2021 WL 9161517
Only the Westlaw citation is currently available.
United States District Court, M.D. Pennsylvania.

Aaron HOPE, et al., Petitioner,
v.
Clair DOLL, et al., Respondents.

CIVIL NO. 1:20-CV-562
|
Signed February 1, 2021

Attorneys and Law Firms

Carla G. Graff, Pro Hac Vice, Thomas James Miller, Will W. Sachse, Kelly A. Krellner, Pro Hac Vice, Dechert LLP, Philadelphia, PA, Muneeba S. Talukder, Vanessa L. Stine, ACLU of Pennsylvania, Philadelphia, PA, Witold J. Walczak, American Civil Liberties Union of PA, Pittsburgh, PA, Richard Ting, ACLU of Pennsylvania, Pittsburgh, PA, for Petitioners Aaron Hope, Rakibu Adam, Yelena Mukhina, Brisio Balderas-Dominguez, Viviana Ceballos, Wilders Paul, Alexander Alvarenga, Coswin Ricardo Murray, Edwin Luis Crisostomo Rodriguez, Eldon Bernard Briette, Dembo Sannoh, Jesus Angel Juarez Pantoja, Duckens Max Adler Francois.

Kelly A. Krellner, Thomas James Miller, Dechert LLP, Philadelphia, PA, Muneeba S. Talukder, Vanessa L. Stine, ACLU of Pennsylvania, Philadelphia, PA, Richard Ting, ACLU of Pennsylvania, Pittsburgh, PA, Witold J. Walczak, American Civil Liberties Union of PA, Pittsburgh, PA, for Petitioner Nahom Gebretnisae.

Joanne M. Sanderson (T), Harlan William Glasser, Michael Butler, Richard D. Euliss, United States Attorney's Office, Harrisburg, PA, for Respondent Clair Doll.

Joanne M. Sanderson (T), Harlan William Glasser, Richard D. Euliss, U.S. Attorney's Office, Harrisburg, PA, for Respondents Craig A. Lowe, Simona Flores-Lund, Matthew Albence, Chad Wolf.

REPORT AND RECOMMENDATION

Martin C. Carlson, United States Magistrate Judge

I. Statement of Facts and of the Case

***1** In this case we do not write upon a blank slate. Rather, this case has a significant history, both in this court and in the Court of Appeals. In the course of this litigation, for the past 10 months the plaintiff-petitioners have been released from immigration custody, and have resided at a variety of different locales throughout the United States. Thus, the legal and factual landscape of this case is entirely different from the factual context that was presented to this court when this litigation began.

We are now called upon to assess whether the materials changes in the posture of this case render this dispute moot. As discussed below, we find on these changed, and unique, circumstances that this case is moot and should be dismissed without prejudice to any re-detained petitioners bringing habeas claims relating to their conditions of confinement in the future, depending upon what those conditions might be in the future.

This litigation involves a hybrid civil injunctive action and habeas corpus petition filed on April 3, 2020, on behalf of

> [A] diverse group of twenty-two individuals from around the world who are held in civil detention by Immigration and Customs Enforcement (ICE) at York County Prison and Pike County Correctional Facility while they await disposition of their immigration cases [who] are united by the fact that they are over age 65 and/or adults who have a serious pre-existing medical condition, which the United States Centers for Disease Control has determined puts them at significantly higher risk of severe disease and death if they contract COVID-19.

(Doc. 1, at 2). Thus, the plaintiff-petitioners filed an action which sought their release from custody based on

the then-current conditions of their confinement at the York County Prison and Pike County Correctional Facility during the outbreak of the COVID-19 pandemic.

Along with this complaint, the plaintiff-petitioners filed a motion for temporary restraining order, which sought the immediate release of these medically-compromised alien detainees from the York and Pike County prisons. (Doc. 3). The district court granted this preliminary relief sought by the plaintiff-petitioners and ordered their immediate release from ICE custody on April 7, 2020. (Doc. 11).

Respondents appealed this decision. (Doc. 24). On August 25, 2020, the Court of Appeals vacated this temporary restraining order and remanded this case for further proceedings. Hope v. Warden York Cty. Prison, 972 F.3d 310 (3d Cir. 2020). In reaching this result, the Court observed that "the fact of Petitioners' present confinement at York and Pike and the constitutionality of their conditions of confinement is a matter properly challenged by petition for the writ." Id. at 324. Therefore, the Court found that "[g]iven the extraordinary circumstances that existed in March 2020 because of the COVID-19 pandemic, we are satisfied that the [petitioners'] § 2241 claim seeking only release on the basis that unconstitutional confinement conditions require it is not improper," Id. at 324–25, and held that "Petitioners' claim that unconstitutional conditions of confinement at York and Pike require their release is cognizable in habeas." Id. at 325.

***2** Having expressly extended habeas corpus jurisdiction to conditions of confinement claims like those advanced here by the plaintiff-petitioners, the Third Circuit went on to describe in detail the analytical paradigm to be used to assess such condition of confinement claims, stating that:

> The touchstone for the constitutionality of detention is whether conditions of confinement are meant to punish or are "but an incident of some other legitimate governmental purpose." Hubbard II, 538 F.3d at 232 (quoting Bell, 441 U.S. at 538, 99 S.Ct. 1861). "[T]he ultimate question" is whether conditions are "reasonably related to a legitimate governmental objective." Id. at 236 (quoting Bell, 441 U.S. at 549, 99 S.Ct. 1861). If Petitioners are subject to conditions unrelated to a legitimate governmental objective, "we may infer 'that the purpose of the governmental action is punishment that may not be constitutionally inflicted upon detainees *qua* detainees.' " Sharkey, 928 F.3d at 307 (quoting Hubbard II, 538 F.3d at 232). Hubbard I further instructs that we consider the totality of the circumstances of confinement, including any genuine privations or hardship over an extended period of time, and whether conditions are (1) rationally related to their legitimate purpose or (2) excessive in relation to that purpose. Hubbard I, 399 F.3d at 159–160; see, e.g., Union Cnty. Jail Inmates v. DiBuono, 713 F.2d 984, 995–96 (3d Cir. 1983) (though double-bunking involved cramped, crowded cells for sleeping, it was not punishment because it eliminated floor mattresses and permitted more recreational space).
>
> In assessing whether conditions and restrictions are excessive given their purposes, the courts must acknowledge that practical considerations of detention justify limitations on "many privileges and rights." Bell, 441 U.S. at 545–46, 99 S.Ct. 1861. Though not a convicted prisoner, a detainee "simply does not possess the full range of freedoms of an unincarcerated individual." Id. at 546, 99 S.Ct. 1861. Thus, "[t]he fact of confinement as well as the legitimate goals and policies of the [ ] institution limits [Petitioners'] retained constitutional rights." Id.
>
> Important here ... are the legitimate objectives and difficulties of managing a detention facility, Hubbard II, 538 F.3d at 233, and the objectives of immigration detention: ensuring appearance at detention proceedings and protecting the public from harm. See DiBuono, 713 F.2d at 993; 8 U.S.C. § 1226(c).
>
> As the Supreme Court cautioned in Bell v. Wolfish:
>
> > In determining whether restrictions or conditions are reasonably related to the Government's interest in maintaining security and order and operating the institution in a manageable fashion, courts must heed our warning that such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.
>
> 441 U.S. at 540 n.23, 99 S.Ct. 1861 (citations omitted); see also Block v. Rutherford, 468 U.S. 576, 584, 104 S.Ct. 3227, 82 L.Ed.2d 438 (1984) (noting the "very limited role that courts should play in the administration of detention facilities"). We defer to administrators on matters of correctional facility administration "not merely because the administrator ordinarily will ... have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government not the Judicial." Bell, 441 U.S. at 520, 99 S.Ct. 1861.

***3** Id. at 326–27.

This standard of review prescribed by the appellate court for evaluation of habeas petitions based upon conditions of confinement claims is by necessity very fact specific. It calls for an assessment of the totality of the circumstances of confinement for each petitioner, including any genuine privations or hardship over an extended period of time, and a determination regarding whether those conditions are rationally related to their legitimate purpose or excessive. Therefore, a conditions of confinement claim is site-specific and must examine the conditions at specific facilities at a particular point in time.

With the legal landscape governing these claims clarified and defined by the Court of Appeals in this fashion, this case was remanded to the district court for further proceedings. While the district court has declined to reinstate any sweeping temporary restraining orders in the wake of the Court of Appeals' decision, it did so without prejudice to considering individualized requests for injunctive relief in the future as necessary. (Doc. 42). In the meanwhile, immigration officials agreed that, absent a violation of their conditions of release or the entry of a final order of removal, they will not re-detain the plaintiff-petitioners released by this court until the earlier of six months from November 19, 2020 or until a decision is rendered on the merits of any individual petitions. (Doc. 45-2).

Beyond the continued release of these plaintiff-petitioners, which has been on-going for the past ten months, several other factors now combine to diminish the current likelihood of a continuing case or controversy in this matter. For example, it is represented that currently ICE has no specific plans to house any of the petitioners at either the York County Prison (YCP) or the Pike County Correctional Facility (PCCF) if they are re-detained. Moreover, it is entirely unclear whether any of these persons will ever be returned to custody in the York or Pike County facilities if they are taken into immigration custody at some time in the future. Any ICE decision regarding where a detainee is housed would be based on several factors, including but not limited to the location of the detainee at the time of apprehension, the nature of the detainee's immigration proceedings, and circumstances existing at available facilities at the time of detention, including reduced population capacities due to COVID-19 mitigation efforts. Furthermore, in this case, many of the plaintiff-petitioners no longer reside locally. Instead, they are released and under supervision by a number of different ICE field offices throughout the United States. Thus, in the event of any future detention, it is speculative to assume that any of the specific petitioners would actually be returned to the York or Pike County facilities. (Id.). Finally, any assessment of a conditions of confinement claim at the local contract facilities would have to evaluate the current conditions of confinement at these prisons, conditions that may have materially changed since this case began—and the plaintiff-petitioners were released—in April of 2020.

***4** Citing this array of considerations that make the dispute in this case increasingly tenuous and remote, the Respondents have now filed a suggestion of mootness. (Doc. 45). The plaintiff-petitioners have opposed this suggestion of mootness, (Doc. 52), arguing that the Respondents' voluntary cessation of their confinement does not render this case moot. The parties' positions are fully briefed, (Docs. 45, 52 and 53), and this suggestion of mootness is now ripe for resolution.

For the reasons set forth below, it is recommended that this case be dismissed as moot, but without prejudice to any re-detained petitioners bringing habeas claims relating to their conditions of confinement in the future, depending upon what those conditions might be.

II. Discussion

The mootness doctrine recognizes a fundamental truth in litigation: "[i]f developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot." Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698-99 (3d Cir. 1996). In the context of habeas corpus petitions, mootness questions often turn on straightforward factual issues relating to the petitioner's custodial status. Thus:

> [A] petition for habeas corpus relief generally becomes moot when a prisoner is released from custody before the court has addressed the merits of the petition. Lane v. Williams, 455 U.S. 624, 631(1982). This general principle derives from the case or controversy requirement of Article III of the Constitution, which "subsists through all stages of federal judicial proceedings, trial and appellate ... the parties must continue to have a personal stake in the outcome of the lawsuit." Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477-78 (1990) (internal citations and quotations omitted). In other words, throughout the litigation, the plaintiff "must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." Id. at

477(citations omitted).

DeFoy v. McCullough, 393 F.3d 439, 441-442 (3d Cir. 2005)

Similar principles govern requests for injunctive relief brought by detained persons who are no longer held in custody at the facility where their claims arose. In analogous custodial settings, the Third Circuit has observed that, when addressing inmate requests for injunctive relief:

> As a preliminary matter, we must determine whether the inmates' claims are moot because "a federal court has neither the power to render advisory opinions nor to decide questions that cannot affect the rights of litigants in the case before them." Preiser v. Newkirk, 422 U.S. 395, 401 (1975) (quotations omitted); see also Abdul-Akbar v. Watson, 4 F.3d 195, 206 (3d Cir. 1993). An inmate's transfer from the facility complained of generally moots the equitable and declaratory claims. Abdul-Akbar, 4 F.3d at 197 (former inmate's claim that the prison library's legal resources were constitutionally inadequate was moot because plaintiff was released five months before trial).

Sutton v. Rasheed, 323 F.3d 236, 248 (3d Cir. 2003). See Griffin v. Beard, No. 09-4404, 2010 WL 4642961 (3d Cir. Nov. 17, 2010) (transfer from SCI Huntingdon renders inmate injunctive relief claim moot). Indeed, as this court has previously observed, where a detained person seeks injunctive relief against his jailers but is no longer housed at the prison where these injunctive claims arose:

> ***5** [H]is request[ ] to enjoin the defendants from interfering with his [rights] is academic. See Muslim v. Frame, 854 F.Supp. 1215, 1222 (E.D. Pa. 1994). In other words, [the prisoner-plaintiff's] transfer to another institution moots any claims for injunctive or declaratory relief. See Abdul-Akbar v. Watson, 4 F.3d 195, 206-07 (3rd Cir. 1993); Weaver v. Wilcox, 650 F.2d 22, 27 (3rd Cir. 1981).

Fortes v. Harding, 19 F.Supp.2d 323, 326 (M.D. Pa. 1998). Thus, normally in a custodial setting it has been held that habeas corpus "petitions appear to be moot to the extent that they can be read to seek 'release' from any particular condition of confinement at" a specific prison once the detainee is no longer housed at that facility. Roudabush v. Warden Fort DIX FCI, 640 F. App'x 134, 136 (3d Cir. 2016).

The mootness doctrine applies with particular force to habeas corpus petitions filed in immigration matters. In the context of federal habeas petitions brought by immigration detainees, it is well settled that administrative action by immigration officials addressing the concerns raised by an alien's petition can render that petition moot. Burke v. Gonzales, 143 F. App'x 474 (3d Cir. 2005); Gopaul v. McElroy, 115 F. App'x 530 (3d Cir. 2004). Thus, for example, the deportation of an alien frequently makes an immigration habeas petition moot. See Lindaastuty v. Attorney General, 186 F. App'x 294 (3d Cir. 2006). Moreover, the courts have held that the release of an immigration detainee from ICE custody also often renders moot any further complaints regarding the fact of that detention. See Nunes v. Decker, 480 F. App'x 173, 174 (3d Cir. 2012) (release from custody moots alien's habeas corpus petition); Purveegiin v. Chertoff, 282 F. App'x 149 (3d Cir. 2008) (affirming dismissal of ICE detainee's petition challenging continued detention as moot based on petitioner's removal from United States); Sanchez v. Attorney General, 146 F. App'x 547 (3d Cir. 2005).

While acknowledging these general principles, for their part the plaintiff-petitioners argue that their claims are not moot despite the fact that they are not in immigration custody and have been released for the past ten months. In their view, this case presents a potentially live controversy because the Respondents' voluntary cessation of their confinement ten months ago does not automatically render their claims moot. The plaintiff-petitioners also voice a concern that their conditions of confinement claims may fall within the "capable of repetition yet evading review" exception to the mootness doctrine. Admittedly, "in voluntary-cessation cases, defendants' burden of showing mootness is heavy." Hartnett v. Pennsylvania State Educ. Ass'n, 963 F.3d 301, 307 (3d Cir. 2020). However, given the unique constellation of facts in this case, we believe that this burden has been met, and this case should be dismissed as moot without prejudice to any re-detained petitioners bringing habeas claims relating to their conditions of confinement, depending upon what those conditions might be in the future.

In our view, the plaintiff-petitioners' argument would have far greater force if this was a typical habeas petition that challenged only the fact or duration of confinement.

In that setting, voluntary cessation, standing alone, may not render the petition moot. But this case entails a challenge to the conditions of the petitioners' confinement, not simply the fact or duration of that confinement. This is a material distinguishing factor in our view and a factor that presently makes this dispute moot.

***6** This conclusion is not a departure from settled case law. Rather, it flows from established legal principles. Indeed, in this custodial context we have routinely found detainee requests for injunctive relief concerning conditions of confinement at particular facilities to be moot when an inmate or detainee is transferred to another facility, even though the authorities, in theory, remained free to transfer the detainee back to that facility. See, e.g., Lockett v. Smith, 2016 WL 721066 (M.D. Pa. Jan. 6, 2016), report and recommendation adopted, 2016 WL 705040 (Feb. 23, 2016) (similar); McBride v. Lebanon County. Comm'rs., 2013 WL 5937339 (M.D. Pa. Nov. 4, 2013). The principle has also been extended to claims, like those made here by the plaintiff-petitioners, that the conditions of confinement at an immigration detention facility violate the Constitution in light of the current COVID-19 pandemic. In this setting, a detainee's transfer to some other facility has been deemed to render any claim for injunctive relief moot. Mena v. Joyce, 2020 WL 7655192 (W.D. La. Nov. 13, 2020) (dismissing as moot a COVID-19 habeas claim after detainee transferred to a different facility, explaining that "[w]hen the government has voluntarily transferred an immigration detainee who has alleged COVID-19 claims relating to his or her continued detention in the facility transferred from, 'there is no longer a "live" controversy between adversarial parties' related to the virus"); Ndudzi v. Castro, 2020 WL 3317107 *6 (W.D. Tex. June 18, 2020) (dismissing as moot both habeas and non-habeas claims regarding exposure to COVID-19 conditions at former facility after petitioner was transferred to another immigration detention facility, and rejecting as "too speculative" Petitioner's suggestion that she could return to original facility); Brown v. Hoover, 2020 WL 4903835 (M.D. Pa. Aug. 20, 2020) (dismissing as moot motion for preliminary injunction regarding COVID-19 conditions at an ICE facility after immigration detainee transferred to different facility). Likewise, in the "unique habeas context" of an immigration detainee conditions of confinement claim, the release of the detainee from custody has been found to render any habeas corpus petition moot. Prieto Refunjol v. Adducci, 461 F. Supp. 3d 675, 696 (S.D. Ohio 2020), reconsideration denied, No. 2:20-CV-2099, 2020 WL 3026236 (S.D. Ohio June 5, 2020).

In this specific factual context, several factors combine to render this dispute moot. Presently, there are at least four degrees of separation between this case and a current live controversy, all of which would have to be satisfied before these conditions of confinement claims would present a live justiciable controversy subject to relief by this court. Before this case presented a live dispute, the following four conditions would have to be met. First, the petitioners would have to be returned to immigration custody. Second, the petitioners would then have to be confined at specific facilities within the jurisdiction of this court where we could assess any highly fact-bound and fact-specific conditions of confinement claims they may bring. Third, we would have to evaluate those claims in light of the new analytical paradigm prescribed by the third circuit in Hope, 972 F.3d 310 (3d Cir. 2020). Fourth, and finally, this evaluation would have to take into account the present conditions of confinement at these facilities should any of the petitioners be housed at these facilities. This final factor may be a particularly daunting obstacle since this court has recently evaluated conditions of confinement at these facilities on a number of occasions and has consistently found that these conditions of confinement meet constitutional benchmarks, even as these institutions address the current COVID-19 pandemic.[1]

In closing, we recognize that the health and safety concerns voiced by the plaintiff-petitioners in April of 2020 were substantial. We shared those concerns. Indeed, those concerns received careful consideration and prompt action by this court, including the entry of an order directing the release of the plaintiff-petitioners in April of 2020, within days of the filing of this case. However, at this time—when the plaintiff-petitioners are not in custody; there is no indication that they will be returned to custody in the foreseeable future; if returned to some form of custody, there is no indication that they would be confined in facilities within the jurisdiction of this court; and there is no legal basis at this time for the court evaluate how the current conditions of confinement at these facilities might affect the plaintiff-petitioners' well-being—there simply is not a live controversy before the court. Therefore, this case should be dismissed as moot. "However, should the [plaintiff-petitioners] be re-detained, they may seek further relief from this Court." Prieto Refunjol, 461 F. Supp. 3d at 696.

III. Recommendation

***7** Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the Petition be DISMISSED as

moot without prejudice to any re-detained petitioners bringing individual habeas claims relating to their conditions of confinement in the future, depending upon what those conditions might be.

The parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 1st day of February 2021.

All Citations

Slip Copy, 2021 WL 9161517

Footnotes

[1] Thomas v. Doll, No. 4:20-CV-1647, 2020 WL 8084960, at *1 (M.D. Pa. Dec. 21, 2020), report and recommendation adopted, No. 4:20-CV-01647, 2021 WL 84350 (M.D. Pa. Jan. 11, 2021); Mariazza-Chavez v. Doll, No. 4:20-CV-1651, 2020 WL 7755438, at *1 (M.D. Pa. Dec. 1, 2020), report and recommendation adopted, No. 4:20-CV-01651, 2020 WL 7711353 (M.D. Pa. Dec. 29, 2020); Kektyshev v. Doll, No. 4:20-CV-1744, 2020 WL 7483946, at *1 (M.D. Pa. Dec. 1, 2020), report and recommendation adopted, No. 4:20-CV-1744, 2020 WL 7482192 (M.D. Pa. Dec. 18, 2020); Seyyidi v. Doll, No. 4:20-CV-1353, 2020 WL 7040562, at *1 (M.D. Pa. Oct. 23, 2020), report and recommendation adopted, No. 4:20-CV-1353, 2020 WL 7034320 (M.D. Pa. Nov. 30, 2020);Tomlinson v. Doll, No. 4:20-CV-1369, 2020 WL 7049531, at *8 (M.D. Pa. Oct. 13, 2020), report and recommendation adopted, No. 4:20-CV-1369, 2020 WL 7048287 (M.D. Pa. Dec. 1, 2020).