim here.

In addition, the statute's provisions suggest that Congress was specifically concerned about the federalism concerns implicated by interference in *state* prison systems. *See* 18 U.S.C. § 3626(a)(1)(B) (providing that no court shall order relief that "requires or permits a government official to exceed his or her authority under State or local law or otherwise violates *State or local* law," subject to exceptions (emphasis added)); *see also Cagle v. Hutto*, 177 F.3d 253, 257 (4th Cir. 1999) ("[T]he fundamental purpose of the PLRA … was to remove the federal district courts from the business of supervising the day-to-day operation of *state* prisons." (emphasis added)); H.R. Rep. No. 104–21, at 24 n.2 (1995) ("By requiring that a plaintiff inmate prove an actual

violation of his constitutional rights based on the alleged overcrowding, this subsection will end the current practice of imposing prison caps when inmates in *local* prisons have complained about the prison conditions but the presiding judge has made absolutely no finding of unconstitutionality …." (emphasis added)).

Release of the kind contemplated by Section 3626 thus is entirely distinct and different from the relief sought here. Petitioners do not challenge overcrowding in and of itself, nor do they seek to remedy the kinds of resourcing issues that undergird overcrowding claims brought in ordinary times (which these surely are not). *Cf. Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 920–21 (E.D. Cal. 2009) (describing standard "crowding" challenges based on conditions caused by overcapacity alone). Instead, Petitioners allege that federal prison officials have acted with deliberate indifference in responding to a specific and urgent medical crisis, and seek release measures to protect against the grave risks posed by that crisis. Judicial review of these constitutional claims need not, and should not, be channeled through the restrictive procedures reserved for "primary" overcrowding challenges. *See Reaves*, 404 F. Supp. 3d at 523; *Plata,* 427 F. Supp. 3d at 1224.

B. This Court's Power to Remedy Constitutional Violations Is Not Limited by the Bureau of Prisons' Statutory Designation Discretion.

Respondent argues that Petitioners seek relief that intrudes on the Bureau of Prisons' discretion with respect to the designation of an inmate's place of imprisonment and whether to release them to home confinement. *See* Resp. Mem. at 15–17. But Petitioners' claims do no such thing. Instead, Petitioners ask that the Court review and remedy *constitutional violations*, a critical judicial function that Congress has in no way limited through the statutes relied upon by Respondent.

As relevant here, the Bureau of Prisons is tasked with designating "the place of the prisoner's imprisonment," which "is not reviewable by any court." 18 U.S.C. § 3621(b). Likewise, the Bureau of Prisons has discretion over whether to release an inmate to home confinement pursuant to 18 U.S.C. § 3624(c) and the CARES Act. *See, e.g.*, *McFadden v. United States*, No. 00-cr-671 (AKH), 2020 WL 1322833, at *1 (S.D.N.Y. Mar. 20, 2020).

These uncontroversial propositions have nothing to do with Petitioners' claims in this case. This is not an action seeking review of the Bureau of Prisons' facility-designation choice under 18 U.S.C. § 3621(b); Petitioners are not, for example, asserting claims that Respondent improperly weighed the statutory considerations in Section 3621(b) (*e.g.*, "the nature and circumstances of the offense") in designating them to the MCC instead of a different facility. *Cf. United States v. Dubogryzov*, No. 3:06-cr-233 (AHN), 2008 WL 4097468, at *1 (D. Conn. Sept. 4, 2008) (BOP permissibly exercised its discretion to designate prisoner to USP Canaan instead of a "lesser classification facility"). Nor are Petitioners challenging Respondent's decision regarding whether to release a given inmate to home confinement.

Rather, Petitioners are alleging violations of their constitutional rights based on prison officials' deliberate indifference to a serious risk of harm, and—as Respondent does not dispute—they are properly invoking the Court's habeas power under 18 U.S.C. § 2241 to do so. *See Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008) ("This court has long interpreted § 2241 as applying to challenges to the execution of a federal sentence, including such matters as … prison conditions.") (internal quotation marks omitted). Although Congress can restrict the habeas power of federal courts and can even limit courts' power to review constitutional claims, its intent to do so must be "clear." *See Hamdan v. Rumsfeld*, 548 U.S. 557, 575 (2006); *Webster v. Doe*, 486 U.S. 592, 603 (1988); *see also Royer v. Fed. Bureau of Prisons*, 933 F. Supp. 2d 170, 181 (D.D.C.

2013) (concluding that "Congress has not explicitly precluded review of *constitutional* claims based on [BOP's decisions as to a prisoner's place of imprisonment] or similar decisions" and proceeding to review such claims). And where judicial review of such claims is available, Congress must also "speak clearly" to limit the courts' equitable power to provide appropriate remedies. *Conboy*, 241 F.3d at 255.

But this is not the case here. Sections 3621 and 3624 do not even mention any restriction on judicial review of constitutional claims or available remedies, let alone contain the clear statement needed to create such a restriction. In the absence of such a restriction, this Court has the power to review and remedy constitutional violations bearing on release. As a court in this district explained in the context of an inmate transfer, "[w]hile it is true that prison officials generally have discretion to transfer an inmate from one correctional facility to another, the transfer is reviewable if it is otherwise in violation of an individual's constitutional rights" and courts thus have "the authority to review [a] prison transfer to determine if it was in violation of constitutionally protected rights." *Fermin-Rodriguez v. Westchester Cty. Jail Med. Pers.*, 191 F. Supp. 2d 358, 362 n.3 (S.D.N.Y. 2002).

Similarly, in *Martinez-Brooks*, the Court explained that it was not "'review[ing]' the BOP's 'designation of a place of imprisonment' under subsection 3621(b)" by "finding preliminarily that Respondents are not exercising their authority under subsection 3642(c)(2) in a constitutionally adequate manner." 2020 WL 2405350, at *15; *see also Royer*, 933 F. Supp. 2d at 181; *Moles v. Lappin*, No. 08-cv-594-F, 2010 WL 796756, at *5 n.4 (W.D. Okla. Feb. 26, 2010) (concluding that "§ 3621(b) is not implicated" where a "request for injunctive relief is not premised on a challenge to the BOP's designation of his place of imprisonment but on an alleged failure to protect him from attacks by other inmates in violation of his Eighth Amendment rights").

These cases accord with the bedrock principle that, although a matter may be committed to the government's discretion, courts retain the power to vindicate claims alleging that such discretion is being exercised in violation of the Constitution. *See Jones v. Connors*, 496 F.2d 82, 83 (5th Cir. 1974) ("While … prison officials do have broad discretion in the exercise of their difficult responsibilities, we must also recognize that these officials are subject to the Constitution."); *cf. United States v. Armstrong*, 517 U.S. 456, 464 (1996) (recognizing that charging decisions generally rest "entirely" in the prosecutor's discretion but that "[o]f course, a prosecutor's discretion is subject to constitutional constraints") (internal quotation marks omitted)).

The cases relied upon by Respondent are not to the contrary. *See* Resp. Mem. at 16–17. In *United States v. Yates*, for example, an inmate brought a *non*-constitutional challenge to BOP's calculation of good-time credits and "presuppose[d]" that he was automatically entitled to home confinement. No. 15-40063-01 (DDC), 2019 WL 1779773, at *4 (D. Kan. Apr. 23, 2019). Of course, no individual inmate is automatically entitled to home confinement, and Petitioners do not claim otherwise. But in any event, unlike in *Yates*, Petitioners do bring a constitutional challenge, which is not foreclosed by section 3621.

Likewise, in *United States v. Gould*, the Court merely commented that the "BOP is in the best position to determine whether RRC/halfway house placement would be of benefit" to the defendant, in response to the defendant's request that the court make a recommendation for such placement. 7:05-CR-020 (RO), 2018 WL 3956941, at *1 (N.D. Tex. Jan. 17, 2018); *see also Livas v. Meyers*, No. 2:20-CV-00422, 2020 WL 1939583, at *6 (W.D. La. Apr. 22, 2020). But Petitioners here do not dispute the fact that individual home confinement decisions are generally within the BOP's institutional competence and discretion, nor do Petitioners seek the Court's

recommendation on an individual inmate's home confinement request. Rather, Petitioners claim that the MCC has utterly neglected its institutional role to provide for the health and safety of its inmate population, in violation of their constitutional rights, and that the release of inmates to home confinement where reasonable is part of the constitutional remedy. Similarly, Respondent's argument that home confinement should be treated the same as community confinement for purposes of Section 3621 (Resp. Mem. at 16–17) is neither here nor there, since, as explained above, Section 3621 does not preclude review of constitutional claims or limit this Court's equitable power to provide remedies for such violations.

Accordingly, this Court has the power to review Petitioners' constitutional claims and grant any appropriate relief, including release-related relief, necessary to remedy constitutional violations.

C. Comity Principles Do Not Preclude Release.

Respondent's assertion that "comity" principles preclude release is based on a grab-bag of inapposite, out-of-circuit case law and should also be rejected.

First, Respondent argues that this Court should grant its partial motion to dismiss based on the "doctrine of equitable restraint" discussed in *Coors Brewing Co. v. Mendez-Torres*, 678 F.3d 15, 28 (1st Cir. 2012) (internal quotation marks omitted). But the doctrine in *Coors Brewing* applies only in the context of interference between federal *and state* proceedings. *See* 678 F.3d at 23 ("[C]omity constrains the exercise of federal jurisdiction in cases implicating a variety of important *state* interests." (emphasis added)); *see also Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421 (2010) ("The comity doctrine … reflects a proper respect for state functions[.]" (internal quotation marks omitted) (cited by *Coors Brewing Co.*, 678 at 23)). The *Coors Brewing* comity doctrine is not implicated where, as here, Respondent claims that injunctive relief would interfere with the operation of a *federal* jail.

Respondent next argues that "[w]hen an injunction sought in one federal proceeding would interfere with another federal proceeding, considerations of comity require more than the usual measure of restraint, and such injunctions should be granted only in the most unusual cases." Resp. Mem. at 17 (quoting *Bergh v. Washington*, 535 F.2d 505, 507 (9th Cir. 1976)). But in stark contrast to this case, the plaintiff in *Bergh*, a commercial fisherman in Washington State, specifically sought an injunction prohibiting (1) a federal judge in a different case from ordering the State of Washington to promulgate fishing regulations, (2) the Clerk of the District Court in the other case from "filing any such order," and (3) the State of Washington from complying with it. *Bergh*, 535 F.2d at 506–07. But Petitioners seek nothing of the sort: they do not ask this Court to order the district judges in their criminal cases to grant them compassionate release, or anything else for that matter. Rather, they have brought an independent habeas action pursuant to 18 U.S.C. § 2241, alleging constitutional violations that they could not adequately raise through a compassionate release motion even if they tried. *See, e.g.*, Transcript of Compassionate Release Hearing at 14:1–24, *United States v. Hatcher*, 18-cr-454-10 (KPF) (S.D.N.Y. Apr. 16, 2020) (observing that an inmate's Eighth Amendment claim "would have to be presented in the procedural vehicle of a habeas petition under 2241 … and couldn't just be intuited from a compassionate release motion"); *see also United States v. Haney*, No. 19-CR-541 (JSR), 2020 WL 1821988, at *8 (S.D.N.Y. Apr. 13, 2020) (denying a COVID-19-based compassionate release motion because "the Court will not, and cannot, construe what is not a habeas petition as a habeas petition").

Respondent also cites several out-of-circuit cases for the proposition that pretrial detainees must seek release through the Bail Reform Act, not Section 2241. *See* Resp. Mem. at 18. As an initial matter, these cases are irrelevant to the claims for relief set forth in Petitioners' preliminary injunction motion, which does not seek direct release from custody but rather prospective relief

ordering Respondent to expedite and maximize the use of her own release authority—in other words, systemic relief that is plainly unavailable in a pretrial bail setting—for those who qualify under existing legal provisions or written directives of the Attorney General. *See Reese v. Warden Phila. FDC*, 904 F.3d 244, 246 (3d Cir. 2018) (reasoning that defendants "should pursue the remedies *available* within the criminal action" (emphasis added)).

Even with respect to direct release, however, neither *Reese* nor the other cases cited by Respondent establish an absolute rule that a federal pretrial detainee cannot seek such relief through Section 2241. *See Reese*, 904 F.3d at 246 (noting the possibility of an exception for "exceptional circumstances"); *Medina v. Choate*, 875 F.3d 1025, 1029 (10th Cir. 2017) (similar); *see also Jones v. Perkins*, 245 U.S. 390, 391–92 (1918) (recognizing "exceptional circumstances" exception). If ever there were "exceptional circumstances" for considering a Section 2241 claim for pretrial release, it would be in the context of this habeas class action, where, unlike in individual bail hearings, inmates can gather evidence in support of their common allegations of systemic constitutional violations—violations that require urgent redress in order to protect their health and safety. *See United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974); *Basank v. Decker*, No. 20-cv-2518 (AT), 2020 WL 1953847, at *2–3 (S.D.N.Y. Apr. 23, 2020).

Finally, Respondent argues, without citing any case law, that sentenced inmates' claims for release should be dismissed because otherwise "this case runs the risk of creating inconsistent rulings." Resp. Mem. at 18–19. But the mere fact that there is some factual overlap between the constitutional claims in this case and an inmate's statutory claim for compassionate release does not create a risk of "inconsistent" rulings that is cognizable for purposes of a "comity" doctrine or any other rule of law. Indeed, Respondent's argument is little more than an end-run around the strict requirements of the *res judicata* and collateral estoppel doctrines, which Respondent

conspicuously does not raise, presumably because the requirements of these doctrines are not satisfied here. *See, e.g.*, *Jim Beam Brands Co. v. Beamish & Crawford Ltd.*, 937 F.2d 729, 734 (2d Cir. 1991) (concluding that similar factual issues were not "identical" for collateral estoppel purposes because they were governed by materially different standards); *see also Martinez-Brooks*, 2020 WL 2405350, at *18 (noting that *res judicata* would turn in part on whether an inmate could raise an Eighth Amendment claim in a compassionate release motion, and rejecting the defense on other grounds); Transcript of Compassionate Release Hearing at 14:1–24, *Hatcher*, 18-cr-454-10 (KPF) (S.D.N.Y. Apr. 16, 2020) (observing that an Eighth Amendment claim could not be brought through a compassionate release motion). Respondent cannot side-step the requirements of these preclusion doctrines by simply recasting them as a novel and amorphous "comity" doctrine. *See Baez*, 2020 WL 2527865, at *3 ("[T]o what extent any relief should be tailored to avoid conflict with orders issued by other District Judges … are questions properly considered when considering the merits and tailoring relief. They are not issues justifying dismissal.").

V. CONCLUSION

For the foregoing reasons, Respondent's partial motion to dismiss should be denied.

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