IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY BROWN, MYLES HANNIGAN, and ANTHONY HALL, Petitioners, v. SEAN MARLER, Respondent.	No. 2:20-cv-01914

Respondent's Motion to Dismiss the Petition and Class Action Complaint

The Court should dismiss petitioners' "Complaint—Class Action for Declaratory and Injunctive Relief and Petition for Writs of Habeas Corpus" (Doc. 1) for lack of subject matter jurisdiction. As to detainees Anthony Hall and Timothy Brown, Third Circuit precedent precludes the use of a petition for writ of habeas corpus under 28 U.S.C. § 2241. Instead, they must follow the procedures of the Bail Reform Act. Hall has filed such a motion and it was denied today by Judge Beetlestone, who presides over his criminal proceedings (in an opinion that bars Hall's personal claim here). As to petitioner Myles Hannigan, who is serving his sentence, he may not challenge the conditions of his confinement through a § 2241 petition. Instead, he is free to file a request with the Bureau of Prisons for compassionate release or home confinement, as he has done, and seek any appropriate review of the BOP's decision.

In any event, Petitioners cannot establish any violation of their Fifth Amendment or Eighth Amendment rights arising out of current conditions at the Federal Detention Center ("FDC"). As set forth in detail in the attached declaration of respondent Sean Marler, the FDC's warden, Bureau of Prisons ("BOP") staff nationwide and at the FDC

have taken an escalating series of steps to avoid the transmission of COVID-19 into or within the facility. Moreover, BOP case management staff are urgently reviewing all inmates to determine which ones meet the criteria established by the Attorney General for possible home confinement.

Even if petitioners could show that the conditions of their confinement are in any way unconstitutional, the Prison Litigation Reform Act, 18 U.S.C. § 3626 ("PLRA"), expressly precludes any single United States district judge from ordering the release of a prisoner based on prison conditions. The PLRA also narrowly circumscribes the permissible scope of any injunctive relief or ongoing supervision relating to prison conditions, and the relief requested by petitioners is well outside those bounds. Further, the petitioners' allegations of Fifth and Eighth Amendment violations fail to state a claim, nor have petitioners exhausted administrative remedies as required by the PLRA. Accordingly, the complaint must be dismissed, and certainly no discovery should proceed at this time.

Additionally, the Court should strike petitioners' class allegations. The determination of whether to release a pretrial detainee, presentenced detainee, or sentenced inmate to home confinement is uniquely unsuited to class determination, as it requires individualized consideration based on the characteristics of the inmate, his sentence, and the risk to public safety if he is released. Such a class action would be entirely antithetical to criminal law. Petitioners' unique characteristics show that they are not typical or representative of "all current and future pretrial detainees,

presentenced detainees, and sentenced inmates in custody at FDC during the course of the COVID-19 pandemic." Pet. ¶ 115.

The Court should dismiss the petition and leave petitioners free to pursue their administrative remedies, or raise appropriate individualized challenges with the judicial officer overseeing their criminal proceedings.

Respectfully submitted,

Dated: April 20, 2020

/s William M. McSwain
WILLIAM M. McSWAIN
United States Attorney

/s Susan R. Becker for GBD
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

/s Robert A. Zauzmer
ROBERT A. ZAUZMER
Assistant United States Attorney
Chief of Appeals

/s Landon Y. Jones III
LANDON Y. JONES III
REBECCA MELLEY
Assistant United States Attorneys
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
landon.jones@usdoj.gov
Tel.: (215) 861-8323/8328
Fax: (215) 861-8618