

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MICHAEL GORDON and ANGEL
SOLIZ, on behalf of themselves and
those similarly situated,
Petitioners,

v.

No. 20-cv-10738-GAO

STEPHEN SPAULDING, Warden of
Federal Medical Center Devens, and
MICHAEL CARVAJAL, Director of the
Federal Bureau of Prisons, in their
official capacities,
Respondents.

**PETITIONERS' RESPONSE TO COURT'S JUNE 11, 2020 ORDER
AND MOTION TO CLARIFY OR, ALTERNATIVELY,
TO VACATE COURT'S MAY 8, 2020 ORDER**

In response to this Court's June 11, 2020 Opinion and Order [D.E. 60],
Petitioners respectfully disagree with this Court's decision that it lacks jurisdiction
under 28 U.S.C. § 2241 to hear Petitioners' class-action claims for habeas relief, and
they decline the invitation to proceed in this case, instead, under the Prison
Litigation Reform Act, 18 U.S.C. § 3626, which would be practically impossible in
the limited time afforded, even if it were legally appropriate. *See* D.E. 60 at 8-9
(allowing Petitioners seven days to submit the "materials" referenced by
§ 3626(a)(3)(C) that a "three-judge court" would typically review in deciding
whether to issue a "prisoner release order," including but not limited to proof that "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"). Petitioners

recognize that, in light of their decision, the Court will dismiss this action. *See id.* at 9.

In addition, Petitioners respectfully move this Court to either (1) clarify that its recent decision that it lacks habeas jurisdiction has already vacated its May 8, 2020 Opinion and Order [D.E. 45] denying Petitioners' request for a preliminary injunction, or in the alternative, (2) in connection with its anticipated dismissal of this action, vacate its May 8, 2020 Opinion and Order. The May 8 decision was based on this Court's findings concerning the merits of Petitioners' habeas claims. *See* D.E. 45. at 3 ("It is not necessary to resolve [the jurisdictional dispute] for now, because the petitioners have a more fundamental problem. They have not demonstrated a likelihood of success on their underlying theory of liability[.]").

Having now concluded that it lacked jurisdiction in this matter from the outset—and indeed denying Petitioner's Motion to Reconsider on this basis—this Court had no legal authority to issue any decisions on the merits of Petitioners' request for preliminary injunction. *See generally Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) ("[A] federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) 'Without jurisdiction the court cannot proceed at all in any cause'; it may not assume jurisdiction for the purpose of deciding the merits of the case.") (quoting *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 93-102 (1998)).

Respectfully submitted,

MICHAEL GORDON, ANGEL SOLIZ,
and others similarly situated,

By their attorneys,

/s/ William W. Fick

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I, William W. Fick, certify that I conferred with counsel for Respondents, who does not assent to the relief requested in this motion.

/s/ William W. Fick

CERTIFICATE OF SERVICE

I, William W. Fick, certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 18, 2020.

/s/ William Fick