22-244(L)

To Be Argued By:
NATHANIEL M. PUTNAM

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 22-244(L), 22-652(Con)

MICHAEL MILCHIN, on behalf of themselves and all other similarly situated plaintiffs, KENNETH PELLETIER, on behalf of themselves and all other similarly situated plaintiffs,

Petitioners-Appellants,

(For continuation of caption, see inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR RESPONDENT-APPELLEE

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Petitioners,

-vs-

ACTING WARDEN JESSICA SAGE,

Respondent-Appellee,

D. EASTER, Warden FCI Danbury, Acting Warden of FCI Danbury, Current Unknown, FCI Danbury, Medical Staff, Federal Bureau of Prisons, FCI Danbury Medical Staff,

Respondents.

Federal Rule of Appellate Procedure 26.1 Disclosure Statement

In this habeas corpus proceeding, there are no organizational victims.

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Table of Authorities

Pursuant to "Blue Book" rule 10.7, the government's citation of cases does not include "certiorari denied" dispositions that are more than two years old.

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Statement of Jurisdiction

In April 2021, six prisoners at the Federal Correctional Institution in Danbury, Connecticut ("FCI Danbury")—including Michael Milchin and Kenneth Pelletier (collectively "Petitioners")—filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the United States District Court for the District of Connecticut. AA9-14.[1] On January 13, 2022, the district court (Dooley, J.) dismissed the petition under Fed. R. Civ. P. 12(b)(6) for failing to state a plausible entitlement to the requested relief of home confinement. AA142-154. On February 4, 2022, Milchin filed a timely notice of appeal under Fed. R. App. P. 4(a). AA155. The district court subsequently extended Pelletier's time to appeal, accepting a notice of appeal he filed March 28, 2022. AA7, AA157-63.

This Court has appellate jurisdiction under 28 U.S.C. § 2253(a).

[1] "AA__" refers to the Appellants' Appendix.

Statement of Issues Presented for Review

I. Whether the district court correctly concluded that the Prison Litigation Reform Act ("PLRA") barred the requested relief of home confinement where this § 2241 habeas corpus petition complains of prison conditions that can be remedied without court ordered home confinement.

II. Whether the judgment should be affirmed on the alternative ground that the district court lacks the authority to order prisoners to home confinement because this power rests solely with the Bureau of Prisons ("BOP").

III. Whether the district court properly dismissed without prejudice this § 2241 habeas corpus petition, finding that, even liberally construed, it requested only home confinement.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 22-244(L), 22-652(Con)

MICHAEL MILCHIN, on behalf of themselves and all other similarly situated plaintiffs, KENNETH PELLETIER, on behalf of themselves and all other similarly situated plaintiffs,

Petitioners-Appellants,

-vs-

ACTING WARDEN JESSICA SAGE,

Respondent-Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE RESPONDENT-APPELLEE

Preliminary Statement

In April 2021, Petitioners filed a § 2241 habeas petition that sought to certify a class of all FCI Danbury inmates "who suffer serious medical concerns or are at risk of serious medical concerns" and requested that all such inmates be placed on home confinement due to alleged inadequacies in the medical care at FCI Danbury. The

district court found it lacked the power to order the requested relief of home confinement and dismissed the petition without prejudice. This left Petitioners free to file another petition seeking other forms of relief, which Petitioners have not done. This Court should affirm the district court's decision.

The district court correctly concluded the PLRA's relief restrictions barred it from ordering home confinement. Because Respondent could be ordered to provide appropriate medical care (in the event the medical care at FCI Danbury were found to be unconstitutional, which Respondent disputes), home confinement is not plausibly the least intrusive means necessary to alleviate the constitutional injuries alleged in this case.

This Court should also affirm the decision below on the alternative ground that the district court lacks authority to order home confinement, irrespective of the PLRA. By statute, home confinement determinations are reserved to the discretion of the BOP, not the district court. *See* 18 U.S.C. § 3624(c)(2); Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281 (2020).

Finally, this Court should reject Petitioners' argument that the district court should not have dismissed the petition without first considering the plausibility of unrequested forms of injunctive relief, such as medical care. A district court is not required to construe a habeas corpus petition to

seek unrequested relief. The petition at issue only requested home confinement, and Petitioners have at all times remained free to file one or multiple § 2241 petitions to seek appropriate medical care should they wish to seek that relief divorced from the prospect of court ordered home confinement.

Statement of the Case

On April 9, 2021, six prisoners, all incarcerated at FCI Danbury, filed a multi-party habeas corpus petition under 28 U.S.C. § 2241 in the United States District Court for the District of Connecticut. AA9-14. The district court (Dooley, J.) granted the Respondent's motion to dismiss the petition on January 13, 2022, finding that the petition failed to state a claim for which the relief sought may be granted. AA142-54.

A. The emergence of COVID-19 and the *Martinez-Brooks* settlement

To understand the current case, background concerning another multi-party habeas corpus proceeding arising out of FCI Danbury is helpful.

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic.

On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which authorized the Director

of the BOP to lengthen the amount of time prisoners can be placed on home confinement under 18 U.S.C. § 3624(c)(2)—previously capped at the shorter of 10% of their sentence or 6 months—provided that the Attorney General makes a finding that "emergency conditions will materially affect the functioning of the Bureau." CARES Act § 12003(b)(2), 134 Stat. at 516. Since the Attorney General made that requisite finding of emergency conditions on April 3, 2020, the BOP has been authorized to place inmates on home confinement under 18 U.S.C. § 3624(c)(2), irrespective of the time remaining on their sentence.

On April 27, 2020, a class of FCI Danbury inmates filed a multi-party habeas corpus proceeding under 28 U.S.C. § 2241 which alleged the Warden of FCI Danbury was violating the Eighth Amendment rights of inmates by failing to adequately use her statutory authority to place inmates on home confinement, and by failing to implement adequate measures to prevent the continued spread of COVID-19 at FCI Danbury. *See Whitted v. Easter*, No. 20-CV-569 (D. Conn.) ("*Martinez-Brooks v. Easter*"), ECF No. 1.[2] Among

[2] This lawsuit was titled *Martinez-Brooks v. Easter* until Dianthe Martinez-Brooks was dismissed from the case and James Whitted became the lead party. *See* Order dated June 15, 2020, ECF No. 108. For the sake of clarity, this lawsuit, *Whitted v. Easter*, No. 20-CV-00569 (D. Conn.), will be referred to as "*Martinez-Brooks v. Easter*" throughout this submission.

other forms of emergency relief, the *Martinez-Brooks* petitioners sought an order transferring all medically vulnerable inmates to home confinement, as well as an injunction mandating certain COVID-19 mitigation practices. *See* ECF No. 1 at 66-70.

On May 12, 2020, the district court (Shea, J.) entered a temporary restraining order that required the Warden to expeditiously review for home confinement a subclass of medically vulnerable to COVID-19 inmates, while reserving the other issues for a preliminary injunction hearing. *See Martinez-Brooks v. Easter,* 459 F. Supp. 3d 411, 454-55 (D. Conn. 2020).

Rather than proceed to the preliminary injunction hearing, the *Martinez-Brooks* petitioners entered a settlement that dismissed all their claims—including claims concerning the adequacy of medical care at FCI Danbury—in exchange for a process by which the Warden and BOP agreed to review all medically vulnerable to COVID-19 FCI Danbury inmates for home confinement. AA44-62.

The parties to the *Martinez-Brooks* litigation operated under the settlement for more than a year, until it expired in October 2021. *See* AA56.

Milchin and Pelletier were parties to the *Martinez-Brooks* settlement. Milchin was reviewed for, but denied, home confinement on October 27, 2020 and again on March 9, 2021. AA36. Pelletier

was similarly reviewed for, but denied, home confinement on November 16, 2020 and again on February 26, 2021. AA36.

B. The *DiMartino v. Sage* petition and Respondent's motion to dismiss

In April 2021, Milchin and Pelletier, along with four other FCI Danbury inmates, filed the § 2241 habeas corpus petition that is the subject of this appeal. The petition sought to represent a class of all FCI Danbury inmates "who suffer serious medical concerns or are at risk of serious medical concerns" and requested that all such inmates be placed on home confinement. AA9-14. The petition claimed the medical care provided to FCI Danbury inmates fell below Eighth Amendment standards due to backlogs and delays in sick call requests and a lack of proper procedures to provide inmates with timely referrals to outside medical providers, among other allegations. *See* AA9-14.

For relief, Petitioners sought: "RELIEF REQUESTED: An expedited order granting home confinement to plaintiffs who suffer from serious medical concerns or are at risk of serious medical concerns so they may address these medical concerns." AA9; *see also* AA10 (seeking "[t]ransfer to home confinement for those class members [who] have serious medical concerns that are not being addressed at FCI Danbury, so those individuals

can obtain timely, competent medical care"). Elsewhere, the petition requested: "Any further relief that the court deems necessary." AA10.

On May 24, 2021, the Respondent moved to dismiss the petition on several grounds. AA25-42. Respondent argued the district court lacked authority to order home confinement, which was the sole requested relief in the petition. AA29-33. Respondent argued the PLRA's restrictions on prospective relief prohibited an order granting home confinement; and, separately, that "home confinement placement is not a proper remedy for a Section 2241 habeas petition challenging the conditions of confinement, regardless of whether the PLRA applies." AA32.

C. The district court's order dismissing the petition without prejudice

On January 13, 2022, the district court granted the Respondent's motion to dismiss, finding the petition failed to state a plausible entitlement to home confinement, warranting a dismissal without prejudice. AA142-54.

The district court first noted that the threshold question of whether the PLRA is even applicable to habeas corpus petitions brought under 28 U.S.C.§ 2241 "remains an unanswered question" in the Second Circuit. AA147-48. The PLRA applies to any "civil action with respect to prison conditions," which the statute defines 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," while carving out "habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. § 3626(g)(2).

The district court noted that, although prior Second Circuit cases involving habeas corpus proceedings challenging the fact or duration of confinement, including *Reyes v. Keane*, 90 F.3d 676 (2d Cir. 1996), *overruled on other grounds by Lindha v. Murphy*, 521 U.S. 320, 336 (1997), spoke in general terms to the effect that "habeas corpus proceedings" are not civil actions covered by the PLRA, the Second Circuit in *Jones v. Smith*, 720 F.3d 142, 145 n.3 (2013), specifically clarified and "assume[d] without deciding" that the PLRA may apply to habeas corpus petitions brought under § 2241 "that complain of conditions of confinement." AA147.

Endorsing the logic of the *Jones v. Smith* dicta, the district court found the PLRA applied here. AA149-52. It noted "there is little question that the instant petition challenges the conditions of confinement at FCI Danbury." AA149. The district court explained that the key question is whether the petition nevertheless falls within the PLRA's carve-out for "habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. § 3626(g)(2). The district court theorized that a challenge to prison conditions

could possibly also challenge the fact of a prisoner's confinement to fall within § 3626(g)(2)'s carve-out where a prisoner alleges constitutional injuries that can only be cured by their removal from confinement. *See* AA149-52. But the district court found that, in this case, "the conditions complained of [by Petitioners] do not inhere to the fact of their confinement because the concerns [raised in the petition] can be remedied through appropriate injunctive relief," including because "Respondent can be ordered to provide appropriate medical care, on both an individual and systemic basis." AA151; *see also* AA152 ("And Petitioners have not, because they cannot on the basis of these allegations, articulated how release from custody is necessary to alleviate the alleged constitutional injuries, a showing that might implicate 'the fact or duration of' their confinement for purposes of the PLRA.").

The district court next found the PLRA barred it from ordering the requested relief of home confinement. AA152-53. It noted prospective relief under the PLRA must be "narrowly drawn, extend[] no further than necessary to correct the violation of the federal right, and [be] the least intrusive means necessary to correct the violation of the Federal right," under 18 U.S.C. § 3626(a)(1). AA152. It found that given "the availability of injunctive relief tailored to [the petitioners'] medical needs, an order granting home

confinement would run afoul of the PLRA's 'narrowly drawn' requirements concerning prospective relief." AA153.

The district court also found the petition's request for class-wide home confinement sought a "prisoner release order," defined in the PLRA as "any order … 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." 18 U.S.C. § 3626(g)(4). It explained that the PLRA precludes the entry of a "prison release order" except by a three-judge panel and only after several other prerequisites have been met, including the failure of some other, earlier-imposed remedy to address the deprivation of the federal right. AA153.

Ultimately, the district court found Petitioners failed to state a plausible entitlement to the requested relief of home confinement. AA153. The district court recognized that "Respondent can be ordered to provide appropriate medical care, on both an individual and systematic basis," AA151, but it noted "Petitioners seek no such relief," AA152. Accordingly, the district court dismissed the petition without prejudice.

Summary of Argument

The Court correctly concluded that it lacked authority to order the requested relief of home confinement. The PLRA applies to this § 2241 pe-

tition because it is a "civil proceeding arising under Federal law with respect to the conditions of confinement" and is not "a habeas corpus proceeding[] challenging the fact or duration of confinement in prison." *See* 18 U.S.C. § 3626(g)(2). Petitioners make no claims that go to the validity of their sentences or custody, but instead challenge the conditions under which they remain in custody; specifically, as it concerns the medical care at FCI Danbury. And as the district court found, the "concerns raised in the petition can be remedied through appropriate injunctive relief" short of release to home confinement, as the petition's allegations fail to show or articulate "how release from custody is necessary to alleviate the alleged constitutional injuries." *See* AA151-52. Because home confinement is not plausibly the least intrusive means necessary to alleviate the constitutional injuries alleged in this case, the PLRA's narrow-drawing requirements bar that relief. *See* 18 U.S.C. § 3626(a)(1)(A).

This Court should also affirm on the alternative ground that the district court lacks the authority to order home confinement, irrespective of the PLRA. By statute, decisions about home confinement placements are discretionary and for the BOP, not the district court. *See* 18 U.S.C. § 3624(c)(2); CARES Act § 12003(b)(2), 134 Stat. at 516.

Finally, the district court's interpretation of the petition as seeking only home confinement

was correct. The district court was not required to read into this § 2241 petition claims for unrequested relief, including injunctive relief in the form of appropriate medical care. Petitioners, at any time—including the present moment—have remained free to file one or multiple § 2241 petitions requesting an order that they be afforded medical care should they wish to seek that relief divorced from the prospect of court ordered home confinement. In this § 2241 petition, which they never sought to amend and instead have pursued this appeal, they requested only home confinement. The district court's dismissal without prejudice was appropriate.

Argument

On appeal, Petitioners argue they sought not only release to home confinement but also other remedies. This argument is addressed in Argument Section III below. Respondent will first explain, in Argument Sections I and II, why the district court was right to conclude it lacked the authority to grant the requested relief of home confinement.

I. The Prison Litigation Reform Act barred the requested relief of home confinement and provided a basis for dismissal.

A. Relevant background

The relevant factual and procedural background pertinent to the consideration of this issue is set forth in the Statement of the Case above.

B. Governing law and standard of review

This Court reviews *de novo* a district court's dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Tsirelman v. Danes*, 794 F.3d 310, 313 (2d Cir. 2015); *see also Adams v. United States*, 372 F.3d 132, 134 (2d Cir. 2004) ("When reviewing a district court's dismissal of a § 2241 petition, we examine both the merits of the petition and questions concerning subject matter jurisdiction *de novo*."). Questions of statutory interpretation are also reviewed *de novo*. *United States v. Abdur-Rahman*, 708 F.3d 98, 100 (2d Cir. 2013).

Habeas relief may be available when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Although the Supreme Court has explicitly "left open the question whether [incarcerated individuals] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus," *Ziglar v. Abbasi*, 137 S. Ct.

1843, 1862-63 (2017); this Court "has long interpreted § 2241" as a proper vehicle for "challenges to the execution of a federal sentence, 'including such matters as … prison conditions.'" *Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008) (quoting *Jiminian v. Nash*, 245 F.3d 144, 246 (2d Cir. 2001)).[3]

The Prison Litigation Reform Act ("PLRA") of 1995, Pub. L. No. 104-134, tit. VIII, 110 Stat. 1321, 1321-66 (1996), carefully circumscribes the federal courts' remedial powers over conditions of confinement. 18 U.S.C. § 3626. It states 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"; that such relief must be "narrowly drawn, [and] exten[d] no further than necessary to correct the violation of the Federal Right"; and that it must be "the least intrusive means necessary to correct the violation of the Federal right." *Id.* § 3626(a)(1)(A).

The PLRA also imposes strict prerequisites before a federal court may issue any "prisoner release order," defined as "any order … that has the purpose or effect of reducing or limiting the prison

[3] Not all circuits recognize § 2241 habeas petitions as a vehicle for challenging prison conditions. *See Aamer v. Obama*, 742 F.3d 1023, 1034-38 (D.C. Cir. 2014) (describing split).

population, or that directs the release from or non-admission of prisoners to a prison." *Id.* § 3626(g)(4). Those prerequisites include the failure of some other, earlier-imposed remedy to address the deprivation of the federal right and the convening of a three-judge court. *Id.* § 3626(a)(3).

The PLRA applies to any "civil action with respect to prison conditions," which the statute broadly defines 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, *but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison*." *Id.* § 3626(g)(2) (emphasis added).

C. Discussion

1. The PLRA applies to habeas corpus proceedings challenging the conditions of confinement.

The district court correctly concluded that the PLRA applies to habeas corpus proceedings that challenge the conditions of a prisoner's confinement. It noted that the threshold question of whether the PLRA is applicable to § 2241 petitions "remains an unanswered question" in this Circuit. AA142-54. In *Jones v. Smith*, this Court "assume[d] without deciding" that the PLRA can apply to "petitions, sometimes brought under 28

U.S.C. § 2241, that complain of conditions of confinement, which are analogous to suits under 42 U.S.C. § 1983 complaining of conditions of confinement." 720 F.3d at 145 n.3. In finding the PLRA applied here, the district court endorsed the logic of *Jones v. Smith*, which is correct for at least two reasons.

First, the plain language of 18 U.S.C. § 3626(g)(2) compels this result. Section 3626(g)(2) broadly defines a "civil action with respect to prison conditions," to which the PLRA applies to encompass "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," and excludes only "*habeas corpus proceedings challenging the fact or duration of confinement in prison*." *Id.* § 3626(g)(2) (emphasis added). Had Congress meant to exclude all habeas corpus proceedings from the PLRA's coverage, including those challenging prison conditions, it would have said so in less words by excluding "habeas corpus proceedings" full stop, without further specifying that *only* habeas corpus proceedings challenging "the fact or duration of confinement in prison" are excepted from the statute. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (the canon against superfluity requires courts to "give effect, if possible, to every clause and word of a statute") (internal quotation marks and citation omitted).

Second, it is not credible to believe Congress intended to create a loophole where prisoners can end run the requirements of the PLRA simply by strategically pleading their Eighth Amendment deliberate indifference challenges in habeas corpus, rather than as civil actions under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). For instance, in *Brown v. Plata*, the Supreme Court applied the PLRA to two California prisoner class actions which, like the petition at hand, sought the transfer or release of prisoners based on alleged deficiencies in prison medical care violative of the Eighth Amendment, finding those suits to be "with respect to prison conditions" under the PLRA. *See* 563 U.S. 493, 507-08, 511, 530 (2011). It is illogical to think the *Brown v. Plata* petitioners could have completely sidestepped the PLRA simply by invoking the habeas label and pleading their conditions of confinement challenges under § 2241. That would be tantamount to saying that, although Congress does not hide elephants in mouseholes, when it comes to the PLRA and habeas corpus applications challenging prison conditions, Congress "enumerated the mice and then unleashed an invisible elephant to trample the field." *Banks v. Booth*, 3 F.4th 445, 448-49 (D.C. Cir. 2021) (applying the PLRA to injunctive relief regarding prison conditions, even though prisoner class also sought release under § 2241).

2. The district court correctly concluded that this is not a habeas corpus proceeding challenging the fact or duration of confinement to qualify for the PLRA's carve-out.

On appeal, Petitioners do not directly contest the *Jones v. Smith* dicta or that the PLRA applies to at least some habeas petitions challenging prison conditions. Nor do Petitioners challenge the district court's finding that "there is little question that the instant petition challenges the conditions of confinement at FCI Danbury." AA149. Instead, Petitioners claim they nevertheless qualify for the PLRA's carve-out because they challenge *both* the conditions *and fact* of their confinement, relying on the reasoning of *Martinez-Brooks v. Easter,* 459 F. Supp. 3d 411 (D. Conn. 2020). But as discussed below, the district court correctly concluded that *Martinez-Brooks* is distinguishable and does not support Petitioners' argument.

Moreover, as discussed further below, the *Martinez-Brooks* textual analysis of 18 U.S.C. § 3626(g)(2) is flawed and does not comport with the Supreme Court's traditional conception of a habeas corpus proceeding challenging the fact of confinement. Under a better interpretation of § 3626(g)(2), the petition here is not a fact of confinement challenge for purposes of evading the PLRA because Petitioners challenge their prison

conditions and make no claims that go to the validity of their sentences or custody.

a. The petition is not a fact of confinement challenge even under the reasoning of *Martinez-Brooks*.

The district court correctly concluded that the petition here is not a fact of confinement challenge even under the reasoning of *Martinez-Brooks v. Easter,* 459 F. Supp. 3d 411 (D. Conn. 2020).

In *Martinez-Brooks*, the court (Shea, J.) considered whether the PLRA applied to the *Martinez-Brooks* § 2241 petition, discussed above at Statement of the Case Section I.A, filed soon after COVID-19 emerged at FCI Danbury in Spring 2020. The *Martinez-Brooks* court interpreted that petition to allege that no set of conditions and no relief short of removal would be sufficient to restore constitutionality to the incarceration of medically vulnerable class members, given the unique and novel nature of the COVID-19 pandemic and the inmates' inability to socially distance at FCI Danbury. *Id.* at 433-34.[4] Based on

[4] The *Martinez-Brooks* petitioners alleged "their medical histories and the [COVID-19] outbreak at FCI Danbury combine to place them in grave danger from COVID-19; that at current facility population levels, they and other FCI Danbury inmates cannot comply with CDC guidelines for physical distancing; and that

that interpretation, the court concluded that the *Martinez-Brooks* petition challenged not just the conditions, but also the fact of petitioners' confinements at FCI Danbury to fall within § 3626(g)(2)'s carve-out. *See id.* The *Martinez-Brooks* court reasoned: "Because Petitioners contend that the Eighth Amendment violation inheres in their incarceration at Danbury FCI and cannot be remedied unless they are removed from that setting, Petitioners are challenging the fact—or 'existence'—of their confinement." *Id.* at 434.

The district court in this case properly concluded that, even under the reasoning of *Martinez-Brooks*, the petition here does not state a plausible fact of confinement challenge to escape the PLRA. The district court explained, "unlike the situation in *Martinez-Brooks*, the conditions complained of [in this case] do not inhere to the fact of [Petitioners'] confinement because the concerns raised can be remedied through appropriate injunctive relief," including because "Respondent can be ordered to provide appropriate medical care." AA151. In other words, even accepting the logic of *Martinez-Brooks* (a logic that the Respondent does not concede is correct, as discussed in the next Section below), the district court found

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as long as prisoners are unable to practice physical distancing, any other mitigating steps will fail to decrease meaningfully the risk of COVID-19 infections at FCI Danbury." *Id.* at 433.

the allegations offered by Petitioners were insufficient to state a claim that might implicate the fact of their confinements, because they failed to plausibly state or "articulate[] how release from custody is necessary to alleviate the alleged conditional injuries"—or that there are no set of conditions under which constitutionally sufficient medical care can be provided at FCI Danbury. *See* AA151-52.

On appeal, Petitioners do not explain how the factual allegations of their pleading state a plausible claim that release to home confinement is required for them to receive constitutionally adequate medical care. Instead, Petitioners argue their petition presents a fact of confinement challenge under § 3626(g)(2)'s carve-out simply because it contains a "request to be physically moved to remedy constitutional violations." *See* Br. 31. But certainly, an inmate cannot evade the PLRA purely by their own say-so in requesting release. Rather, the district court was right to find the petition here failed to state a plausible fact of confinement challenge, even under the reasoning of *Martinez-Brooks*.

b. The petition is not a fact of confinement challenge because it is based on prison conditions and does not challenge the validity of any convictions or sentences.

Although the district court properly found the petition here is not a fact of confinement challenge even under the reasoning of *Martinez-Brooks*, this Court should consider whether *Martinez-Brooks* and the cases that have followed its logic[5] are mistaken. Those cases conclude that when Congress carved out from the PLRA's reach "*habeas corpus proceedings challenging the fact or duration of confinement in prison*," § 3626(g)(2), it meant to exclude certain claims based on prison conditions from the Act's purview. The better view is that fact of confinement challenges are limited to those that imply the invalidity of convictions or sentences—and that Congress intended for the PLRA to apply to claims based on prison conditions.

The *Martinez-Brooks* textual analysis of § 3626(g)(2) is flawed in at least two respects.

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[5] *See Fernandez-Rodriguez v. Licon-Vitale*, 470 F. Supp. 3d 323, 361 (S.D.N.Y. 2020) (endorsing the textual analysis of *Martinez-Brooks* and discussing similar cases).

First, the *Martinez-Brooks* court interpreted the meaning of "habeas corpus proceedings challenging the fact or duration of confinement in prison" in § 3626(g)(2) by looking up "fact" and "confinement" in the Oxford English and Webster's dictionaries, 459 F. Supp. 3d at 434, while ignoring that the Supreme Court has already ascribed meaning to "fact or duration of confinement" habeas challenges. This approach was misguided because courts must "assume that Congress is aware of existing law when it passes legislation," *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990); and "if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific," *Midlantic Nat. Bank v. New Jersey Dep't of Env't Prot.*, 474 U.S. 494, 501 (1986).

The Supreme Court's traditional conception of a habeas corpus proceeding challenging the fact or duration of confinement in prison does not include habeas claims challenging prison conditions (assuming such claims even exist, which remains undecided by the Supreme Court). *See Preiser v. Rodriquez*, 411 U.S. 475, 485-500 (1973). To the contrary, the Supreme Court has long distinguished between the "two broad categories of prisoner petitions: (1) those challenging the fact or duration of confinement itself; and (2) those challenging the conditions of confinement." *McCarthy v. Bronson*, 500 U.S. 136, 140 (1991). Traditionally, "fact or duration" challenges are limited to

those in which the prisoners' success would "necessarily imply the invalidity of their convictions or sentences." *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (brackets and citation omitted).

In this case, Petitioners make no claims that go to the validity of their sentences or custody, but instead they challenge the conditions under which they remain in custody; specifically, as it concerns the medical care at FCI Danbury. Petitioners do not even claim that they should be released from custody. To the contrary, Petitioners have requested a specific form of custody in seeking home confinement. Nor do Petitioners challenge the reason for their confinement, their conviction or charge, the length of their sentence, or a release determination based on good time credits—claims that are often characterized as "the core of habeas corpus." *Preiser*, 411 U.S. at 487. Accordingly, the petition here is not a habeas corpus proceeding challenging the fact or duration of confinement in prison, unless Congress meant to reinvent those concepts in § 3626(g)(2)—which strains credulity.

The second problem with the *Martinez-Brooks* textual analysis is that it finds surplusage where there is none. The *Martinez-Brooks* court reasoned that § 3626(g)(2)'s carve-out for "habeas proceedings challenging the fact or duration of confinement in prison" *must* include *some* claims based on prison conditions because the first part of 3626(g)(2)'s definition "already limits its scope

to proceedings 'with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison.'" *Martinez-Brooks*, 459 F. Supp. 3d at 435 ("Thus, to interpret the habeas clause of the definition to refer only to these types of petitions would make the clause superfluous."). Yet there is no surplusage in § 3626(g)(2), because a claim "with respect to … the effects of actions by government officials on the lives of persons confined in prison" read literally englobes a plethora of traditional fact or duration of confinement habeas challenges, such as, for example, challenges based on deprivation of good-conduct-time credits, or imprisonment from a defective indictment. *See Preiser*, 411 U.S. at 485-87.[6] Indeed, almost

[6] Furthermore, the Supreme Court has repeatedly emphasized that the "canon against surplusage is not an absolute rule," *Marx v. General Revenue Corp.*, 568 U.S. 371, 385-86 (2013); *see also Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 881 (2019) ("Redundancy is not a silver bullet. … Sometimes the better overall reading of the statute contains some redundancy."). On the other hand, one of the main purposes of the surplusage canon is to construe the words of a statute to give harmonious effect to all its parts. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004). But the *Martinez-Brooks* textual analysis does the opposite by reading out all the PLRA's relief restrictions in proceedings that challenge the conditions of a prisoner's confinement, so long as the prisoner asks for release

every imaginable fact or duration of confinement challenge concerns "the effects of actions by government officials on the lives of persons confined in prison."

The better interpretation of § 3626(g)(2)'s carve-out is reflected in other lower court decisions that have eschewed the *Martinez-Brooks* approach and applied the PLRA to similar habeas petitions brought under § 2241. For example, in *Alvarez v. Larose*, 445 F. Supp. 3d 861 (S.D. Cal. 2020), the court applied the PLRA to a § 2241 habeas petition seeking release for a class of medically vulnerable criminal detainees challenging their prison's response to COVID-19. The *Alvarez* court noted the petition did not assert a challenge that fit within "'the core of habeas corpus'" under Supreme Court precedent, *see id.* at 866 (quoting *Preiser*, 411 U.S. at 487); and reasoned that "unlike a claim concerning the fact of confinement, Plaintiffs' claims would not exist *but for* their current conditions of confinement," making them "based on confinement conditions" and thus subject to the PLRA, *id.* at 866. *See also Grinis v. Spaulding*, No. 20-10738, 2020 WL 3097360, *4 (D. Mass. June 11, 2020) ("A habeas petition always has something to do with the fact and duration of imprisonment but interpreting the exception so broadly as to authorize use of the writ to cover the sort of claims advanced in this case

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and styles their pleading as a "habeas petition" rather than a civil rights "complaint."

would render the PLRA's limiting conditions and requirements nugatory. Why would an inmate file a civil rights action under the *Bivens* doctrine or under 42 U.S.C. § 1983 that would be subject to the conditions and restrictions of the PLRA when he could avoid those conditions and restrictions wholesale simply by styling his action as a 'habeas corpus proceeding [] challenging the fact or duration of confinement in prison'? Poof! The PLRA disappears.").

In short, the petition in this case does not fall within the PLRA's carve-out for "habeas corpus proceedings challenging the fact or duration of confinement in prison," § 3626(g)(2), for the simple reason that Petitioners challenge their prison conditions and make no claims that go to the validity of their sentences or custody. The district court correctly concluded the PLRA applies.

3. The district court properly dismissed the petition for failing to state a plausible entitlement to home confinement relief given the PLRA's restrictions.

a. The district court correctly concluded that the PLRA's narrow-drawing requirements barred home confinement, warranting a dismissal.

The district court correctly concluded that the PLRA's narrow-drawing requirements barred the requested relief of home confinement. *See* 18 U.S.C. § 3626(a)(1)(A). It reasoned: "Given the availability of injunctive relief tailored to their individual medical needs, an order granting home confinement would run afoul of the PLRA's 'narrowly drawn' requirements concerning prospective relief." AA153.

Petitioners do not explain how their allegations, assumed to be true, plausibly show that home confinement is the least intrusive means necessary to provide them constitutionally adequate healthcare. Instead, Petitioners argue that the PLRA's narrow-drawing requirements are wholly inapposite and irrelevant until "the remedial phase of litigation"—*only after* the merits of a petition's allegations have been adjudicated. *See* Br. 16-23.

That rule is made up and forgets that "[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief." *See Jones v. Bock*, 549 U.S. 199, 215 (2007). "Whether a particular ground for opposing a claim may be the basis for dismissal for failure to state a claim depends on whether the allegations in the complaint suffice to establish that ground, not on the nature of the ground in the abstract," such as whether the ground is a pleading requirement or an affirmative defense. *Id.* Petitioners do not identify any analogous case in which, as here, the only relief a claimant has sought cannot be tailored and violates the PLRA's narrow-drawing requirements even when their allegations are assumed to be true.[7] Instead, Petitioners cite a slew of distinguishable cases that stand for the unremarkable proposition that the PLRA's narrow-drawing

[7] Such cases do exist—and courts have dismissed them. *See, e.g.*, *Hamilton v. Chendehen*, No. 15-CV-0661, 2016 WL 1402277, *2-3 (E.D. Cal. Feb. 26, 2016) (PLRA's narrow-drawing restrictions justified dismissal of complaint whose "sole demand" requested the construction of an outside mental health facility); *Gess v. USMS*, No. 20-CV-01790, 2020 WL 8838280, *11 (D. Colo. Dec. 10, 2020), *report and recommendation adopted in part*, 2021 WL 423436 (D. Colo. Feb. 5, 2021) (PLRA's restrictions barred prisoner's request for immediate release).

requirements are not independent pleading requirements that require tailoring at the pleading stage so long as some requested relief is shown to be plausible (even if tailored). *See* Br. 17-21. Indeed, in each of the cases cited by Petitioners on this issue, the pleadings sought plausible or tailorable forms of relief.

Take *Henderson v. Thomas*, 891 F. Supp. 2d 1296 (M.D. Ala. 2012), for example. *Henderson* involved a prisoner class that challenged a multifaceted HIV+ segregation policy as violative of federal disability statutes. After finding the complaint stated a plausible entitlement to some relief (including because it was plausible that reasonable accommodations could be made to integrate the HIV+ inmates), the *Henderson* court correctly refused to engage in tailoring at the motion to dismiss stage, noting that "a complaint is judged by whether it presents enough facts to state a claim to relief that is plausible on its face,' not whether the relief requested will be granted in full." *Id.* at 1312 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).[8]

[8] Petitioners also cite *Williams v. Edwards*, 87 F.3d 126 (5th Cir. 1996) and *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019), although neither case bears any resemblance to this one. *Williams* involved a reinstatement order that reimposed supervisory jurisdiction over nine prisons under a consent decree entered in a 42 U.S.C. § 1983 civil rights action in which

The situation here is distinguishable. As discussed in more detail in Argument Section III.C below, Petitioners only requested home confinement. That relief cannot be granted in part or tailored, and it is not plausibly the least intrusive means necessary for Respondent and BOP to correct the constitutional injuries alleged in this case. There is no indication that release to home confinement is necessary to provide constitutionally adequate medical care to Petitioners. Indeed,

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Louisiana prisoners sought various improvements alleged to be necessary to make their prison conditions constitutional. The order in *Williams* entered after the district court made specific findings of fact, including that "a crisis existed with respect to housing" Louisiana prisoners. The Fifth Circuit in *Williams* explained that the PLRA's restrictions did not preclude the reinstatement order because it merely "brought the … institutions back within the court's continuing jurisdiction so that it may examine whether prospective relief is necessary to avoid constitutional violations from occurring in those institutions." *Id.* at 133. *Edmo* did not involve a motion to dismiss, but rather a challenge to a lower court preliminary injunction, entered after a three-day hearing, which ordered prison officials to provide a transgender inmate "with adequate medical care, including gender confirmation surgery," but which limited that relief to "actions reasonably necessary" to ensure "the minimal impact possible on [the State's] discretion over their policies and procedures." 935 F.3d at 780-83. The plaintiffs in these cases sought plausible and tailorable forms of relief.

the district court specifically found that "injunctive relief tailored to their individual medical needs" could be available to Petitioners, but they "seek no such relief." AA152-53. Petitioners also could be transferred to a higher-level care BOP facility or other medical facility, among other less intrusive possibilities. Petitioners try to divorce the concept of a claim from the relief sought by a claim but can point to no authority supporting that a district court must adjudicate the merits of a claim in the abstract even if the only relief sought in a lawsuit is not plausible or cognizable. If not an Article III justiciability problem, that notion is at least inconsistent with the court's duty to determine whether allegations "plausibly suggest an *entitlement to relief*." *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) (emphasis added).

Petitioners cannot explain how their allegations plausibly suggest home confinement is necessary for them to receive adequate medical care while in BOP custody given the other available options short of release. Accordingly, the district court correctly concluded the PLRA's narrow-drawing requirements barred home confinement and warranted a dismissal without prejudice. Since the district court found the "motion to dismiss can be granted on this basis alone," AA153, this Court need not address whether Petitioners sought a "prisoner release order" under the PLRA.

b. The district court correctly concluded that the petition sought a "prisoner release order" under the PLRA.

Although the Court need not reach this issue, the district court correctly concluded that Petitioners sought a "prisoner release order" within the meaning of the PLRA. The petition sought to represent a class of all FCI Danbury inmates "who suffer serious medical concerns or are at risk of serious medical concerns" and requested that all such inmates be placed on home confinement. AA9-14. That requested relief unambiguously falls within the statute's definition of a "prisoner release order," defined as "any order … that has the purpose or effect of reducing or liming the prison population, or that directs the release from or nonadmission of prisoners to *a prison*." 18 U.S.C. § 3626(g)(4) (emphasis added). A literal reading of this plain language supports the district court's conclusion, considering "an order granting [Petitioners] home confinement …, of course, would require an order directing their release from prison." AA153.

Petitioners argue they did not seek a "prisoner release order" under the PLRA because such orders are limited to "orders regarding overcrowding." Br. 23. But the problems with that argument are legion.

First, Petitioners' argument is primarily based on selective excerpts from the PLRA's sparse legislative history. But courts "do not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994). Had Congress intended to limit the definition of a "prisoner release order" to population caps or orders "that direct[] the release from or nonadmission of prisoners to a prison" based on overcrowding, Congress could have done so—yet § 3626(g)(4)'s language is not so limited. *See Dean v. United States*, 556 U.S. 568, 572 (2009) ("[W]e ordinarily resist[] reading words or elements into a statute that do not appear on its face" (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997))). Such an interpretation also lacks harmony with § 3626(a)(3)(E)(i), which permits a three-judge court to enter a prisoner release order only upon a finding that "crowding is the primary cause of the violation of a Federal right." It would be nonsensical for Congress to require such a finding if all requested "prisoner release orders" by definition satisfied that requirement.

Second, Petitioners misrepresent their petition as seeking only single-inmate transfers to correct "non-crowding-related" constitutional violations. In fact, the petition requested an "order granting home confinement to [all FCI Danbury inmates] who suffer from serous medical concerns or are at risk of serious medical concerns" based on alleged understaffing and backlogs and delays

in sick call requests and referrals to outside medical providers, *see* AA9-14—problems inherently tied to population levels and resources. Petitioners' district court pleading does not support their appellate argument.

Third, Petitioners' cases—*Reaves v. Department of Correction*, 404 F. Supp. 3d 520 (D. Mass. 2019) and *Plata v. Brown*, 427 F. Supp. 3d 1211 (N.D. Cal. 2013)—are distinguishable. *Reaves* involved the transfer of a quadriplegic plaintiff to a medical facility following a bench trial in which the Court found, "if Mr. Reaves is not transferred, he will die." *See* 404 F. Supp. 3d at 524. *Plata* involved the transfer of inmates at-risk for developing cocci disease—a respiratory disease caused by exposure to fungal spores—out of one facility with undisputed severe cocci infection rates, without further dictating to which other California Department of Corrections facilities the inmates would be transferred. *See Plata*, 427 F. Supp. 3d at 1222-30. In ordering transfers tailored to specific medical needs, the *Plata* and *Reaves* courts found their orders met the PLRA's narrow-drawing requirements. *Id.* at 1230; *Reeves*, 404 F. Supp. 3d at 524.

Petitioners argue the above cases support that § 3626(g)(4) must be read not to cover their home confinement requests because Congress's authority to restrict prospective relief for unconstitutional prison conditions is permissible only "so

long as the restrictions on the remedy do not prevent vindication of the right." Br. 27 (quoting *Plata*, 427 F. Supp. 3d at 1223). But Petitioners did not seek injunctive relief tailored to their specific medical needs to which a transfer to a medical or other BOP facility may, in theory, be attendant. Rather, Petitioners requested that they and all other FCI Danbury inmates with "serious medical concerns" be redesignated to home confinement. The district court correctly found that request was not narrowly drawn "[g]iven the availability of injunctive relief tailored to their individual medical needs," and, relatedly, that the request constituted a "prisoner release order" under the PLRA's language and spirit. AA153.

To be clear, it is not Respondent's position that Petitioners are precluded from seeking injunctive relief tailored to their medical needs. To the contrary, as discussed in Argument Section III.C below, Petitioners *remain free to bring such an action at any time*. But that is not what was sought in the petition. Petitioners requested home confinement placements which would not be narrowly tailored or minimally intrusive and would constitute the precise kind of "prisoner release order" Congress meant to restrict.

II. The district court lacks authority to order home confinement, providing alternative grounds to affirm.

A. Relevant background

The factual and procedural background pertinent to the consideration of this issue is set forth in the Statement of the Case above.

B. Governing law and standard of review

"A judgment appealed from will be sustained on any legally sufficient basis in the record," *Fabrication Enters. v. Hygenic Corp.,* 64 F.3d 53, 59 (2d Cir. 1995), meaning this Court may affirm the district court's order "on any basis for which there is a record sufficient to permit conclusions of law, including grounds upon which the district court did not rely," *Leon v. Murphy*, 988 F.2d 303, 308 (2d Cir. 1993).

Congress has vested the authority to place a prisoner in home confinement with the BOP alone. The BOP's home confinement authority is set forth in 18 U.S.C. § 3624, within the same statutory subchapter that governs the BOP's authority over matters like designating a prisoner to a particular facility (§ 3621) or temporarily releasing a prisoner (§ 3622). Section 3642(c)(2) states that the BOP's director "*may* … place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months." (Emphasis added). Section

3642(c)(2) further states that "[t]he [BOP] shall, *to the extent practicable*, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph." (Emphasis added.)

The 2020 CARES Act increased BOP's home confinement authority by lengthening the permissible home-confinement term. Section 12003(b)(2) of the Act established that: "During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau *may* lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement …, *as the Director determines appropriate*." CARES Act § 12003(b)(2), 134 Stat. at 516 (emphasis added). Neither of these statutes, and no other statute, vests a district court with the authority to direct a prisoner to home confinement.

And while this Court has yet to determine "whether a district court has the power to order a defendant to serve his term of imprisonment in home confinement," it has noted in an unreported opinion that "[o]ther Circuits … have held that this power rests solely with the Bureau of Prisons." *United States v. DiBiase*, 857 F. App'x 688, 689-90 (2d Cir. 2021) (summary order).

C. Discussion: The district court lacks authority to order home confinement.

This Court can affirm the district court on the alternative—and perhaps simpler—ground that the district court has no authority to grant Petitioners' requests to be transferred to home confinement, irrespective of the PLRA.

As spelled out above, the statutes authorizing home confinement—18 U.S.C. § 3624(c)(2) and § 12003(b)(2) of the CARES Act—plainly reserve decisions about home confinement placements to the discretion of BOP, not the district court. Accordingly, every Court of Appeals to have addressed whether federal courts can order prisoners to home confinement has concluded that power rests solely with the BOP. *See, e.g.*, *United States v. Houck*, 2 F.4th 1082, 1085 (8th Cir. 2021) ("Because these statutes give authority to place a prisoner in home confinement to the Director of the BOP, not the district court, the district court correctly held that it did not have authority to change Houck's place of imprisonment to home confinement under § 3624(c)(2)."); *United States v. Saunders*, 986 F.3d 1076, 1078 (7th Cir. 2021) (holding that district court lacked authority to consider prisoner's request for home confinement); *United States v. Mathews*, No. 21-1697, 2022 WL 1410979, at *3 (6th Cir. Apr. 4, 2022) (not precedential) ("Decisions regarding home confinement under the CARES Act as well as decisions regarding prison assignment are reserved

to the Bureau of Prisons."); *Collins v. Warden Canaan FPC*, No. 21-2878, 2022 WL 2752536, at *2 (3d Cir. July 14, 2022) (not precedential) (affirming district court's lack of authority to order prisoner to home confinement under the CARES Act); *see also Melot v. Bergami*, 970 F.3d 596, 600 (5th Cir. 2020) (concluding that "Congress has vested the executive branch, not the judicial branch, with the power to decide which prisoners" may be released to home confinement under the First Step Act's pilot program for eligible elderly offenders).

Numerous district courts in this Circuit have reached this same conclusion. *See, e.g.*, *United States v. Woody*, 463 F. Supp. 3d 406, 408-09 (S.D.N.Y. 2020); *United States v. Green*, 466 F. Supp. 3d 328, 328 n.1 (W.D.N.Y. 2020); *United States v. Nnawuba*, No. 18-CR-117-6, 2022 WL 1322207, at *6 n.2 (S.D.N.Y. May 3, 2022); *United States v. Fairbanks*, No. 17-CR-6124, 2021 WL 776982, at *3 (W.D.N.Y. Mar. 1, 2021); *United States v. Ogarro*, No. 18-CR-373-9, 2020 WL 1876300, at *6 (S.D.N.Y. Apr. 14, 2020). This includes *Milchin v. Warden*, No. 22-CV-195, 2022 WL 1658836, at *2 (D. Conn. May 25, 2022), a habeas corpus proceeding Milchin filed shortly after the district court issued the dismissal order that is the subject of this appeal. In *Milchin*, Milchin again requested a transfer to home confinement alleging that the conditions of his confinement and the medical care at FCI Danbury violated the

Eighth Amendment. *See id.* at *1, *4. Citing many of the precedents listed above, the *Milchin* court (Dooley, J.) denied Milchin's request, concluding that "the decision to grant a transfer to home confinement under the CARES ACT is reserved to the BOP." *Id.* at *2.[9]

Importantly, prisoners are not left without redress as they can seek a sentence reduction from their sentencing court under the compassionate release statute, 18 U.S.C. § 3582. But such matters are for each prisoner's sentencing court. *See United States v. Avery*, 807 F. App'x 74, 77 (2d Cir. 2020) (summary order) ("[A]ny reduction of the original ... sentence must be made by the sentencing court that imposed that sentence ....").

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[9] BOP's plenary authority over home confinement decisions is consistent with BOP's plenary authority over place of imprisonment decisions. *See* § 3621(b) ("Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court."). *See also Tapia v. United States*, 564 U.S. 319, 331 (2011) ("decisionmaking authority" regarding place of imprisonment "rests with the BOP"). Section 3624(c)(4) also explains that BOP's discretionary home confinement authority does nothing to limit BOP's plenary authority over place of imprisonment decisions, stating: "Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the [BOP] under section 3621."

Indeed, Milchin and Pelletier have each recently sought and been denied compassionate release from their sentencing courts. *See United States v. Milchin*, No. 17-00284-1, 2022 WL 196279, *2-3 (E.D. Pa. Jan. 21, 2022) (denying Milchin's fourth compassionate release motion in less than two years, finding that "Milchin's medical records refute his claim that the Bureau of Prisons [has] neglected his cancer" and noting that Milchin refused to allow the dermatologist and surgeon he saw while in BOP custody excise the basal cell carcinoma from his nose); *United States v. Pelletier*, 12-CR-00119, 2022 WL 2916034, at *2-3 & n.5 (D. Me. July 25, 2022) (denying Pelletier's second compassionate release motion in less than two years, finding that "[a]s to Defendant's assertion that the BOP would be unable to manage his [cancer] treatment, the Court does not find this supported in the record").

In short, this Court can affirm the district court on the alternative ground that it lacks the power to grant Petitioners' home confinement requests, irrespective of the PLRA.

III. The distinct court did not err in finding that, even liberally construed, the petition requested only home confinement.

A. Relevant background

The petition sought to certify a class of all FCI Danbury inmates with or at risk of "serious medical concerns" and requested that all such inmates be placed on home confinement, stating:

> RELIEF REQUESTED: An expedited order granting home confinement to plaintiffs who suffer from serious medical concerns or are at risk of serious medical concerns so they may address these medical concerns.

AA9. The petition also elsewhere requested for the class: "Any further relief that the court deems necessary." AA10.

Respondent's May 24, 2021 motion to dismiss argued that the district court lacked the authority to order the requested relief of home confinement. AA29-33.

On July 29, 2021, Petitioners filed a "Notice of Related Case" which stated: "The petition in this matter, brought by *pro se* petitioners with no legal education, should be construed as seeking an order for[] the BOP to remedy the unconstitutional conditions of confinement and, if it cannot remedy the conditions, an order of release." AA80. Days later amicus James Whitted parroted nearly identical language in a professionally written

amicus curiae submission, arguing the petition "should be construed liberally as seeking an order for BOP to remedy the unconstitutional conditions of confinement and, if it cannot remedy the conditions, an order of release …." AA88. Petitioners never moved to amend their petition.

The district court found Petitioners failed to allege a plausible entitlement to home confinement. It recognized that "Respondent can be ordered to provide appropriate medical care, on both an individual and systematic basis," but found Petitioners "seek no such relief." AA151-52. Accordingly, the district court dismissed the petition without prejudice.

On appeal, Petitioners argue the district court incorrectly construed their petition to seek only release to home confinement. Br. 13-16. Petitioners claim they "also sought injunctive orders regarding decent medical care and alternative forms of release from Danbury (whether by transfer to another facility, transfer to home confinement, or outright release from prison)." *Id.*

B. Governing law and standard of review

This Court reviews *de novo* a district court's dismissal under Fed. R. Civ. P. 12(b)(6). *Tsirelman*, 794 F.3d at 313.

The Rules Governing Section 2254 Cases in the United States District Courts ("Habeas

Rules") govern the pleading requirements for habeas corpus petitions. *See* Habeas Rule 1(b) (Habeas Rules may be applied to any habeas corpus petition). "The Federal Rules of Civil Procedure ... may be applied to a [habeas] proceeding," but only "to the extent that they are not inconsistent with any statutory provisions or [the Habeas Rules]." Habeas Rule 12; *see also* Fed. R. Civ. P. 81(a)(4) (the Federal Civil Rules may apply to proceedings for habeas corpus "to the extent that the practice in those proceedings" is not specified in "the [Habeas Rules]"). In determining how a Federal Civil Rule may apply to a habeas corpus proceeding, this Court must consider "the overall framework of habeas corpus." *Mayle v. Felix*, 545 U.S. 644, 654 (2005) (quoting the Advisory Committee's Note to Habeas Rule 12).

Habeas Rule 2(c) is "more demanding" than Fed. R. Civ. P. 8. *Mayle*, 545 U.S. at 655; *see also McFarland v. Scott*, 512 U.S. 849, 856 (1994) ("Habeas corpus petitions must meet heightened pleading requirements."). It requires, among other requirements, that a "petition must … state the relief requested." Habeas Rule 2(c)(3).

Consistent with the Supreme Court's directive that *pro se* filings be "liberally construed," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), this Court has long recognized that *pro se* habeas corpus petitions must be reviewed "with a lenient eye," *Williams v. Kullman*, 722 F.2d 1048, 1050 (2d Cir. 1983). But even a *pro se* complaint when liberally

construed must satisfy the plausibility standard set forth in *Twombly* and *Iqbal*. *Harris v. Mills,* 572 F.3d 66, 72 (2d Cir. 2009). And while courts must "make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training," *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983), a *pro se* status "does not exempt a party from compliance with relevant rules of procedural and substantive law." *Id.* (quoting *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981)).

Determining plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. The same goes for reading things into a *pro se* complaint based on leniency principles: It often "has to be a matter of judgment on which reasonable people may differ," and "in deciding which case falls on which side of the line," this Court simply does its "best to gauge what is appropriate" under the circumstances presented. *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006).

C. Discussion: The district court correctly interpreted the petition to seek home confinement and not medical care or other injunctive relief

The district court properly interpreted the *pro se* petition, which requested home confinement. The petition sought to certify a class of all FCI

Danbury inmates with serious medical concerns and requested as relief:

> RELIEF REQUESTED: An expedited order granting home confinement to plaintiffs who suffer from serious medical concerns or are at risk of serious medical concerns so they may address these medical concerns.

AA9; *see also* AA10 (seeking "[t]ransfer to home confinement for those class members [who] have serious medical concerns that are not being addressed at FCI Danbury, so those individuals can obtain timely, competent medical care"). The petition discussed the *Martinez-Brooks* settlement under which "the [BOP] agreed to review inmates for consideration for home confinement," AA10—and under which Petitioners had each recently been denied home confinement, AA36—and made allegations to support their claim that "HOME CONFINEMENT WORKS," AA14. Despite that Petitioners had no trouble articulating their allegations and specifically requesting medical records, class certification, and home confinement, the petition contained no request for an order for Respondent to provide appropriate medical care at FCI Danbury, either on an individual or systematic basis—which, indeed, may have undercut Petitioners' claimed need for home confinement, as the district court ultimately found. Accordingly, in dismissing the petition without prejudice, the district court found that "Respondent can be ordered to provide appropriate medical

care, on both an individual and systematic basis," but that Petitioners "seek no such relief." AA151-52.

The district court's interpretation was reasonable. First, Habeas Rule 2(c) unambiguously requires that a petition must "state the relief requested." Habeas Rule 2(c)(3). Like the Federal Rules of Civil Procedure, the Habeas Rules are promulgated by the Supreme Court pursuant to the Rules Enabling Act, 28 U.S.C. § 2072, and therefore are "in every pertinent respect, as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard [a] Rule's mandate than they do to disregard constitutional or statutory provisions." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988). The district court's interpretation of the petition can be upheld on this basis alone. *See, e.g.*, *Crosby v. True*, No. 21-1003, 2021 WL 5647770, *2 (10th Cir. 2021) (not precedential) (affirming dismissal of claim for programming related time credits for failing to comply with Habeas Rule 2(c), where the "§ 2241 application did not demand relief in the form of time credits").

Second, Petitioners' failure to request appropriate medical care cannot genuinely be attributed to "their lack of legal training." *Traguth*, 710 F.2d at 95. Petitioners had no trouble articulating their allegations and requesting medical records, class certification, and home confine-

ment. Moreover, both before and after the without prejudice dismissal, Petitioners have remained free to request medical care through a habeas petition. Yet they have not done so: they never moved to amend their petition and have not since requested medical care in any subsequent habeas petition. To the contrary, Milchin filed a subsequent § 2241 petition that once again requested home confinement. *See Milchin v. Warden*, No. 22-CV-195, 2022 WL 1658836, at *1 (D. Conn. May 25, 2022).[10] That Milchin and Pelletier still have not requested a habeas writ for medical care—despite that Respondent months ago communicated to them through counsel that they can do so at any time—confirms that the district court's interpretation was correct.

Petitioners argue the petition's catch-all request for "[a]ny further relief that the court deems necessary," AA10, changes the calculus. But there are at least two problems with that argument. First, it ignores Habeas Rule 2(c)(3)'s requirement that a habeas petitioner must state

[10] The district court dismissed Milchin's subsequent petition on the basis that "the Court cannot order Milchin released to home confinement" and because he failed to state an Eighth Amendment violation, in part because "[r]egarding the basal cell carcinoma on Milchin's nose, the medical records show that Milchin has refused treatment recommended by a dermatologist and a surgeon" he saw in BOP custody. *Milchin*, 2022 WL 1658836, at *4.

their requested relief. Second, it ignores that liberal construction is a context-specific task. Certainly, such catch-all requests do not require a district court to construct claims whose absence from a pleading is not related to a lack of legal training. For example, in *Williams v. Ozmint*, 716 F.3d 801 (4th Cir. 2013), the Fourth Circuit declined to read a claim for declaratory relief into a *pro se* prisoner's "'catch-all' request for 'other relief'" despite that the prisoner requested related injunctive relief, explaining that "[o]f necessity, our focus remains on discerning the expressed intent of the litigant" and although the *pro se* litigant "need not have pleaded verbatim that he sought 'declaratory relief,' he nevertheless was required to express in his complaint a challenge to the validity of the prison's policy." *Id.* at 811. Indeed, under Petitioners' expansive "any further relief" theory, every dismissal of a compassionate release motion—the most analogous action to a home confinement request—that includes allegations of prison conditions and a catch-all request for "other" or "further" relief should have to contain an analysis of all imaginable claims or whether transfer to the district of confinement is appropriate under 28 U.S.C. § 1406(a). That approach stretches liberal construction past what is required. Context matters.

Petitioners' cases on this point are distinguishable. None involve a habeas corpus petition or bear any resemblance to the situation at hand,

and all reflect reasonable, context-specific constructions. For example, in *Smith v. Hundley*, 190 F.3d 852 (8th Cir. 1999), the Eighth Circuit "preliminary considered," for purposes of dismissing all claims as moot, a *pro se* prisoner's request for a declaration that he was entitled to certain religious items to encompass a request for injunctive relief as to those items. *Id.* at 855-56 & n.7. In *Gowins v. Griener*, No. 01-CV-6933, 2002 WL 1770772 (S.D.N.Y. Jul. 31, 2022), a *pro se* paraplegic prisoner's request for a declaration that his bedding and means of showering violated disability statutes was construed to also seek prospective injunctive relief. *Id.* at *2, *8. In *Ostofsky v. Sauer*, No. 07-CV-00987, 2010 WL 891263 (E.D. Cal. Mar. 8, 2010), the court had previously ordered that "plaintiff should be given an opportunity to assert" certain disability claims "with the limitation that these claims seek only declaratory and prospective injunctive relief," *see* No. 07-CV-00987, ECF No. 40 at 10, and then construed the *pro se* litigant's attempt to reassert those claims as seeking the relief described in the court's prior order, 2010 WL 891263 at *2. Lastly, in *Littlejohn v. Core Civic*, No. 22-CV-00109, 2022 WL 1124855 (M.D. Tenn. April 14, 2022), the court granted a *pro se* prisoner leave to amend his complaint to more properly plead a request for injunctive relief based on violent prison conditions, where he requested "[s]uch other and further relief as the Court deems just and proper for the

Pro[]se-Plaintiff suffering unduly under the unsafe conditions of confinement at [the facility]." *Id.* at *4-5. These cases do not support Petitioners' claim that the district court's construction of the petition was erroneous in the context of this case.

Petitioners also claim they "diligently explained the relief they sought in subsequent filings," Br. 15, referring to a "Notice of Related Case," filed more than two months after the Respondent's motion to dismiss and after Petitioners replied to that motion, *see* AA63-68, which stated:

> The petition in this matter … should be construed as seeking an order for[] the BOP to remedy the unconstitutional conditions of confinement and, if it cannot remedy the conditions, an order of release.

AA80. Initially, a complaint—never mind a habeas corpus petition—cannot be amended by statements made in motion papers. *See Wright v. Ernst & Young LLP*, 152 F.3d 169, 178 (2d Cir. 1998) (rejecting new claim raised for the first time in opposition to motion to dismiss). Moreover, this statement does not metamorphose the petition that was filed, which requested only home confinement. Far from requesting injunctive relief at FCI Danbury, the petition implausibly alleged that release to home confinement was necessary for Petitioners to address their medical concerns—a claim they repeat before this Court

to try to fit within the PLRA's carve-out for "habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. § 3626(g)(2). Petitioners want it all ways by asking that their original petition be read to take whatever shape is needed to avoid dismissal (for instance on this appeal: a narrow habeas request for release to home confinement to escape the PLRA, but also, should the first argument fail, a broad request encompassing all conceivable "further relief"; the latter of which request, they argue, should insulate the former from plausibility review at the pleading stage).

To be clear, under the law of this Circuit, Petitioners can *at any time* file a § 2241 petition to seek an order to receive adequate medical care that is not already being provided to them. Such a request must simply be made, as required by Habeas Rule 2(c). Petitioners did not need legal expertise to tell the district court what they wanted. If they truly sought additional medical care within FCI Danbury, they would have asked for it in their petition—or since then, in a new or amended § 2241 petition. The district court correctly interpreted the petition as requesting exactly what it said: home confinement. Accordingly, the district court did not err in dismissing the petition *without prejudice*, which has always left Petitioners free to seek medical care in a

§ 2241 petition should they wish to seek that relief divorced from the prospect of court ordered home confinement.

Conclusion

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated: October 11, 2022

Respectfully submitted,

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Federal Rule of Appellate Procedure 32(g) Certification

This is to certify that the foregoing brief complies with the 14,000-word limitation of Second Circuit Local Rule 32.1(a)(4), in that the brief is calculated by the word processing program to contain approximately 11,382 words, excluding the items listed in Federal Rule of Appellate Procedure 32(f).

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Addendum

18 U.S.C. § 3621

§ 3621. Imprisonment of a convicted person

(a) Commitment to custody of Bureau of Prisons.—A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) Place of imprisonment.—The Bureau of Prisons shall designate the place of the prisoner's imprisonment, and shall, subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns of the Bureau of Prisons, place the prisoner in a facility as close as practicable to the prisoner's primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence. The Bureau shall, subject to consideration of the factors described in the preceding sentence and the prisoner's preference for staying at his or her current facility or being transferred, transfer prisoners to facilities that are closer to the prisoner's primary residence even if the prisoner is already in a facility within 500 driving miles of that residence. The Bureau

may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

(1) the resources of the facility contemplated;

(2) the nature and circumstances of the offense;

(3) the history and characteristics of the prisoner;

(4) any statement by the court that imposed the sentence—

(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or

(B) recommending a type of penal or correctional facility as appropriate; and

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the

transfer of a prisoner from one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse. Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person. Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court.

. . . .

18 U.S.C. § 3624(c)

§ 3624. Release of a prisoner

. . . .

(c) Prerelease custody.—

(1) In general.—The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare

for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

(2) Home confinement authority.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.

(3) Assistance.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) No limitations.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

. . . . .

18 U.S.C. § 3626

§ 3626. Appropriate remedies with respect to prison conditions

(a) Requirements for relief.—

(1) Prospective relief.—

(A) Prospective 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. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

(B) The court shall not order any prospective 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, unless—

(i) Federal law requires such relief to be ordered in violation of State or local law;

(ii) the relief is necessary to correct the violation of a Federal right; and

(iii) no other relief will correct the violation of the Federal right.

. . . .

(2) Preliminary injunctive relief.—In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

(3) Prisoner release order.—

(A) In 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.

(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

(E) The three-judge court shall enter a prisoner release order only if the court finds 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 the violation of the Federal right.

. . . .

(g) Definitions.--As used in this section—

. . .

(2) the term "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; [and]

. . . .

(4) the term "prisoner release order" includes 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;

. . . .

Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281 (2020)

SEC. 12003

. . . .

(b) Supply of Personal Protective Equipment and Test Kits to Bureau of Prisons; Home Confinement Authority.—

. . . .

(2) Home Confinement Authority.—During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate.

. . . .