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)

MEMORANDUM OF LAW
IN SUPPORT OF RESPONDENT'S PARTIAL MOTION TO DISMISS

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Respondent Marti Licon-Vitale ("Respondent"), in her official capacity as Warden of the Metropolitan Correctional Center ("MCC"), by her attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, respectfully submits this memorandum of law in support of her partial motion to dismiss the Class Action Petition Seeking Writs of Habeas Corpus (the "Petition" or "Pet.") brought by current MCC inmates Cesar Fernandez-Rodriguez, Rober Galvez-Chimbo, Sharon Hatcher, and James Woodson (collectively, "Petitioners")[1] pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

The Court should dismiss all of the Petition's claims seeking the release of MCC inmates. These claims warrant dismissal because the Prison Litigation Reform Act ("PLRA") and 18 U.S.C. § 3621 prohibit the Court from granting the requested relief, and because the claims improperly ask the Court to infringe on the statutory authority of both the Bureau of Prisons ("BOP") and the district court judges presiding over the criminal cases of MCC's inmates.

Where, as here, Petitioners' "claims are based solely on the current conditions inside [the prison] given the COVID-19 pandemic," *Alvarez v. Larose*, 20-CV-782 (DMS) (AHG), 2020 WL 2315807 at *3 (S.D. Cal. May 9, 2020), the claims "cannot be characterized as a 'habeas corpus proceeding challenging the fact or duration of confinement in prison,'" *id.* (quoting 18 U.S.C. § 3626(g)(2)), and are subject to the PLRA. Pursuant to Section 3626 of the PLRA, this Court cannot order the release relief sought by the Petition. It must accordingly dismiss the Petition's claims for inmate releases for failure to state a legally cognizable claim.

[1] Petitioner Jonathan Medina filed a notice of voluntary dismissal on May 18, 2020. *See* Not. Vol. Dismissal (ECF No. 41).

The Court should also dismiss the Petition's claims for the MCC to release inmates to home confinement because BOP's home confinement decisions are not subject to judicial review. Pursuant to 18 U.S.C. § 3621, BOP "shall designate the place of the prisoner's imprisonment," and this designation "is not reviewable by any court." *Id.* § 3621(b). Although Section 3621 does not specify whether home confinement is a "place of the prisoner's imprisonment" under the statute, this Court should follow precedent from this circuit and others regarding the application of this provision to non-prison settings, and hold that a district court cannot review BOP's exercise of discretion in deciding whether to release inmates to home confinement.

Finally, considerations of comity require this Court to dismiss the Petition's inmate release claims to avoid inappropriate collateral attack and inconsistent rulings. Petitioners, like all other MCC inmates, may seek individualized release determinations as part of their criminal proceedings. Permitting Petitioners, some whom were already denied release in such proceedings, to pursue a second bite at the apple through the Petition improperly transforms this Court into "an appellate tribunal to review a possible error by the trial judge." *Medina v. Choate*, 875 F.3d 1025 (10th Cir. 2017). Such a result must be avoided, and the Court should dismiss the Petition's claims for release on this additional ground.

BACKGROUND

I. ALLEGATIONS OF THE PETITION

The Petition alleges that, as "a result of the jail's delayed and patently inadequate response to the COVID-19 pandemic," "[a]n unprecedented health crisis is unfolding at the MCC." Pet. ¶ 1. It further claims that the "MCC's treatment of those suspected of having COVID-19 is as ill-conceived as it is inhumane," *id.*¶ 3, and that the MCC has neither taken "obvious, common-sense health and hygiene measures crucial to reducing the spread of the

virus," *id.* ¶ 4, nor adequately addressed "the extreme overcrowding of its facility . . . despite ample tools to do so." *Id.*

The Petition specifically alleges that the MCC has failed to take certain appropriate measures to protect inmates from COVID-19, such as: (1) failing to act upon its authority to release inmates who are particularly vulnerable to COVID-19, *id.* ¶¶ 43-44; (2) housing inmates in conditions that make it impossible for them to maintain a six-foot distance from others, *id.* ¶ 50; (3) failing to provide sufficient hygiene materials, such as soap and face masks, *id.* ¶ 53, or to adequately sanitize toilets, sinks, showers, phones, and computer terminals shared by many inmates, *id.* ¶ 54; (4) engaging in inadequate testing to prevent the further spread of COVID-19, *id.* ¶¶ 59, 61-63; and (5) failing to identify and adequately treat inmates who contract COVID-19, *id.* ¶ 75. As a result of these alleged failings, the Petition alleges that the MCC has "jeopardized the health and safety of the entire population under its care, including 205 inmates . . . whom the MCC has determined are especially vulnerable to COVID-19 based on CDC [Centers of Disease Control and Prevention] criteria." *Id.* ¶ 6. While Respondent will address these allegations separately and does not concede their accuracy, they are assumed to be true for purpose of this motion. *See Littlejohn v. City of N.Y.*, 795 F.3d 297, 306 (2d Cir. 2015) ("On a motion to dismiss, all factual allegations in the complaint are accepted as true and all inferences are drawn in the plaintiff's favor").

The Petition seeks as several forms of relief changes to the prevention methods, sanitation and hygiene practices, and medical treatment undertaken by the MCC in response to the COVID-19 pandemic. Pet. Prayer for Relief, ¶ (iii)(a)-(c). As relevant to this motion, however, the Petition also seeks "release from MCC confinement, with such conditions as may be appropriate, of Petitioners and Class members (i) who are eligible for release pursuant to the

BOP's statutory authority or directives issued by Attorney General Barr; or (ii) for whom release (either temporary or permanent) is otherwise reasonable under the extraordinary circumstances of the COVID-19 pandemic." *Id.* ¶ (iii)(d).

II. PETITIONERS' MOTIONS FOR RELEASE IN THEIR CRIMINAL PROCEEDINGS

In addition to seeking their release from this Court, three of the Petitioners (Fernando-Rodriguez, Hatcher, and Woodson),[2] have also sought various types of release from the district court judges presiding over their criminal cases.

A. Petitioner Fernandez-Rodriguez

Fernandez-Rodriguez is a pretrial detainee held at the MCC, Pet. ¶ 9, facing two parallel proceedings in this district: (1) a criminal case under docket 20 Cr. 43 (GBD) involving one count of conspiracy to distribute one kilogram and more of heroin, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A); and (2) a violation of supervised release proceeding under docket number 14 Cr. 383 (GBD). *See United States v. Fernandez-Rodriguez*, 20 Cr. 43 (GBD) (ECF No. 1), and *United States v. Fernandez-Rodriguez*, 14 Cr. 383 (GBD) (ECF No. 70).

On March 31, 2020, Fernandez-Rodriguez's criminal defense counsel submitted a letter motion to Judge George B. Daniels of this District seeking extraordinary release on bail in light of concerns relating to COVID-19. *See* Req. for Release on Bail, Mar. 31, 2020, *United States v. Fernandez-Rodriguez*, 20 Crim. 43 (GBD) (ECF No. 20) . The motion argued that the Sixth Amendment and Due Process Clause mandated Fernandez-Rodriguez's release because the COVID-19 pandemic presented a grave harm that outweighed the Government's interest in his continued detainment. *Id.* at 13-18. The motion claimed that the MCC was "a high-risk setting for infectious diseases even when there is no worldwide pandemic," *id*., and specifically alleged

[2] It does not appear that the fourth remaining named petitioner, Rober Galvez-Chimbo, has made any request for extraordinary release as of the date of this filing.

that: (1) the MCC had not done sufficient testing for COVID-19, *id.*; (2) the MCC's pandemic protocols addressed only symptomatic detainees, *id.*; (3) insufficient hygiene measures existed to address contagion concerns, including a lack of soap and face masks for inmates, *id.* at 6-7; (4) frequent movements of inmates between units could spread the virus, *id.* at 7; (4) and the MCC had failed to apply recommendations of the CDC to prevent the spread of COVID-19, *id.* Fernandez-Rodriguez asserted that he suffered from chronic asthma and had been identified by the MCC as a vulnerable inmate under CDC guidelines, and was thus entitled to release on bail. *Id.* at 8.

The Government opposed Fernandez-Rodriguez's motion, arguing that Fernandez-Rodriguez's release posed substantial danger to the safety of the community and a risk of flight. *See* Letter from J. Fiddelman to Hon. George B. Daniels, Apr. 1, 2020 (ECF No. 25) at 4. The Government specifically asserted that "[t]he criminal conduct at issue in this case and the defendant's history of trafficking in kilogram quantities of narcotics demonstrates the degree of danger he poses to society." *Id.* On April 7, 2020, Judge Daniels denied Fernandez-Rodriguez's request for bail, *see* Order, Apr. 7, 2020 (ECF No. 27).

B. Petitioner Sharon Hatcher

Judge Katherine Polk Failla of this District sentenced Hatcher on March 10, 2020, to fifty-two months of imprisonment after Hatcher plead guilty to one count under 21 U.S.C. § 846, conspiracy to distribute narcotics. *See* Criminal Judgment, March 10, 2020, *United States v. Hatcher*, 18 Cr. 454 (KPF) (ECF No. 193). Shortly thereafter, Hatcher filed an emergency motion for compassionate release. Emergency Mot. Compassionate Release, Apr. 5, 2020 (ECF No. 204). It requested that Hatcher be immediately released to home confinement pursuant to 18 U.S.C. § 3582(c)(1)(A) due to "extraordinary and compelling reasons" relating to the COVID-19 pandemic, or, in the alternative, be released on bail pending her designation pursuant to 18

U.S.C. § 3141(b) to the prison where she will serve her sentence. *Id.* The Government opposed both requests. *See* Letter from F. Balsamello, Apr. 8, 2020 (ECF No. 208).

Although the Government argued in its opposition that the Court could not consider the merits of Hatcher's motion because she had not satisfied the exhaustion requirement of 18 U.S.C. § 3582, *id.* at 1-5, the Government noted in its papers that Hatcher's "tragic" personal circumstances bore "directly on the question of whether releasing this defendant today would in fact be compassionate." *Id.* at 9. Specifically, the Government pointed out that, at her sentencing, Hatcher "acknowledged needing significant drug and mental health treatment, which she has never received and never would receive if on her own," and further noted that, at sentencing, her counsel stated that Hatcher "actually has been getting much better medical treatment at the MCC than she got when she was actually out on the streets." *Id.* (quoting Tr. At 6).

On April 8, 2020, Judge Failla ordered the parties to submit supplemental letter briefs addressing whether the Court had the legal authority to temporarily release a defendant from custody until the threat posed by COVID-19 subsided. *See* Order, Apr. 8, 2020 (ECF No. 209). At a subsequent telephonic conference on April 16, 2020, the Court held that it could not address Hatcher's request for compassionate release because she had not exhausted her administrative remedies, a requirement that could not be waived by the Court. Apr. 16, 2020, Hearing Transcript at 12:19-25 (ECF No. 234). The Court further indicated that it did not have the authority to "grant or to craft a new sentence that would allow temporary release and then remand." *Id.* at 15:22-16:2. Although the Court stated during the conference that it was "uncomfortable" making a recommendation for BOP to consider furlough for Hatcher "because I don't know what the plan is for Ms. Hatcher's release," *id.* at 18:15-21, it indicated it could be

receptive to making such a recommendation "if only I knew or had a better sense of where things were." *Id.* The Court then issued an order denying Hatcher's motion "for the reasons given on the record during the telephonic hearing." Order, Apr. 16, 2020 (ECF No. 233).

C. Petitioner James Woodson

Woodson was sentenced by Judge Kevin Castel of this District on November 26, 2019 for one count under 18 U.S.C. § 1347, health care fraud, and was sentenced to one year and one day of imprisonment. *United States v. Woodson*, 18 Cr. 845 (PKC). According to the Petition, he is currently scheduled for release in December 2020. *See* Pet. ¶ 13.

On March 25, 2020, Woodson, by his counsel, the Federal Defenders of New York, filed an Emergency Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(1)(A). Mot. Sent. Red., Mar. 31, 2020, (ECF No. 44). In that motion, Woodson requested that he be resentenced to time served, or, in the alternative, that he be permitted to serve the remaining eight months of his custodial sentence in home confinement. *Id.* at 2. The motion described Woodson's health problems, *id.* at 6, and attached an affidavit from Jonathan Giftos, M.D., *id.* (who has also submitted an affidavit supporting the Petition in this case). *See* ECF No. 8. Dr. Giftos' affidavit in support of Woodson's motion addressed: the state of the COVID-19 pandemic in New York City, Aff. J. Giftos, Mar. 31, 2020, (ECF No. 44-1) at 2; populations at greater risk of serious health effects from the virus, *id.* at 4; increased risks of transmission in correctional settings, *id.* at 5; specific conditions at the MCC, *id.* at 7; and the public health reasons to reduce the population size at specific corrections facility. *Id.* at 11. The motion further claimed that MCC inmates did not have adequate access to protective gear or hygiene supplies, and thus that Woodson faced a severe risk of contracting COVID-19. Mot. Sent. Red., Mar. 31, 2020 (ECF No. 44) at 13.

The Government opposed Woodson's motion, *see* Letter from L. Pellegrino, *Woodson*, 18 Cr. 845 (PKC) (ECF No. 50), and Woodson filed a reply in response. Reply, Mar. 31, 2020, *Woodson*, 18 Cr. 845 (PKC) (ECF No. 49).

On April 6, 2020, the Court denied Woodson's motion without prejudice because he had failed to exhaust his administrative remedies. Order, Apr. 6, 2020 (ECF No. 53). Woodson renewed his motion on April 26, 2020. Letter from S. Baumgartel, Apr. 26, 2020 (ECF No. 58). The Government opposed the renewed motion, and Woodson filed a reply letter brief. Letter from S. Baumgartel, Apr.30, 2020, (ECF No. 61).

After oral argument, Judge Castel denied Woodson's motion for compassionate release. *See United States v. Woodson*, 18 Cr. 845 (PKC), 2020 WL 2114770 (S.D.N.Y. May 4, 2020). In denying Woodson's motion, Judge Castel reviewed: the crime to which Woodson had pled guilty, fraudulently obtaining and filling hundreds of prescriptions for antiretroviral medications, *id.* at *2; Woodson's ongoing struggle with drug addiction even while under pretrial supervision, and his initial failure to surrender himself to the BOP, *id.*; the health conditions that Woodson alleged made him more susceptible to dire consequences should he become infected by COVID-19, including asthma, chronic viral hepatitis b, hypertension, and HIV, *id.*; and the alleged deficiencies at the MCC relating to COVID-19 testing, inmate separation, and inmates' access to personal protective equipment and hygiene supplies. *Id*.

The Court assumed for purposes of its decision that Woodson could be "at a greater risk of exposure to the virus than he would be if he were at liberty or on home confinement," *id*. but found that "there are a host of relevant section 3553(a) factors that make Woodson a poor candidate for sentence reduction," *Id.* at *4. These factors included that Woodson had served less than 30% of his sentence, *id.*, and that his crime was "richly deserving of just punishment," and

"was not a one-time error in judgment but a way of life that required effort, planning, and ingenuity." *Id.* The Court further held that "[s]upervising Woodson on home confinement with location monitoring would greatly tax the resources of the Office of Probation because it would require an officer to distinguish between needed in-person, telephonic, or virtual medical visits and pharmaceutical orders and those that might reflect a resumption of the pattern of criminal deception," and "[n]either the BOP nor the Office of Probation is in a position to serve as an intermediary in the on-going dispensing of pharmaceuticals, beyond an initial 30-day supply." *Id.* The Court thus held that "there are not extraordinary and compelling reasons to reduce Woodson's sentence." *Id.* at *5.

III. STATUTORY CONTEXT OF INMATE RELEASE CLAIMS

A. Section 3626 of the Prison Litigation Reform Act

Section 3626 of the PLRA provides that "[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1)(A). The statute further provides that "[i]n any civil action with respect to prison conditions, no court shall enter a prisoner release order unless—(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and (ii) the defendant has had a reasonable amount of time to comply with the previous court orders." *Id.* § 3626(a)(3)(A).

While the definition of a "civil action with respect to prison conditions" excludes "habeas corpus proceedings challenging the fact or duration of confinement in prison," *id.* § 3626(g)(2), the statute broadly defines the term as "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." *Id.* The statute further defines a "prisoner release order" as

"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." *Id.* § 3626(g)(4).

Insofar as Section 3626's pre-conditions for a prisoner release order have been met, namely that the respondent prison has failed to comply in a reasonable time to prior orders, Section 3626 additionally requires that "a prisoner release order shall be entered only by a three-judge court in accordance with [28 U.S.C. § 2284]," *Id.* § 3626(a)(3)(B). The three-judge court must then determine whether clear and convincing evidence establishes that: (i) crowding is the primary cause of the violation of a Federal right; and (ii) no other relief will remedy the violation of the Federal right. *Id.* § 3626(a)(3)(E)

B. Statutes Governing Inmates' Release from BOP Custody

The MCC houses inmates who are in various stages of criminal proceedings. Some inmates, like Fernandez-Rodriguez, are pretrial defendants. *See* Pet. ¶ 9. Others, like Galvez-Chimbo, have either pled guilty or been found guilty at trial, but remain at the MCC awaiting sentencing. *See id.* ¶¶ 10, 12. Still others, like Hatcher and Woodson, have already been sentenced for their crimes. *See id.* ¶¶ 11, 13. Although the MCC has physical custody of each category of inmate, the statutory provisions governing the legal authorities to release such individuals, and BOP's authority in that regard, differ substantially based on the status of the inmates' criminal proceedings.

1. Release of Defendants Awaiting Trial or Sentencing

By statute, BOP has no authority to release federal inmates awaiting trial or sentencing. *See* 18 U.S.C. § 3141 *et seq*. The authority to release such individuals rests solely with the district court presiding over the inmate's criminal case. *See id.* The sole avenue for such inmates to seek release prior to trial or sentencing is to file a motion with the district court. In addition to

standard motions for pretrial release, 18 U.S.C. § 3142(b), post-conviction release, *id*. § 3143, and bail pending appeal, 18 U.S.C. § 3143(b)(1), a pretrial defendant may also seek release under 18 U.S.C. 3142(i), which provides that a "judicial officer may . . . permit the temporary release of [a] person, in the custody of the United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary . . . for another compelling reason." *Id.* § 3142(i).

2. Release of Sentenced Defendants

BOP does, however, have certain authority to release sentenced defendants from federal custody through either "compassionate release" or a "release to home confinement." *See id.* § 3582(c)(1) (compassionate release for inmates sentenced after November 1, 1987); *id.* § 3624(c)(2) (BOP's home confinement authority); 34 U.S.C. § 60541 (federal prisoner reentry initiative). Although these two types of release from custody are similar, they arise from separate statutory authorities and are legally distinct.

With respect to "compassionate release"—which is a reduction of an inmate's remaining sentence—the release authority ultimately resides with the inmate's sentencing judge. *See* 18 U.S.C. § 4205(g) (authorizing the court to reduce any minimum term to the time the defendant has served); *id.* § 3582(c)(1) (authorizing the court to reduce the term of imprisonment). Although BOP may file a motion requesting compassionate release for an inmate, it lacks the authority to actually release a sentenced defendant without a court order. *Id.*

BOP does have discretion, however, to permit a sentenced defendant to serve out the remainder of his sentence in home confinement. *See id.* § 3624(c)(2) (authorizing BOP to place a prisoner in home confinement for the shorter of 10% of the sentence or 6 months); 34 U.S.C. § 60541(g) (authorizing BOP to release eligible elderly or terminally ill inmates to home detention). Home confinement differs from compassionate release in that an inmate released to

such confinement must still serve the remainder of his sentence, but is permitted to serve this sentence at home rather than in a correctional institution.

3. Inmate Releases Following the COVID-19 Pandemic

On March 27, 2020, in response to the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), which authorized the Attorney General, upon a finding of emergency conditions that materially affect BOP's functioning, to expand the cohort of inmates eligible to be considered for home confinement. On April 3, 2020, Attorney General Barr made a finding of emergency conditions and authorized BOP to maximize transfers to home confinement of appropriate inmates held at facilities where the agency determined that COVID-19 was materially affecting operations.

ARGUMENT

I. Section 3626 Precludes This Court from Releasing Inmates

With regard to the remaining Petitioners, the Court should dismiss the portion of the Petition that seeks a "prisoner release order," *see* 18 U.S.C. § 3626(g)(4), because Section 3626 of the PLRA precludes this Court from granting such releases. Section 3626 limits district courts' ability to order prisoner releases in cases, like this one, where inmates pursue civil claims "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." *Id.* § 3626(g)(2). Prior to issuing "any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population," *id.* § 3626(g)(4), this provision requires a district court to first "enter[] an order for less intrusive relief." *Id.* § 3626(a)(3)(A). Only after "the defendant has had a reasonable amount of time to comply" with such an order and fails to do so, may the district court consider releasing inmates. *Id.* And even

in such a circumstance, release orders may be entered only by "a three-judge court," *id.* § 3626(a)(3)(B), which must first determine by clear and convincing evidence that: (i) crowding is the primary cause of the violation of a Federal right; and (ii) no other relief will remedy this violation. *Id.* § 3626(a)(3)(E).

By limiting district courts' authority to release inmates, Section 3626 satisfies one of Congress's purposes in enacting the PRLA, namely to "afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." *Johnson v. Killian*, 680 F.3d 234, 238 (2d Cir. 2012) (citations omitted). Minimizing judicial interference in prison administration is also consistent with Supreme Court precedent, which acknowledges that, in fulfilling "their obligation to enforce the constitutional rights of all persons, including prisoners," courts must "be sensitive to the State's interest in punishment, deterrence, and rehabilitation, as well as the need for deference to experienced and expert prison administrators faced with the difficult and dangerous task of housing large numbers of convicted criminals." *Brown v. Plata*, 563 U.S. 493, 511 (2011).

Section 3626 clearly applies to the Petition's claims for inmate release. The Petition is similar to a petition filed in the Southern District of California. *See Alvarez v. Larose*, 20-CV-782 (DMS) (AHG), 2020 WL 2315807 (S.D. Cal. May 9, 2020). In that case, the petitioners, criminal defendants awaiting trial or sentencing at BOP's Otay Mesa Detention Center ("OMDC"), made allegations similar to the Petition's here about hygiene and health protocols as relate to COVID-19. *Id.* at *3. The district court held that Section 3626 applied because "Plaintiffs' claims rest entirely on the conditions of the Otay Mesa facility." *Id.* (petitioners' claims, "under any good faith calculus, cannot be characterized as a 'habeas corpus proceeding challenging the fact or duration of confinement in prison.'" (citing 18 U.S.C. § 3626(g)(2)). The

court concluded that the petitioners' "claims are based solely on the current conditions inside the OMDC given the COVID-19 pandemic," because "unlike a claim concerning the fact of confinement, Plaintiffs' claims would not exist *but for* their current conditions of confinement at Otay Mesa." *Id.* (emphasis in original). This reasoning applies equally here. The Petition's factual allegations also "focus exclusively on Defendants' 'actions and inactions' concerning the 'conditions of confinement,'" *id.*, and Section 3626 thus requires dismissal of the claims for inmate releases.

Three recent decisions of other courts–the District of Connecticut, the Sixth Circuit, and the District of Massachusetts–are not to the contrary, and the United States is seeking a stay from the Supreme Court of the order at issue in the Sixth Circuit case. *See Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 WL 2405350 (D. Conn. May 12, 2020); *Wilson v. Williams*, No. 20-3447 (6th Cir. filed May 4, 2020) (ECF No. 23-2) (unpublished); *Baez v. Moniz*, Civil No. 20-10753-LTS, 2020 WL 2527865 (D. Mass. May 18, 2020). These decisions are distinguishable because in all three cases the petitioners claimed that nothing could resolve the alleged constitutional violations other than a release order. *See Martinez-Brooks*, 2020 WL 2405350 at *16 ("In short, Petitioners contend that . . . nothing short of an order ending their confinement . . . will alleviate th[e] [Eighth Amendment] violation."); *Wilson*, ECF No. 23-2 at 3 ("Where a petitioner claims no set of conditions would be constitutionally sufficient, we construe the petitioner's claim as challenging the fact of confinement."); *Baez*, 2020 WL 2527865 at *2 (holding that petitioners had alleged that "[i]n these circumstances, *release is the only means of protecting Petitioners* . . . . ") (emphasis in original). In contrast, the Petition does not allege that releasing MCC inmates is the only remedy for the alleged constitutional violations. Rather, the Petition requests "improvements to the MCC's testing, tracing, treatment, sanitation, isolation

and other health-related conditions of confinement . . . for all who remain," without identifying any inmates for whom such relief would be constitutionally insufficient. Pet. ¶ 7. Nowhere does the Petition claim that only release from incarceration would redress Petitioners' alleged injuries, or indeed that there is any sub-class of MCC inmates for which this would be the case. This case is therefore distinguishable from *Martinez-Brooks* or *Baez*, in which petitioners alleged that no relief short of release could satisfy the constitutional claims, *Martinez-Brooks*, 2020 WL 2405350, at *16 *and Baez*, 2020 WL 2527865 at *2, and from *Wilson*, where petitioners sought release for a subclass of medically at-risk inmates for whom they alleged that only release would prevent constitutional injury. *See Wilson*, No. 20-03447 (ECF No. 23-2), at 3).

Section 3626 therefore precludes the Court from considering the Petition's inmate release claims, and the Court should dismiss them on that basis.

II. The Court Should Dismiss the Petition's Inmate Release Claims Because They Infringe on the Statutory Authority of the Bureau of Prisons and Sentencing Judges

Even if this Court were not statutorily precluded from considering the inmate release claims in the Petition, it should still dismiss them. BOP's determinations regarding home confinement are not subject to judicial review, and entertaining inmate release claims in this case would facilitate inappropriate collateral attacks and/or inconsistent rulings.

A. The Court Must Dismiss Claims for Release to Home Confinement Because BOP's Home Confinement Decisions Are Not Judicially Reviewable

Because BOP's decision whether to transfer an inmate to home confinement falls squarely within its unreviewable authority to designate an inmate's place of imprisonment, the Petitioners' claims for release to home confinement must be dismissed. The relevant statute provides that BOP "shall designate the place of the prisoner's imprisonment," and this designation "is not reviewable by any court." 18 U.S.C. § 3621(b). The Supreme Court has acknowledged that "[i]t is well settled that the decision where to house inmates is at the core of

prison administrators' expertise." *McKune v. Lile*, 536 U.S. 24, 39 (2002). The practical reality is that prison administrators have finite resources for monitoring and providing case management to inmates. As these officials decide how best to direct their resources to satisfy the policy goals of incarceration and ensure public safety, courts defer to their knowledge and expertise. *Cf. Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989) ("[T]his Court has afforded considerable deference to the determinations of prison administrators, who in the interest of security, regulate the relations between prisoners and the outside world." (citation omitted)).

Although the statute does not define "place of imprisonment," a Louisiana district court presiding over a challenge to the COVID-19 conditions at a federal prison recently noted that "[b]oth placement in a Residential Reentry Center ("RRC") (more commonly known as a halfway house) and on home confinement are within the BOP's discretion" under this provision. *Livas v. Myers*, No. 2:20-V-00422, 2020 WL 1939583 (W.D. La. Apr. 22, 2020). *cf. United States v. Yates*, No. 15-40063-01-DDC, 2019 WL 1779773, at *4 (D. Kan. Apr. 23, 2019) ("[I]t is BOP—not the courts—who decides whether home detention is appropriate."); *United States v. Gould*, No. 7:05-CR-020-O, 2018 WL 3956941, at *1 (N.D. Tex. Jan. 17, 2018) ("[T]he BOP is in the best position to determine whether RRC/halfway house placement would be of benefit to [the defendant] and to society in general."). *Contra Martinez-Brooks*, 2020 WL 2405350 at *15 (holding that Section 3621 is "not an obstacle" to issuance of temporary restraining order directing warden of FCI Danbury to take certain steps regarding home confinement referrals of at-risk subclass, where the petitioners alleged that release was the only relief that could remedy the alleged constitutional violations for this subclass).

Applying Section 3621 to BOP's home confinement determinations is consistent with precedent from this District, along with several circuit courts of appeal, holding that "community

confinement is 'imprisonment'" under the statute. *See Cato v. Menifee*, No. 03 Civ. 5795 (DC), 2003 WL 22725524, at *4 (S.D.N.Y. Nov. 20, 2003) (collecting cases); *Goldings v. Winn*, 383 F.3d 17 (1st Cir. 2004) (holding that "[a] community correction center is a correctional facility" pursuant to 18 U.S.C. § 3621); *Elwood v. Jeter*, 386 F.3d 842, 847 (8th Cir. 2004) (holding that Section 3621(b) "gives the BOP the discretion to transfer prisoners to [community correction centers] at any time during their incarceration."). Longstanding Second Circuit precedent that "[t]he BOP is the sole agency charged with discretion to place a convicted defendant within a particular treatment program or a particular facility," *Levine v. Apker*, 455 F.3d 71, 83 (2d Cir. 2006) (citing *United States v. Williams*, 65 F.3d 301, 307 (2d Cir. 1995) (confinement to a particular facility or drug treatment program is "within the sole discretion of the Bureau of Prisons.")), also supports reading Section 3621 as giving BOP unreviewable discretion in home confinement decisions.

Given Section 3621's express prohibition against judicial review, and the clear precedent supporting home confinement as a "place of imprisonment" under the statute, the Court must dismiss the Petition's claims seeking release to home confinement for this reason as well.

B. The Court Should Dismiss the Petition's Release Claims Due to Comity

Finally, this Court should dismiss the Petition's release claims to avoid inconsistent rulings and prevent inmates from inappropriately collaterally challenging the decisions of other courts. "Comity is a doctrine of 'equitable restraint.'" *Coors Brewing Co. v. Mendez-Torres*, 678 F.3d 15, 28 (1st Cir. 2012). "When 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." *Bergh v. Washington*, 535 F.2d 505, 507 (9th Cir. 1976); *see also Brittingham v. Comm'r*, 451 F.2d 315, 318 (5th Cir. 1971) ("The proper exercise of restraint in the name of comity keeps to a

minimum the conflicts between courts administering the same law, conserves judicial time and expense, and has a salutary effect upon the prompt and efficient administration of justice."). *Cf. Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 108 (1981) (acknowledging the "traditional doctrine that courts of equity will stay their hand when remedies at law are plain adequate and complete.").

Considerations of comity arise in this case and call for the exercise of equitable restraint as to the Petition's inmate release claims. Depending on the status of their criminal proceedings, Petitioners and the putative class members may pursue release through a motion for bail or compassionate release addressed to the district court before which their criminal case is pending. Indeed, four of the five Petitioners have already pursued such alternative vehicles for release.

In the case of pretrial detainees, like Fernandez-Rodriguez, consideration of the Petition's release claims would effectively constitute a collateral attack on the decision of the district court not to grant him bail, even in light of his allegations relating to MCC's response to the COVID-19 pandemic. Several circuits have held that a § 2241 habeas petition cannot seek release of a pretrial detainee, as the authority to order such release lies exclusively through the bail authority of the criminal district court. *See Reese v. Warden, Phila. FDC*, 904 F.3d 244, 247 (3d Cir. 2018) ("[F]ederal defendants who seek pretrial release should do so through the means authorized by the Bail Reform Act, not through a separate § 2241 action."); *Medina*, 875 F.3d at 1029 ("[W]e now adopt the general rule that § 2241 is not a proper avenue of relief for federal prisoners awaiting federal trial."); *Williams v. Hackman*, 364 Fed. App'x 268 (7th Cir. 2010) ("[A] federal pretrial detainee cannot use § 2241 to preempt the judge presiding over the criminal case.").

With respect to sentenced inmates, entertaining release in this case runs the risk of creating inconsistent rulings. Woodson's case illustrates how this risk is not merely academic. In

lengthy submissions in support of his motion for compassionate release, Woodson repeatedly raised the same arguments he makes now. *See United States v. Woodson*, 18 Cr. 845 (PKC) (ECF Nos. 44, 49, 52, and 54). Woodson's submissions even included an affidavit from a physician whose affidavit supports the Petition. *Compare* Mot. Sent. Red., Mar. 31, 2020, *United States v. Woodson*, 18 Cr. 845 (PKC) (ECF No. 44), *and* Aff. J. Giftos (ECF No. 8). In his thorough opinion denying Woodson's motion for compassionate release, Judge Castel made clear that he weighed: (1) Woodson's health conditions, *Woodson*, 2020 WL 2114770, at *2; (2) his elevated risk of serious illness or death if he were to be infected by the COVID-19 virus, *id.* at *3; (3) the alleged conditions at the MCC, *id.*; and (4) the increased risk continued incarceration poses to Woodson's health and safety, *id.* After considering these factors with respect to Woodson individually, Judge Castel ultimately held that in light of "the nature and circumstances of [Woodson's] crime, his history and characteristics, . . . and the danger to the community that he would pose if he were at liberty . . . there are not 'extraordinary and compelling' reasons to reduce Woodson's sentence." *Id.* at *5. Judge Castel also denied Woodson's alternative motion to be transferred to a halfway house or home confinement on the grounds that "[s]upervising Woodson on home confinement with location monitoring would greatly tax the resources of the Office of Probation." *Id.* at *4.

To the extent the Petition asks this Court to second-guess Judge Castel's individualized assessment (and those of other sentencing judges) by reaching broad-brush conclusions on whether to release MCC inmates generally, this Court should decline to do so. Otherwise the Petition would violate the long established rule that "the writ of *habeas corpus* should not do service for an appeal." *United States v.* Addonizio, 442 U.S. 178, 184 n.10 (1979) (citing *Adams v. United States ex rel.* McCann, 317 U.S. 269, 274 (1942)).

The Court should thus dismiss all of the Petition's release claims. To do otherwise would put this Court in the inappropriate position of second-guessing the rulings of sentencing judges considering individual applications or prematurely curtailing those courts' ability to consider such applications when they are made in matters properly before them. *Contra Baez*, 2020 WL 2527865 at *3 (denying motion to dismiss on comity grounds because "to what extent any relief should be tailored to avoid conflict with orders of detention issued by other District Judges . . . . [is] not [an] issue[] justifying dismissal.") To avoid inappropriate collateral attack and the risk of inconsistent rulings, the Court should thus dismiss the Petition's release claims based on considerations of comity.

CONCLUSION

For the foregoing reasons, the Court should dismiss in their entirety the Petition's claims seeking the release of MCC inmates.

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Respectfully submitted,

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