

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

GEGINE AVAKIAN

A 

DOCKET NO. 6:25-cv-00662
SECTION P

VERSUS

JUDGE S. MAURICE HICKS, JR.

US IMMIGRATION & CUSTOMS
ENFORCEMENT

MAGISTRATE JUDGE DAVID J. AYO

REPORT AND RECOMMENDATION

Before the court is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 by *pro se* petitioner Gegine Avakian. Avakian is an inmate in the custody of the US Immigration and Customs Enforcement/US Department of Homeland Security (ICE/DHS) and is currently detained at the South Louisiana ICE Processing Center in Basile, Louisiana.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. § 636 and the standing orders of this court. For the following reasons **IT IS RECOMMEDED** that the petition be **DENIED**.

I. BACKGROUND

Through the instant petition, Avakian asks this Court to order her immediate release from immigration custody on three grounds: (1) denial of necessary medical care; (2) abuse, coercive medical practices and inhumane transport conditions; and (3) deliberate medical mistreatment rising to the level of malpractice resulting in permanent harm, and denial of humanitarian release. Rec. Doc. 1 at 6.

II. LAW & ANALYSIS

A. *Screening of Habeas Corpus Petitions*

A district court may apply any and all of the rules governing habeas petitions filed under 28 U.S.C. § 2254 to those filed under Section 2241. *See* Rule 1(b), Rules Governing § 2254 Cases in the United States District Courts. Rule 4 of the Rules Governing § 2254 Cases authorizes preliminary review of such petitions, and states that they must be summarily dismissed “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” To avoid summary dismissal under Rule 4, the petition must contain factual allegations pointing to a “real possibility of constitutional error.” *Id.* at Rule 4, advisory committee note (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)). Accordingly, this Court reviews the pleadings and exhibits before it to determine whether any right to relief is indicated or whether the petition must be dismissed.

B. *Section 2241*

The Court must first determine whether Avakian’s claims may be properly raised in a Section 2241 habeas corpus petition. Section 2241 is generally used to challenge the manner in which a sentence is executed. *See Warren v. Miles*, 230 F.3d 688, 694 (5th Cir.2000). An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody” under federal authority “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c). The “sole function” of a habeas petition is to “grant relief from unlawful imprisonment or custody.” *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). The Fifth Circuit follows a bright-line rule: “If a favorable determination . . . would not automatically entitle [the detainee] to accelerated release, . . . the proper vehicle is a [civil rights] suit.” *Carson v. Johnson*, 112 F.3d 818, 820-21 (5th Cir. 1997) (internal citations omitted).

Avakian does not allege that Respondents maintain custody over her in violation of a law of the United States. Instead, she alleges that she should be released due to conditions of her confinement. Avakian must demonstrate that her allegations present a viable claim for infringement of her constitutional rights that can be addressed through habeas corpus.

“Typically, habeas is used to challenge the fact or duration of confinement” *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017). “[A]llegations that challenge rules, customs, and procedures affecting conditions of confinement are properly brought in civil rights actions.” *Schipke v. Van Buren*, 239 F. App’x 85, 85-86 (5th Cir. 2007) (citing *Spina v. Aaron*, 821 F.2d 1126, 1127-28 (5th Cir. 1987)). District courts have applied these principles to deny habeas relief based solely on alleged inadequate conditions of detention. *See, e.g., Sarres Mendoza v. Barr*, No. 2019 U.S. Dist. LEXIS 42382, 2019 WL 1227494, at *2 (S.D. Tex. Mar. 15, 2019) (denying a Honduran detainee’s motion for leave to amend because the proposed claims on “conditions of confinement may not be brought in a habeas corpus proceeding, and are actionable, if at all, in a civil rights action”); *Morales-Corbala v. United States*, 2011 U.S. Dist. LEXIS 162398, 2011 WL 13185995, at *3 (W.D. Tex. July 19, 2011), *aff’d*, 498 Fed. App’x 467 (5th Cir. 2012) (explaining that a habeas petition was improper as the plaintiff was not challenging the “constitutionality of his detention and [did] not ask the Court to release him from [the defendant’s custody]”). Even when a 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); *Northup v. Thaler*, 2012 U.S. Dist. LEXIS 131347, 2012 WL 4068676, at *2 (S.D. Tex. Aug. 7, 2012), *adopted by*, 2012 U.S. Dist. LEXIS 131353, 2012

WL 4068997 (S.D. Tex. Sept. 14, 2012) (dismissing petitioner's habeas claim based on alleged risk of abuse by other inmates).

At its core, Avakian's lawsuit challenges the conditions of her confinement. She alleges that she suffered a serious injury to her arm while in federal custody, resulting in a broken bone and despite repeated requests for medical attention, she has not been provided timely or adequate medical care. Rec. Doc. 1 at 6, ¶ 13. She contends that despite suffering permanent damage to her arm and being unable to perform basic life activities such as bathing or using the restroom independently, ICE has denied her release. *Id.* She asserts that she was often verbally abused and reprimanded for raising concerns about her health, given unidentified pills without explanation and during medical transport, deprived of food and water for an entire day and kept in handcuffs for hours. *Id.* Finally, she contends that her broken arm was treated with an external fixator that was misapplied, causing nerve damage and extreme pain. She alleges that a medical professional confirmed that her arm was "never properly set" and the injury has likely caused permanent damage. Despite this, ICE has continued to deny multiple parole or bond requests. *Id.*

"[T]he proper remedy for unconstitutional conditions of confinement should be equitable—to enjoin the unlawful practices that make the conditions intolerable." *Arafat Ahmed v. Warden*, 2024 U.S. Dist. LEXIS 228894, *3 (W.D. La. Sept. 25, 2024) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979)). "A demand for release does not convert a conditions-of-confinement claim into a proper habeas request." *Id.* (citing *Cureno Hernandez v. Mora*, 467 F. Supp. 3d 454, 460 (N.D. Tex. 2020) (citing *Springer v. Underwood*, 2019 U.S. Dist. LEXIS 122491, 2019 WL 3307220, at *2 (N.D. Tex. 2019), *adopted by*, 2019 U.S. Dist. LEXIS 122534, 2019 WL 3306130); *Vetcher v. Sessions*, 2018 WL 4006813, at *2 (N.D. Tex.

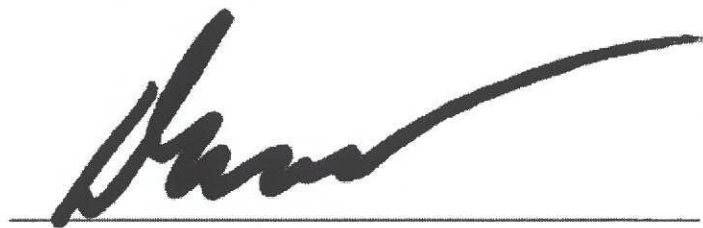
2018) (a petitioner may not challenge the conditions of confinement through a habeas action) (citing *Ruiz v. Davis*, 850 F.3d 225, 229 (5th Cir. 2017)).

III. CONCLUSION

Because Avakian cannot establish her entitlement to release at this time, **IT IS RECOMMENDED** that the Petition be **DENIED AND DISMISSED WITHOUT PREJUDICE**.

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days from receipt of this Report and Recommendation to file written objections with the Clerk of Court. Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days of receipt shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error.

THUS DONE AND SIGNED in Chambers in chambers this 12th day of August, 2025.

A handwritten signature in black ink, appearing to read 'David J. Ayo', is written over a horizontal line.

David J. Ayo
United States Magistrate Judge