

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FAVIAN BUSBY, ET AL.,

Plaintiff,

vs.

FLOYD BONNER, JR., ET AL.,

Defendants.

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No.: 2:20-CV-02359-SHL

RESPONDENTS-DEFENDANTS' MOTION TO DISMISS

Respondents-Defendants, Floyd Bonner, Jr., Shelby County Sheriff and the Shelby County Sheriff's Office, by and through their undersigned counsel, respectfully move the Court to dismiss the Petitioners' Petition for Writ of Habeas Corpus pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support of this motion, Respondents-Defendants rely upon their Memorandum in Support of Respondents-Defendants' Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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DATE: This the 26th day of May, 2020.

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No.: 2:20-CV-02359-SHL

**MEMORANDUM IN SUPPORT OF RESPONDENTS-DEFENDANTS’
MOTION TO DISMISS**

Respondents-Defendants, Floyd Bonner, Jr., Shelby County Sheriff and the Shelby County Sheriff’s Office (hereinafter referred to as “Defendants”), by and through their undersigned counsel, submit this Memorandum in Support of Respondents-Defendants’ Motion to Dismiss.

BACKGROUND

Petitioners, Michael Edgington and Favian Busby, are Tennessee state pretrial detainees being held by the Shelby County Sheriff’s Office in the Shelby County Jail. (D.E. 1, ¶¶ 7-8). Petitioners bring a petition for writ of habeas corpus pursuant to 28. U.S.C. § 2241, asking this Court to order them and a class of other detainees to be released from jail because of fear that they may contact COVID-19. (D.E. 1). In making their request, Petitioners allege there are specific conditions at the Shelby County Jail that make them susceptible to being infected by COVID-19. For example, they allege that during mealtimes, detainees are required to “line up inches apart.” (D.E. 1, ¶ 30). They further claim that they must “use and reuse” the same “high-touch” items, such as telephones and kiosks, but that the jail does not provide disinfectant or other cleaning supplies to sanitize these items. (D.E. 1, ¶ 31). They also allege that the jail does not test enough

new arrestees for COVID-19 and worry that asymptomatic detainees could be infecting others. (D.E. 1, ¶ 32). They further claim that on two occasions, detainees who had been exposed to COVID-19 were “pepper sprayed.” (D.E. 1, ¶¶ 33-34). Petitioners claim that by remaining in the Shelby County Jail, their constitutional rights secured under the Fourteenth Amendment are being violated. (D.E. 1, ¶¶ 52-61). They also claim that the Shelby County Jail is violating Title II of the ADA and Section 504 of the Rehabilitation Act. (D.E. 1, ¶¶ 62-70).

STANDARD

To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Assuming they are true, a plaintiff’s allegations must be enough to raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555.

ARGUMENT

A. Petitioners’ Petition Must Be Dismissed Because Petitioners Have Not Exhausted State Law Remedies.

It is well-settled that “a state prisoner’s federal habeas petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims.” *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Luedtke v. Berkebile*, 704 F.3d 465, 466 (6th Cir. 2013); *Graham v. Snyder*, 68 F. App’x 589, 590 (6th Cir. 2003). Thus, the Sixth Circuit has held that although § 2241 “establishes jurisdiction in the federal courts to consider pretrial habeas corpus petitions, the courts should abstain from the exercise of that jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in the state courts or by

other state procedures available to the petitioner.” *Atkins v. Michigan*, 644 F.2d 543, 546 (6th Cir. 1981); *see also, Bronston v. Sabbatine*, 1993 U.S. App. LEXIS 29970 (6th Cir. Nov. 16, 1993) (dismissing § 2241 petition because petitioner had not exhausted his state court remedies prior to filing the petition); *Martin-Trigona v. Shiff*, 702 F.2d 380, 388 (2d Cir. 1983) (“[T]he writ of habeas corpus is not a substitute for a regular route of appeal.”). The requirement that a habeas petitioner exhaust state-court remedies before seeking relief in federal court “protect[s] the state courts’ opportunity to confront initially and resolve constitutional issues arising within their jurisdictions and to limit federal judicial interference in state adjudicatory processes.” *Atkins*, 644 F.2d at 546.

Importantly, the petitioner has the burden of showing exhaustion. *Rust v. Zent*, 17 F.3d 155, 160 (6th Cir. 1994). When a petitioner cannot show that he has exhausted his administrative remedies, his habeas petition must be dismissed. *See e.g., Patton v. Bonner*, 2020 U.S. Dist. LEXIS 74470, *4-5 (W.D. Tenn. Apr. 28, 2020) (dismissing a pretrial state detainee’s § 2241 petition when he failed to exhaust his state court remedies); *Burke v. Hall*, 2020 U.S. Dist. LEXIS 17774 (M.D. Tenn. Feb. 4, 2020) (denying without prejudice § 2241 habeas petition seeking immediate release because it was “apparent on the face of Burke’s . . . petition that he did not exhaust his administrative remedies”); *Greenwood v. Batts*, 2018 U.S. Dist. LEXIS 115875, *4 (W.D. Tenn. July 12, 2018) (dismissing a federal detainee’s § 2241 petition for failure to exhaust administrative remedies); *Reid v. Mackie*, 2011 U.S. Dist. LEXIS 123596, *7-8 (E.D. Mich. Oct. 26, 2011) (dismissing a § 2241 petition because the petitioner failed to allege that he exhausted state remedies).

Exhaustion requires a petitioner to “fairly present” federal claims so that state courts have a “fair opportunity” to apply controlling legal principles to the facts bearing upon a petitioner’s

constitutional claim. *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999); *see also Picard v. Connor*, 404 U.S. 270, 275-77 (1971); *Duncan v. Henry*, 513 U.S. 364, 365 (1995); *Anderson v. Harless*, 459 U.S. 4, 6 (1982). To fulfill the exhaustion requirement, a petitioner must have fairly presented his federal claims to all levels of the state appellate system, including the state's highest court. *O'Sullivan*, 526 U.S. at 845; *Wagner v. Smith*, 581 F.3d 410, 414 (6th Cir. 2009); *Hafley v. Sowders*, 902 F.2d 480, 483 (6th Cir. 1990). The district court can and must raise the exhaustion issue *sua sponte* when it clearly appears that habeas claims have not been presented to the state courts. *See Prather v. Rees*, 822 F.2d 1418, 1422 (6th Cir. 1987); *Allen v. Perini*, 424 F.2d 134, 138-39 (6th Cir. 1970).

In light of these considerations, numerous District Courts in the Sixth Circuit have already dismissed similar habeas petitions in which petitioners sought release from confinement due to the COVID-19 epidemic. *See e.g., Williams v. Rapelje*, 2020 U.S. Dist. LEXIS 84609, *3 (E.D. Mich. May 14, 2020) (dismissing § 2254 petition seeking relief based upon COVID-19 because the petitioner had not exhausted state law remedies); *Makin v. Wainwright*, 2020 U.S. Dist. LEXIS 76007, *2 (N.D. Ohio Apr. 30, 2020) (dismissing § 2241 petition seeking relief on the basis of the COVID-19 pandemic for failure to exhaust state remedies); *Simmons v. Warden, FCI-Ashland*, 2020 U.S. Dist. LEXIS 67855, *6 (E.D. Ky. Apr. 17, 2020) (denying without prejudice defendant's habeas petition, pursuant to 28 U.S.C. § 2241, for immediate release due to COVID-19 for failure to exhaust administrative remedies); *Petry-Blanchard v. Louis*, 2020 U.S. Dist. LEXIS 57146, *11 (W.D. Ky. Apr. 1, 2020) (dismissing § 2241 petition because the petition failed to demonstrate exhaustion of administrative remedies).

In *Makin*, the Court dismissed an Ohio state prisoner's petition for habeas relief due to the COVID-19 pandemic when he failed to plead that he exhausted his state law remedies prior to

bringing suit. *Makin*, 2020 U.S. Dist. LEXIS 76007 at *2-4 (N.D. Ohio Apr. 30, 2020). The Court explained:

[W]hether under § 2241 or § 2254, a state prisoner must demonstrate that he has exhausted his available state remedies before asserting a federal habeas corpus claim. *Collins v. Million*, 121 F. App'x 628 (6th Cir. 2005). It is well-established that an application for a writ of habeas corpus by a state prisoner may not be granted unless it appears that the petitioner has exhausted all “remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A); *Hannah v. Conley*, 49 F.3d 1193, 1196 (6th Cir. 1995) (per curiam). “In other words, the state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal court in a habeas petition.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 842, (1999). The requirement that a state prisoner exhaust available state remedies as to federal claims prior to seeking federal habeas corpus relief is grounded in principles of comity. *Coleman v. Thompson*, 501 U.S. 722, 731, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991). In the federal system, states should have first opportunity to address and correct alleged violations of a state prisoner's federal rights. *Id.*

It is clear on the face on the Petition that Petitioner has not exhausted his state remedies as to the federal claims he asserts. Although Petitioner contends that pursuing a grievance in the prison system would be futile (see Doc. No. 1 at ¶ 15), he has not demonstrated that relief as to his claims is unavailable to him in the Ohio courts. Petitioner cannot seek federal habeas corpus relief unless and until he has exhausted such relief. The state courts must have the first opportunity to address the federal violations he asserts in connection with his state incarceration.

Id.

In *Money v. Pritzker*, 2020 U.S. Dist. LEXIS 63599 (N.D. Ill. Apr. 10, 2020), the Northern District of Illinois likewise found that the plaintiffs’ failure to exhaust was fatal to their claims. There, plaintiffs filed a habeas petition in federal court seeking their release from incarceration alleging the prison setting made them (and other purported class members) vulnerable to COVID-19 and the only way to solve the problem was for release. *Id.* at *2. The court dismissed plaintiffs’ habeas petition, holding that plaintiffs’ failed to raise their claims in the state courts prior to filing suit in federal court. *Id.* at *21-22. The court noted that the state courts were available for emergency matters. *Id.* at *21. Notably, the court held, “[T]o be sure, exhaustion requirements can

(and should) be waived when relief is truly unavailable. But waiving them here - when state courts clearly were available...would turn the habeas system upside down.” *Id.* at *22.

Tennessee courts are given explicit authority to release a pretrial detainee by setting certain conditions on release. *See* Tenn. Code Ann. 40-11-116. Additionally, any time after the trial court sets bond, criminal defendants may – and often do – move the trial court to alter their bond or other conditions of their release. Criminal defendants, before or after conviction, likewise have the right to obtain review of an order from the trial court “granting, denying, setting, or altering conditions” of the defendant’s release. Tenn. R. App. P. 8(a); *see also* Tenn. Code Ann. 40-11-144. Habeas relief is also available in Tennessee courts. Tenn. Code Ann. § 29-21-204. Further, while the Tennessee Supreme Court has suspended *most* in-person proceedings in all state and local courts in Tennessee due to the COVID-19 pandemic, the Court has *not* suspended in-person “proceedings necessary to protect constitutional rights of criminal defendants including bond-related matters and plea agreements for incarcerated individuals.” *See In re: Covid-19 Pandemic*, No. ADM2020-00428 (Tenn. March 13, 2020). In fact, not at any time have such proceedings been suspended in the state of Tennessee and they have continued in Shelby County. Indeed, numerous criminal pretrial defendants have sought release via motion due to COVID-19. Additionally, on March 25, 2020, the Tennessee Supreme Court entered another COVID-19 related order in which the Court directed that each judicial district

[S]hall develop a written plan to affirmatively address issues regarding the incarceration of nonviolent offenders in furtherance of efforts to reduce the jail population, including but not limited to bond reductions or eliminations, deferred sentences, and suspended sentences. The presiding judge or the designee of the presiding judge of each judicial district shall submit its plan to the Administrative Office of the Courts by the close of business on Monday, March 30, 2020, absent an extension granted by the Chief Justice.

See In Re: COVID-19 Pandemic, ADM2020-00428 (Tenn. March 25, 2020). Per the March 25, 2020 order, each judicial district in Tennessee developed a written jail population reduction plan as directed by the Court. *See In Re: COVID-19 Pandemic*, ADM2020-00428 (Tenn. Apr. 27, 2020). As of March 13, 2020, the date of the Tennessee Supreme Court’s first order, the total population in county jails across the state stood at 27,169. By April 21, 2020, the overall county jail population in Tennessee had decreased to 19,126. *Id.* Said data reveals that state law remedies to obtain release from jail due to COVID-19 are available and are being used by criminal defendants across the state of Tennessee.

Abstention from the exercise of the habeas corpus jurisdiction is justified by the doctrine of comity, a recognition of the concurrent jurisdiction created by our federal system of government in the separate state and national sovereignties. Intrusion into state proceedings already underway is warranted only in extraordinary circumstances. *Atkins*, 644 F.2d 543 at 546. Importantly, Sheriffs of Tennessee are not just county employees. They are Tennessee constitutional officers. Constitution of Tennessee, Art. VII § 1; *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn. 1991). The Sheriff’s duties are prescribed by over 100 Tennessee statutes. *See Ray v. Madison Cty.*, 536 S.W.3d 824, 841 (Tenn. 2017). Pursuant to their constitutional duties and Tennessee law, the Sheriff must follow all “process and orders of the courts of record of [Tennessee].” Tenn. Code Ann. § 8-8-201. Sheriffs must also “[t]ake charge and custody of the jail of the sheriff’s county, and of the prisoners therein; receive those lawfully committed, and keep them personally, or by deputies or jailer, until discharged by law.” Tenn. Code Ann. § 8-8-201(a)(3). They similarly have the duty to see that the orders of the courts are enforced. Tenn. Code Ann. § 8-8-201(a)(1); *Shorts v. Bartholomew*, 278 S.W.3d 268, 281 (Tenn. 2009). Failure to obey any court process is grounds

for the Sheriff to be held in contempt of court and can even lead to civil liability. Tenn. Code Ann. § 8-8-207.

Here, Petitioners ask this Court to order the Sheriff of Tennessee to violate his duties under the Tennessee Constitution and Tennessee law by releasing inmates without appropriate orders from Tennessee Courts. Such inquiries are clearly within the purview of the Tennessee state courts, which are presiding over the Petitioners' and proposed class members' criminal charges, and the Shelby County Sheriff has a duty under the Tennessee Constitution and Tennessee law to follow the directives of those courts. Prior to bringing their Petition, Petitioners did not even attempt to begin to pursue any state law remedy, let alone exhaust their state law remedies prior to filing their petition.¹ Because Petitioners have failed to exhaust their state law remedies, this Court should decline jurisdiction and the petition must be dismissed.

B. Plaintiffs' Petition Must Be Dismissed Because Petitioners are Challenging the Conditions of Confinement, Not the "Fact or Duration" of Confinement.

A habeas corpus petition under 28 U.S.C. § 2241 is typically "reserved for challenges to the execution of a sentence, such as a computation of parole or sentencing credits...." *Velasco v. Lamanna*, 16 F. App'x 311, 314 (6th Cir. 2001) (citing *Cohen v. United States*, 593 F.2d 766, 770-71 (6th Cir. 1979)); see *Sullivan v. United States*, 90 F. App'x 862, 863 (6th Cir. 2004). Additionally, while the Sixth Circuit has long recognized that pretrial detainees may pursue habeas relief under § 2241, pretrial detainees can do so only in rare, "extraordinary" instances. *Christian v. Wellington*, 739 F.3d 294, 297 (6th Cir. 2014). In fact, the Sixth Circuit has approved consideration of a pretrial § 2241 petition only in three exceptional circumstances: (1) when the petitioner seeks a speedy trial, *Atkins* 644 F.2d at 546-47; (2) when a petitioner seeks to

¹ The Tennessee's online Public Case History reveals that neither of the named petitioners has ever had a case or motion pending before the Tennessee Court of Appeals. <http://www.tsc.state.tn.us/courts/supreme-court/public-case-history>

avoid a second trial on double jeopardy grounds, *Delk v. Atkinson*, 665 F.2d 90, 93 (6th Cir. 1981); and (3) when a petitioner faces prejudice from prior ineffective assistance of counsel and due process violations on retrial, *Turner v. Tennessee*, 858 F.2d 1201, 1204 (6th Cir. 1988), *vacated on other grounds*, 492 U.S. 902, 109 S. Ct. 3208, 106 L. Ed. 2d 559 (1990).

While habeas corpus relief is available to pretrial detainees in the above-mentioned limited circumstances, habeas corpus is never available to pre- or post-trial prisoners who are complaining only about their conditions of confinement. *See e.g., Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (constitutional claims that merely challenge the conditions of a prisoner's confinement as opposed to the fact of his conviction or the duration of his sentence fall outside the "core" of habeas corpus); *Luedtke v. Berkebile*, 704 F.3d 465, 466 (6th Cir. 2013) (holding that "§ 2241 is not the proper vehicle for a prisoner to challenge his conditions of confinement."); *Sullivan v. United States*, 90 F. App'x 862, 863 (6th Cir. 2004) (concluding, "§ 2241 is a vehicle not for challenging prison conditions, but for challenging matters concerning the execution of a sentence such as the computation of good-time credits."); *Boyce v. Ashcroft*, 251 F.3d 911, 914 (10th Cir. 2001) (holding that a claim regarding a transfer to higher security prison related to conditions of confinement was not cognizable under Section 2241), *vacated as moot*, 268 F.3d 953, 954 (10th Cir. 2001); *Schipke v. Van Buren*, 239 F. App'x. 85, 86 (5th Cir. 2007) (holding that the petitioner's claims were outside scope of § 2241 motion where none of the claims raised by petitioner challenged the fact or duration of her confinement and none, if prevailed on, would have entitled her to accelerated release). Even when a habeas petitioner alleges that inadequate conditions of confinement create the risk of serious physical injury, illness, or death, a petition for a writ of habeas corpus is not the proper vehicle for such a claim. *See, e.g., Spencer v. Bragg*, 310 F. App'x 678, 679 (5th Cir. 2009) (affirming the lower court's dismissal of petitioner's habeas

claim even though he alleged that the conditions of confinement endangered his life).

Further, the Sixth Circuit has held that a writ of habeas corpus is not the proper vehicle to bring a deliberate indifference claim. *Andrews v. Quintana*, 2018 U.S. App. LEXIS 12096, *3 (6th Cir. May 8, 2018) (finding that the petitioner's claim that prison officials or employees were deliberately indifferent was not cognizable in a § 2241 habeas petition). Likewise, in *Burton v. McGlasson*, 2014 U.S. Dist. LEXIS 22642 (E.D. Mich. Feb. 24, 2014), the Eastern District of Michigan considered whether a petitioner can bring a deliberate indifference claim challenging his conditions of confinement. The Court held:

Where a prisoner is challenging the very fact or duration of his physical imprisonment and the relief that he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a petition for writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). However, habeas corpus is not available to prisoners who are complaining only of mistreatment during their legal incarceration. See *Lutz v. Hemingway*, 476 F. Supp. 2d 715, 718 (E.D. Mich. 2007). Complaints like the ones raised by petitioner which involve conditions of confinement “do not relate to the legality of the petitioner’s confinement, nor do they relate to the legal sufficiency of the criminal court proceedings which resulted in the incarceration of the petitioner.” *Id.* (quoting *Maddux v. Rose*, 483 F. Supp. 661, 672 (E.D. Tenn. 1980)). A petition for writ of habeas corpus is not the proper vehicle for a prisoner’s claim that prison officials have been deliberately indifferent to his medical needs, because release from custody is not an available remedy for a deliberate indifference claim. See *In re Owens*, 525 Fed. App’x 287, 290 (6th Cir. 2013); *Glaus v. Anderson*, 408 F. 3d 382, 387 (7th Cir. 2005); *Hamilton v. Gansheimer*, 536 F. Supp. 2d 825, 841-42 (N.D. Ohio 2008). An inmate like petitioner should therefore bring his medical indifference claim as a civil rights complaint. *Glaus*, 408 F. 3d at 386-87. Because petitioner challenges only the conditions of his confinement, his claims “fall outside of the cognizable core of habeas corpus relief.” See *Hodges v. Bell*, 170 Fed. App’x 389, 393 (6th Cir. 2006).

Burton, 2014 U.S. Dist. LEXIS 22642, *1-3 (emphasis added).

More specifically, the Northern District Court of Ohio recently considered whether a habeas corpus petition under 28 U.S.C. § 2241 could be utilized to request immediate release from

prison due to the COVID-19 pandemic. *Barrett v. Carvajal*, 2020 U.S. Dist. LEXIS 84873 (N.D. Ohio May 14, 2020). In dismissing the petition, the Court explained:

Here, Barrett seeks relief on basis of the “deteriorating conditions [at FCI Elkton] during the COVID-19 pandemic.” (Pet. at 1, 11.) Although he seeks relief in the form of immediate release from prison—which falls within the ambit of habeas corpus relief—the basis for this relief is clearly grounded in his conditions of confinement at FCI Elkton and the alleged resulting constitutional violations. Because Barrett does not challenge the execution of his sentence, § 2241 is not the proper vehicle for his claims. *See, e.g., Bolden v. Ponce*, No. 2:20-cv-03870-JFW-MAA, 2020 U.S. Dist. LEXIS 77249, 2020 WL 2097751, at *2 (C.D. Cal. May 1, 2020) (dismissing for lack of jurisdiction § 2241 petition for immediate release due to COVID-19 circumstances).

Barrett, 2020 U.S. Dist. LEXIS 84873 at *6-7.

Likewise, the Northern District of Texas recently held that habeas was the improper vehicle for pre-trial detainees to seek release from jail due to COVID-19. *See Sanchez v. Dallas County*, 2020 U.S. Dist. LEXIS 90667, *39 (N.D. Tex. May 22, 2020). The Court explained:

Public safety concerns aside, habeas is not available to review questions unrelated to the cause of detention. *Pierre v. U.S.*, 525 F.2d 933, 935 (5th Cir. 1976). Its sole function is to grant relief from unlawful imprisonment or custody, and it cannot be used properly for any other purpose. *Id.* at 935-36. An inmate is not entitled to relief in a habeas corpus petition based on civil rights claims related to the conditions of his confinement. *Cf. Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

Sanchez v. Dallas County, 2020 U.S. Dist. LEXIS 90667, *39-40 (N.D. Tex. May 22, 2020).

Here, as in *Barrett* and *Sanchez*, Petitioners complain about their conditions of confinement, not the underlying reasons for their detention. As set forth in their petition, Petitioners identify specific practices undertaken at the Shelby County Jail which they assert violate their constitutional rights. (D.E. 1 ¶¶ 28-34). Even if Petitioners’ complaints are true, they relate to *conditions* at the Shelby County Jail, *not* that their confinement was procured improperly or illegally. To prove their alleged injuries, they have to show that Respondents acted with “deliberate indifference,” not that the underlying reasons for their incarceration are improper or

illegal. Whatever their conditions of confinement, they are not related to Petitioners' "fact or duration" of their respective confinements. Thus, a habeas corpus petition under § 2241 is not the proper vehicle for Petitioners' to present their claims.

Importantly, the Sixth Circuit has held that when a prisoner asserts conditions of confinement claims in a habeas corpus petition under § 2241, it is not appropriate for the court to attempt to re-characterize the claims. Instead, the court should dismiss the petition. *Shah v. Quintana*, 2016 U.S. Dist. LEXIS 59608 at *3 (E.D. Ky. May 5, 2016) (*citing to Martin v. Overton*, 391 F.3d 710, 714-15 (6th Cir. 2004)). Accordingly, Petitioners' petition should be dismissed.

C. If Petitioner's Claims Are Cognizable, Then They Are Subject to the Requirements for Relief in 18 U.S.C. § 3626.

If Petitioners' claims challenging their conditions of confinement were cognizable in habeas (they are not), then the Prison Litigation Report Act's ("PLRA") requirements for prisoner release orders must apply. *Santana v. United States*, 98 F.3d 752, 756 (3d Cir. 1996) ("the PLRA applies to special proceedings like habeas corpus" where claims are analogous to typical suits brought under § 1983); *see also Blair-Bey v. Quick*, 151 F.3d 1036, 1040-42 (D.C. Cir. 1998) (where challenges to prison conditions "are permissibly brought in habeas corpus," they would be subject to the PLRA, "as they are precisely the sort of actions that the PLRA sought to address"), *modified by other grounds by reh'g*, 151 F.3d 1036 (D.C. Cir. 1998). "[I]t would defeat the purpose of the PLRA if a prisoner could evade its requirements by simply . . . joining it with a petition for habeas corpus." *See Blair-Bey*, 151 F.3d at 1042.

A federal court may not enter a prisoner release order unless there has been a prior order "for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prison release order," and respondent "has had a reasonable amount of time to comply with the previous court order[]." 18 U.S.C. § 3626(a)(3)(A). Moreover, only a three-

judge court may enter a prison release order and can only do so after a prisoner files an appropriate request. 18 U.S.C. § 3626(3). The three-judge panel may enter such an 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.” 18 U.S.C. § 3626(3). Here, Petitioners have failed to satisfy obviously not satisfied any of these requirements. *See, e.g., Coleman v. Newsom*, 2020 U.S. Dist. LEXIS 62575 (E.D. Cal. April 4, 2020) (three-judge court pursuant to 28 U.S.C. § 2248 that denied the petitioners’ emergency motion to modify population reduction order due to COVID-19, noting that (1) prisoners must first go to single federal judge who, if finding constitutional violation, “may order [prison authorities] to take steps short of release necessary to remedy that violation; and (2) if lesser remedy “proves inadequate,” [petitioners] may return to convened three-judge panel to determine whether release order is appropriate under 18 U.S.C. § 3626(a)(3)).

Here, Petitioners should not be allowed to circumvent the PLRA’s unambiguous requirements to obtain release. Petitioners plainly complain about the current prison conditions of the Shelby County Jail. Such complaints fall squarely within the purview of the PLRA. Because Petitioners have failed to comply with the PLRA prior to seeking release, their petition must be dismissed.

CONCLUSION

Based upon the foregoing, the Petition should be dismissed in its entirety.

Respectfully submitted,

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