

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

A.S.M., <i>et al.</i> ,	*	
Petitioners,	*	
vs.	*	CASE NO. 7:20-CV-62 (CDL)
WARDEN MICHAEL DONAHUE, <i>et al.</i> ,	*	
Respondents.	*	

O R D E R

Petitioners are detainees at the Stewart Detention Center ("Stewart") and Irwin County Detention Center ("Irwin") either awaiting deportation from the United States pursuant to a final order of removal or awaiting resolution of their claim not to be removed. They seek emergency preliminary equitable relief temporarily releasing them from custody. They allege that continued detention at Stewart and Irwin exposes them to the substantial risk of infection with the COVID-19 virus, which given their underlying health conditions seriously endangers their health and safety. They maintain that these conditions violate their constitutional right to substantive due process under the Fifth Amendment and their right to be free from cruel and unusual punishment under the Eighth Amendment.

Petitioners' pending motion seeks a temporary restraining order, which the Court converts to a motion for preliminary

injunction now that Defendants have responded to it. See *Levine v. Comcoa Ltd.*, 70 F.3d 1191, 1193 (11th Cir. 1995). The standard for the two is the same. To obtain such preliminary injunctive relief, Petitioners must establish the following: (1) that they have a substantial likelihood of succeeding on the merits; (2) that they face an imminent and substantial threat of irreparable harm unless relief is granted; (3) that the threatened injury to them outweighs the harm the relief may cause defendants; and (4) the relief is not against the public interest. *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

Before the Court decides whether Petitioners have satisfied the requirements for preliminary injunctive relief, it must determine whether it has jurisdiction to decide the matter. Petitioners maintain that because they seek a writ of habeas corpus releasing them from custody the Court has jurisdiction pursuant to 28 U.S.C. § 2241. Alternatively, they argue that the Court has jurisdiction under 28 U.S.C. § 1331 to determine their implied cause of action for equitable relief to remedy constitutional violations. Although the Eleventh Circuit has not addressed the issue in a published opinion, an unpublished opinion in this Circuit has concluded that a petition for a writ of habeas corpus is not the appropriate mechanism for contesting a prisoner's conditions of confinement. See *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam) (finding § 2241 is "not the

appropriate vehicle for . . . a claim challeng[ing] the conditions of confinement"). The circuits that have squarely addressed the issue are split on how they resolve it. See *Wilborn v. Mansukhani*, 795 F. App'x 157, 162-64 (4th Cir. 2019) (per curiam) (describing circuit split). The Court is persuaded that the Eleventh Circuit would likely follow the unpublished decision of its fellow colleagues who have decided the issue consistent with a majority of the other circuits. Accordingly, the Court finds that a writ of habeas corpus is not the appropriate mechanism for seeking the relief Petitioners request. And the Court may not exercise jurisdiction pursuant to 28 U.S.C. § 2241. The Court has considered Petitioners' argument that an exception should be made to the general principle that writs of habeas corpus cannot be used to remedy conditions of confinement claims when release from detention is the only meaningful remedy for the constitutional violation. The Court agrees that the general principle eschewing habeas relief as a means for remedying condition of confinement constitutional violations rests upon the assumption that eliminating the contested confinement conditions is possible without releasing the detainee from detention. And if the present record supported Petitioners' contention that they face substantial risk of serious physical harm and/or death from unconstitutional *conditions that cannot be modified to reasonably eliminate those risks*, the Court may find Petitioners' argument

for habeas relief persuasive. But based upon the present record, the Court does not find that the only way to remedy Petitioners' alleged constitutional violations is to release them from custody. Therefore, even if this narrow exception to the "no habeas for constitutional confinement claims" was recognized in this circuit, it does not apply here.

Petitioners have a stronger argument for jurisdiction pursuant to 28 U.S.C. § 1331 arising from their implied cause of action for equitable relief to remedy constitutional violations. See *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 404 (1971) (Harlan, J., concurring) ("[There is a] presumed availability of federal equitable relief against threatened invasions of constitutional interests."). The remedy for this type of claim, however, is modification of the conditions of confinement to eliminate the constitutional violation. Release from custody is not a remedy for this type of claim. See *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) ("The appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment. . . . [R]elief of an Eighth Amendment violation does not include release from confinement."). Because the only remedy Petitioners seek in their presently pending motion for emergency

preliminary equitable relief is release from detention, this claim does not support granting that relief.

Based on the foregoing, Petitioners' motion for emergency preliminary injunctive relief is denied. The Court emphasizes the narrow scope of today's ruling. Based upon the present record, Petitioners are not entitled to release from custody in the form of preliminary injunctive relief because: (1) the Court has no jurisdiction to decide Petitioners' writ of habeas corpus claim that is based upon allegedly unconstitutional conditions of confinement, and (2) release from custody is not an appropriate remedy for Petitioners' implied equitable relief cause of action to remedy constitutional violations. Petitioners may amend their motion to seek remedies other than release from detention.

IT IS SO ORDERED, this 10th day of April, 2020.

S/Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA