[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10761
Non-Argument Calendar

D.C. Docket No. 1:20-cv-25169-BB

DANIEL JOSEPH TOUIZER,

Petitioner-Appellant,

versus

U.S. ATTORNEY GENERAL,
MICHAEL CARVAJAL,
in his official capacity as Director of the Bureau of Prisons,
PATRICIA MIKULAN,
in her official capacity as Executive Director of the Salvation Army Residential Reentry Program,
E.K. CARLTON,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(August 27, 2021)

Before WILSON, ROSENBAUM, and LAGOA, Circuit Judges.

PER CURIAM:

Daniel Touizer, a counseled federal prisoner, appeals the district court's dismissal of his 28 U.S.C. § 2241 habeas corpus petition and denial of his motion for a temporary restraining order ("TRO") seeking immediate release to home confinement. The district court dismissed Touizer's petition after determining that it lacked the authority to grant the relief that he sought—namely, to order the Bureau of Prisons to again release him to home confinement. For the following reasons, we agree with the district court and affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In May 2018, Touizer pled guilty to conspiracy to commit wire and mail fraud, in violation of 18 U.S.C. § 1349. The district court sentenced Touizer to sixty-eight months' imprisonment and ordered him to pay more than $1.8 million in restitution. In May 2020, the Bureau of Prisons ("BOP") released him to home confinement to serve the remainder of his sentence because he had a heightened risk of serious

illness from COVID-19. But in November 2020, the BOP remanded him back to prison for violating a condition of his home confinement.

As part of the conditions for his home confinement, Touizer was prohibited from communicating with any victims of his conspiracy. In violation of this condition, Touizer sent an email to various investors and victims regarding a pending civil action—an action in which he is a defendant—related to his criminal conspiracy. In the email, Touizer claimed that he "decided to plead guilty even though [he] didn't commit this crime of stealing investor funds" and promised to "fight for you" to recover all damages.

After BOP was informed of this communication, Touizer was reminded about the conditions he agreed to when he was placed on home confinement. Following these conversations, Touizer waived his right to twenty-four-hour notice and agreed to proceed to the disciplinary hearing without representation. At the hearing, he was found guilty and remanded to prison.

Soon after he was returned to prison, Touizer filed a 28 U.S.C. § 2241 habeas petition contesting the revocation of his home confinement and moved for a TRO requiring his immediate release back to home confinement. In his amended petition, Touizer argues that the condition that he may not communicate with victims violated his First Amendment rights, that his home confinement was revoked without due process in violation of his Fifth Amendment rights, and that continued confinement

during the pandemic constituted a violation of his Eighth Amendment right to be free from cruel and unusual punishment.

Although the district court determined that Touizer's claims were cognizable under § 2241, it dismissed the petition after finding that the BOP was vested with the exclusive power to determine a prisoner's place of confinement, including home confinement, under 18 U.S.C. § 3624(c)(2) and § 12003(b)(2) of the CARES Act, and thus it lacked the authority to order the BOP to select a certain location for Touizer's confinement. Looking to the due process claim, the district court concluded that such a claim failed because a prisoner does not have a liberty interest in his place of confinement. Because it dismissed the petition, the district court denied as moot Touizer's TRO motion. Touzier timely appealed the district court's dismissal of his habeas petition and denial of his TRO motion.

II. STANDARD OF REVIEW

We review *de novo* the district court's denial of habeas relief under § 2241 and its fact findings for clear error. *Bowers v. Keller*, 651 F.3d 1277, 1291 (11th Cir. 2011). We review the district court's denial of a motion for a TRO for abuse of discretion. *Long v. Sec'y, Dep't of Corr.*, 924 F.3d 1171, 1175 (11th Cir.), *cert. denied*, 139 S. Ct. 2635 (2019).

III. ANALYSIS

The main question we must determine in this appeal is whether the district court has the authority to order the BOP to return Touizer to home confinement. We hold that it does not. The BOP has independent authority "to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months." 18 U.S.C. § 3624(c)(2). And if an inmate violates a condition of that home confinement, the BOP is permitted—and in some cases, required—to revoke the prisoner's prerelease custody and require them to serve the rest of their sentence in prison. 18 U.S.C. § 3624(g)(5). As a result of the COVID-19 pandemic, the CARES Act was passed and permits the BOP to "lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement" under 18 U.S.C. § 3624(c)(2), as it deems appropriate. CARES Act, Pub. L. 116-136, Div. B, Title II, § 12003(b)(2).

Neither § 3624(c)(2) nor the CARES Act expressly provide the judiciary with authority to grant an inmate home confinement in these circumstances. *See* 18 U.S.C. § 3624(c)(2); CARES Act, § 12003(b)(2). Indeed, the BOP alone "shall designate the place of the prisoner's imprisonment," and such "a designation of a place of imprisonment . . . is not reviewable by any court." 18 U.S.C. § 3621(b); 18 U.S.C. § 3624(c)(4) (stating that nothing in this statute "shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621"); *accord Tapia v. United States*, 564 U.S. 319, 331 (2011). A district court may only

recommend a new placement, but it may not order it. *See* 18 U.S.C. § 3621(b)(4)(B); *Tapia*, 564 U.S. at 331 ("A sentencing court can *recommend* that the BOP place an offender in a particular facility or program . . . [b]ut decision making authority rests with the BOP.").

The Supreme Court has recognized that "[a]fter a district court sentences a federal offender, the Attorney General, through BOP, has the responsibility for administering the sentence." *United States v. Wilson*, 503 U.S. 329, 335 (1992). Further, the Supreme Court "has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world." *Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989).

With these principles in mind, we conclude that the district court did not err in dismissing Touizer's habeas petition because the district court lacked the authority to grant the relief he requested—i.e., ordering the BOP to release him to home confinement. At most, the district court could only have sent the BOP a recommendation related to Touizer's confinement. Touizer's contention that his case is unique because he was granted home confinement and then had it improperly revoked is unavailing. Just as the BOP has the authority to release prisoners to home confinement, so too does it have the power to revoke that release. *See* 18 U.S.C. § 3624(g)(5).

Because the district court did not have the authority to grant the requested relief, we decline to address the district court's alternative analysis or Touizer's remaining arguments. Additionally, we conclude that because the district court properly dismissed the petition, it likewise did not abuse its discretion by denying as moot Touizer's TRO motion. Accordingly, we affirm.[1]

AFFIRMED.

[1] Touizer's motion to supplement the record on appeal is DENIED.