No. 23-

In the Supreme Court of the United States

BRUCE SANDS, JR., PETITIONER

v.

PATRICIA V. BRADLEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal courts have jurisdiction under 28 U.S.C. § 2241 over a petition for habeas corpus alleging that a prisoner's unconstitutional conditions of incarceration require release, either because habeas jurisdiction generally extends to conditions-of-confinement claims, or because it at least extends to such claims when the prisoner seeks his release from custody?

PARTIES TO THE PROCEEDINGS

Bruce Sands, Jr., was the petitioner/appellant in the proceedings below.

Patricia V. Bradley, in her official capacity as the Warden of FCI Lompoc, was respondent/appellee in the proceedings below.

A clerical error prior to appointment of counsel below lead to listing the United States of America as appellee. The United States was not a party below. Sands filed an unopposed motion to correct the caption, which the Ninth Circuit granted.

RELATED PROCEEDINGS

United States District Court for the Central District of California

United States v. *Sands*, No. 2:13-cr-00489-GW (July 29, 2016) (judgment of conviction)

United States v. *Sands*, No. 2:13-cr-00489-GW (June 25, 2020) (order denying compassionate release)

United States v. *Sands*, No. 2:13-cr-00489-GW (December 28, 2020) (order denying compassionate release)

Smith et al. v. *Von Blanckensee*, No. 2:20-cv-04642-JVS-JEM (July 30, 2020) (order denying habeas petition)

Sands v. *Bradley*, No. 2:21-cv-01114-JVS-JEM (July 6, 2021) (order denying habeas petition)

United States Court of Appeals for the Ninth Circuit

United States v. *Sands*, No. 16-50293 (April 13, 2018) (direct appeal)

Sands v. *Bradley*, No. 21-55759 (June 8, 2023)

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INTRODUCTION

In *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), this Court reserved the question whether the writ of habeas corpus, as codified in 28 U.S.C. § 2241, may "be available to challenge [unconstitutional] prison conditions," and not just to "challenge the very fact or duration of the confinement itself." *Id.* at 499. In the 50 years that have followed, the Court has repeatedly acknowledged that it has "left open the question whether [prisoners] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus." *Ziglar* v. *Abbasi*, 582 U.S. 120, 144 (2017). But despite the hope that this Court would address this question "another day," *Bell* v. *Wolfish*, 441 U.S. 520, 526 n.6 (1979), that "day has yet to arrive," *Glaus* v. *Anderson*, 408 F.3d 382, 387 (7th Cir. 2005) (Wood, J.). Indeed, just this past term, the Court assumed that jurisdiction would lie for at least some "manner-of-detention challenges," but again was not squarely presented with that question. *Jones* v. *Hendrix*, 599 U.S. 465, 476 (2023).

"As a result, a split has arisen amongst [the federal] circuits on this issue." *Spencer* v. *Haynes*, 774 F.3d 467, 470 (8th Cir. 2014). Some circuits "have concluded that an individual in custody may utilize habeas corpus to challenge the conditions under which he is held," while "other circuits have reached a contrary conclusion." *Aamer* v. *Obama*, 742 F.3d 1023, 1036, 1037 (D.C. Cir. 2014).

The Ninth Circuit's Opinion in this case deepens this split, and provides the Court with an ideal opportunity to finally resolve the question it reserved in *Preiser*. The Ninth Circuit held that "'the writ of habeas corpus is limited to attacks upon the legality or

duration of confinement,'" and does not extend to "a conditions-of-confinement claim." App.18a (quoting *Crawford* v. *Bell*, 599 F.2d 890, 891 (9th Cir. 1979)). Petitioner Bruce Sands, Jr., argued that his petition sounded in habeas because he sought release from custody, alleging that there was "no set of conditions under which his confinement would be constitutional" given his chronic health conditions and grave risks from COVID exposure. App.29a-30a. But the Ninth Circuit held Sands's prayer for release insufficient to invoke habeas jurisdiction, reasoning that his petition failed "to demonstrate the illegality of his detention or the necessity for release." App.30a.

In holding that jurisdiction over habeas claims does not turn "solely on whether the prisoner requested release as opposed to some other form of relief," the Ninth Circuit expressly disagreed with decisions from the Sixth and Third Circuits upholding habeas jurisdiction over nearly identical COVID-related petitions seeking release. App.25a-26a. That deepened the existing split between those Circuits and the Seventh Circuit on the matter. And by reconfirming its general rule against habeas jurisdiction over conditions-of-confinement claims, the Ninth Circuit highlighted the long-standing split on the broader question left open by *Preiser*. The Ninth Circuit is aligned with the Seventh, Eighth, and Tenth Circuits in precluding "conditions-of-confinement claims using the vehicle of a habeas petition." *Spencer*, 774 F.3d at 468 (collecting cases). In contrast, the D.C., First, Second and Fourth Circuits hold that "one in custody may challenge the conditions of his confinement in a petition for habeas corpus." *Aamer*, 742 F.3d at 1032.

This Court should use this case to resolve the split and answer the question it left open in *Preiser*. The cognizability of conditions-of-confinement claims in habeas is important and recurring. This Court has repeatedly stressed the writ's "fundamental importance *** in our constitutional scheme." *Johnson* v. *Avery*, 393 U.S. 483, 485 (1969). Conditions of confinement claims arise frequently and in a wide range of contexts, from the detention and treatment of prisoners in Guantanamo Bay to cases addressing disciplinary confinement, institutional security-levels, and restraints. The decision below flatly barred such claims from proceeding in habeas, despite this Court's repeated suggestion that habeas jurisdiction may be proper in these circumstances. This Court's review is necessary to give lower courts guidance on this important question.

OPINIONS BELOW

The U.S. Court of Appeals for the Ninth Circuit's opinion (App.1a-35a) is reported at 69 F.4th 1059. The District Court's decision adopting the Magistrate Judge's recommendation (App.36a) is available at 2021 WL 2808696. The Magistrate Judge's report and recommendation (App.37a-42a) is available at 2021 WL 2810160.

JURISDICTION

Petitioner Sands sued Respondent in the U.S. District Court for the Central District of California alleging habeas jurisdiction under 28 U.S.C. § 2241. The Magistrate Judge found the court lacked jurisdiction under Section 2241 and recommended dismissal

(App.40a), and the District Court accepted the recommendation (App.36a). Sands timely filed a notice of appeal.

The U.S. Court of Appeals for the Ninth Circuit had jurisdiction under 28 U.S.C. § 1291. On June 8, 2023, the Ninth Circuit held that it lacked jurisdiction under Section 2241 and affirmed. App.35a.

On August 25, 2023, Sands timely filed an application to extend the time to file a petition for a writ of certiorari. On August 29, Justice Kagan granted the application, extending the time to file the petition to Sunday, November 5, 2023. Under Rule 30.1, the deadline is extended to Monday, November 6, 2023.

This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. VIII:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

28 U.S.C. § 2241(a), (c):

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> (c) The writ of habeas corpus shall not extend to a prisoner unless—

> (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
>
> (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
>
> (3) He is in custody in violation of the Constitution or laws or treaties of the United States; or
>
> (4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
>
> (5) It is necessary to bring him into court to testify or for trial.

STATEMENT

A. Sands's habeas petition

In 2016, Sands pled guilty to mail fraud, wire fraud, and money laundering. App.45a-46a. Sands was sentenced to 135 months' imprisonment and ordered to pay restitution. App.45a. At all relevant times, Sands has served his sentence at FCI Lompoc. His prison term is slated to terminate in September 2025.

Sands's hypertension and obesity render him vulnerable to respiratory disease. App.47a,48a,52a. After the COVID-19 pandemic swept through his prison, Sands filed the present habeas petition, alleging that

prison officials failed to treat his severe illnesses and subjected him to grave health risks from COVID-19. Sands alleged that despite knowing of his health risks, prison officials left his conditions untreated and failed to safeguard him and other medically-vulnerable prisoners. App.47a-49a,52a-55a. Sands maintained that the Bureau of Prisons ignored distancing, masking, and quarantine guidelines; confined him alongside COVID-positive inmates; refused to medically-isolate positive cases; refused to properly release inmates "pursuant to the CARES Act and the Attorney General's orders"; increased population density; and forced him "to remain in [his] overcrowded and poorly-ventilated dorm full of hundreds of COVID-19-positive inmates." *Ibid*. As a result of these actions, Sands alleged, his physical condition deteriorated during the pandemic, causing myocardial ischemia, cardiac arrhythmia, hyperlipidemia, edema, and (potentially) diabetes. App.52a.

Sands claimed that FCI Lompoc's treatment constituted cruel and unusual punishment in violation of the Eighth Amendment. App.5a,42a. Alleging that "'no set of conditions' could remedy the alleged constitutional violations at FCI Lompoc," Sands sought release from custody. App.5a-6a,29a. Because he sought release and challenged "the fact or duration of his confinement," Sands argued that habeas was "the proper procedural vehicle." App.5a,50a.

The government moved to dismiss Sands's petition for lack of habeas jurisdiction. App.37a. The magistrate judge agreed, finding that "a Section 2241 petition *** is not the proper vehicle to challenge the conditions of confinement." App.39a. Because the "re-

quest for relief exceed[ed] the Court's jurisdiction under Section 2241," the magistrate judge concluded that Sands's petition "must be dismissed." App.40a (quotation omitted). The district court summarily adopted the report and recommendation. App.36a.

B. The Ninth Circuit's Opinion

Sands timely appealed. App.3a. The Ninth Circuit appointed counsel and consolidated Sands's case with that of another prisoner, Pinson. App.1a-2a.

1. On appeal, Sands argued that under Ninth Circuit precedent, Section 2241 jurisdiction extended to petitions challenging the conditions of a prisoner's confinement. C.A. Opening Br. 18. At all events, Sands argued, his petition fit within the "heart" of habeas because he alleged unlawful detention and sought "'[t]he typical remedy for such detention[:] *** release." *Id.* at 18-30, 25 (quoting *Munaf* v. *Geren*, 553 U.S. 674, 693 (2008)). Sands pointed to two other circuits—the Sixth and the Third—which had recognized habeas jurisdiction over materially identical claims. C.A. Opening Br. at 26-27 (discussing *Hope* v. *Warden York Cnty. Prison*, 972 F.3d 310, 324-325 (3d Cir. 2020) and *Wilson* v. *Williams*, 961 F.3d 829, 837 (6th Cir. 2020)).

2. The Ninth Circuit affirmed, upholding the dismissal of Sands's petition for lack of jurisdiction.[1]

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[1] The Opinion is captioned under the lead consolidated case, *Pinson* v. *Carvajal*. Pinson has not sought certiorari. Sands's case was incorrectly captioned "*Sands* v. *United States*," despite the fact that he correctly named his warden (Bradley). Sands's unopposed motion to correct the caption below was granted.

a. Invoking its prior precedent, the Ninth Circuit held that "'the writ of habeas corpus is limited to attacks upon the legality or duration of confinement' and does not cover claims based on allegations 'that the terms and conditions of *** incarceration constitute cruel and unusual punishment.'" App.10a (quoting *Crawford*, 599 F.2d at 891).

The court rejected Sands's contention that it had previously held conditions-of-confinement claims cognizable under Section 2241. While acknowledging Circuit precedent extending Section 2241 jurisdiction to "the manner, location, or conditions of a sentence's execution," the court drew a distinction between claims challenging "conditions *of a sentence's execution*" and "claims related to the conditions *of their confinement*." App.14a-15a (quoting *Hernandez* v. *Campbell*, 204 F.3d 861, 864-865 (9th Cir. 2000) (per curiam)). Habeas jurisdiction, the court reasoned, lies only for "challenges to the actual execution of the sentence itself, rather than ancillary harms resulting from the conditions of confinement." App.18a. On this theory, claims related to parole eligibility, parole decisions, or good time credits were cognizable in habeas because they "challeng[ed] the conditions of carrying out a sentence or putting the sentence into effect." App.17a. In the court's view, however, these challenges to the "execution of a sentence" were "not synonymous with challenging conditions of confinement." *Ibid.*

b. The Ninth Circuit also rejected Sands's contention that his claim went "to the historic core of habeas corpus" because he sought "release from FCI Lompoc"

and alleged that release was "the only adequate remedy" for the BOP's Eighth Amendment violations. App.19a.

While recognizing this Court's precedents "emphasiz[ing] the importance of release from custody when considering whether a claim sounds in habeas" (App.24a), the Ninth Circuit concluded that a prayer for release was not, alone, dispositive of whether a claim fell within the core of habeas. Rather, requesting release only marks "claims at the writ's core" if the allegations "demonstrate[] that the *detention itself* is without legal authorization." App.21a. Under this view, an action sounds in habeas only if "success in that action would *necessarily* demonstrate the invalidity of confinement or its duration," such that release was the only adequate remedy. App.23a (quoting *Wilkinson* v. *Dotson*, 544 U.S. 74, 82 (2005)) (emphasis added). The Ninth Circuit reasoned that claims "are not at the core of habeas corpus" if, by contrast, they "would not necessarily lead to the invalidity of the custody." *Ibid.*

On this score, the Ninth Circuit expressly parted ways with the Sixth and Third Circuits, characterizing them as "go[ing] astray." App.25a-26a (distinguishing *Wilson* v. *Williams*, 961 F.3d 829 (6th Cir. 2020) and *Hope* v. *Warden York Cnty. Prison*, 972 F.3d 310 (3d Cir. 2020)). Whereas these courts focused "solely on whether the prisoner requested release, as opposed to some other form of relief," the Ninth Circuit framed the dispositive question as "whether, based on the allegations in the petition, release is *legally required*." App. 25a-26a,27a. In the court's view,

"a successful claim sounding in habeas necessarily results in release, but a claim seeking release does not necessarily sound in habeas." App.27a.

c. Turning to Sands's allegations, the Court concluded that they failed to bring his claim within the core of habeas. App.27a-32a. Although Sands argued that no conditions could remedy the Eighth Amendment violations he had pled, the Ninth Circuit deemed his allegations insufficient to compel release. His claims, the court reasoned, "fail[] to demonstrate the illegality of his detention or the necessity of his release," as they did not "go[] to the fact of Sands's confinement nor would require immediate release if successful," and therefore were "outside the historic core of habeas corpus." App.30a,28a,33a.

This petition followed.

REASONS FOR GRANTING THE PETITION

In "reject[ing] habeas jurisdiction over a federal prisoner's claims related to the conditions of his confinement" (App.15a), the Ninth Circuit joined the Seventh, Eighth, and Tenth Circuits, which each hold that habeas will not lie for conditions-of-confinement claims. More specifically, it aligned itself with the Seventh Circuit by holding that a petitioner's request for release is inadequate to invoke habeas jurisdiction. In doing so, the Ninth Circuit openly broke with the Third and Sixth Circuits, which upheld habeas jurisdiction over nearly identical claims seeking release from prison. The Opinion also places the Ninth Circuit across from the First, Second, and D.C. Circuits on the "unsettled question of law among [the] sister circuits" over whether conditions-of-confinement claims are generally cognizable in habeas. *Farabee* v.

Clarke, 967 F.3d 380, 395 (4th Cir. 2020). At least one other Circuit—the Fifth—has reached conflicting results on the matter.

The split has persisted because this Court has so far "left open" the question, despite referencing it in multiple opinions. *Ziglar*, 582 U.S. at 144. There is no reason to believe the split will dissipate, as the doctrinal divide is clear and many circuits now have decades-old precedent binding them to one view. The scope of the great writ thus varies based solely on the law of the circuit in which a prisoner is housed, with courts reaching diametrically opposite jurisdictional conclusions when presented with the same set of facts.

This case is a good vehicle to resolve that split. Because Sands requested release, this Court may determine whether conditions-of-confinement claims are always cognizable; whether they are only appropriate when release is the requested remedy; whether a prisoner must show that release is the *only* remedy; or whether such claims never sound in habeas—thus fully resolving the multi-circuit split.

Moreover, the Opinion below demonstrates why such claims sound in habeas. To reach the contrary conclusion, the Ninth Circuit embraced the view that claims sound in habeas *only* when release is "*legally required*." App.27a. But that view is inconsistent with the relevant statutes, see 28 U.S.C. § 2243, and this Court's precedents, see *Boumediene* v. *Bush*, 553 U.S. 724, 739 (2008), each of which make clear that courts may grant habeas relief without granting release.

I. The decision below deepens a long-running circuit split.

1. In its Opinion below, the Ninth Circuit adhered to its "long[-]held" view that "the writ of habeas corpus is limited to attacks upon the legality or duration of confinement." App.10a (quoting *Crawford*, 599 F.2d at 891). Although Sands specifically sought release from custody on the ground that no conditions of confinement could cure the unconstitutional conditions he endured, the court held that this claim for release was inadequate alone to invoke habeas jurisdiction. App.25a. Rather, a prisoner seeking release due to his conditions of confinement must "demonstrate the illegality of his detention or the necessity for release"—a standard that, the court held, Sands failed to meet. App.30a.

2. The Ninth Circuit adopted the same framework applied by the Seventh Circuit for analyzing conditions-of-confinement claims, and joined two other Circuits—the Eighth and Tenth—in holding that habeas jurisdiction does not extend to such claims.

a. *The Seventh Circuit*: Like the Ninth Circuit, the Seventh Circuit limits habeas jurisdiction to claims challenging the fact or duration of incarceration, and refuses to find habeas jurisdiction based solely on a prisoner's claim for release from unconstitutional conditions of confinement.

In *Glaus* v. *Anderson*, 408 F.3d 382 (7th Cir. 2005), the petitioner alleged that prison officials failed to properly treat his medical condition. *Id.* at 385. The petitioner sought transfer to a prison medical facility or, alternatively, release from prison. *Ibid.* The Seventh Circuit held that this claim "could not be brought

under 28 U.S.C. § 2241," and affirmed the district court's dismissal. *Id.* at 390. Invoking *Preiser,* the court reasoned that "[i]f a prisoner is not challenging the fact of his confinement, but instead the conditions under which he is being held, we have held that she must use a § 1983 [if a state prisoner] or *Bivens* theory [if a federal prisoner]." *Id.* at 386. Although Glaus expressly sought release, the Seventh Circuit held that his claims for medical treatment would not legally *compel* that remedy. Rather, the court noted, "the appropriate remedy would be to call for proper treatment, or to award him damages." *Id.* at 387. And because the court deemed release "unavailable, Glaus's complaint necessarily concerns only the conditions of his confinement and thus must be brought as either a civil rights claim or possibly [a federal tort] claim." *Ibid.*

Like the Ninth Circuit, then, the Seventh Circuit has framed habeas jurisdiction around whether the petitioner's claim challenges the legality or duration of confinement, and to "preclude prisoners from using the writ to attack the conditions of confinement." See *Aamer*, 742 F.3d at 1037 (construing Seventh Circuit precedent and noting its alignment with Ninth Circuit); accord *Graham* v. *Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (reasoning that if a prisoner "is challenging merely the conditions of his confinement his proper remedy is under the civil rights law"). And like the Ninth Circuit, the Seventh Circuit has answered that question not by assessing whether the petitioner *sought* release, but examining whether his allegations *compelled* release as a matter of law. Compare *Glaus*, 408 F.3d at 387, with App.26a (examining "whether, based on the allegations in the petition, release is legally required"). Under this approach, if the court

deems "release [] unavailable" based on the petitioner's allegations, the "challenge can only concern the conditions of his confinement," and habeas jurisdiction does not lie. *Glaus*, 408 F.3d at 388.

b. *The Eighth and Tenth Circuits*: As in the Ninth and Seventh Circuits, Eighth Circuit and Tenth Circuit "precedent precludes conditions-of-confinement claims using the vehicle of a habeas petition." *Spencer* v. *Haynes*, 774 F.3d 467, 468 (8th Cir. 2014); see also *Standifer* v. *Ledezma*, 653 F.3d 1276, 1280 (10th Cir. 2011) ("It is well-settled law that prisoners who wish to challenge only the conditions of their confinement *** must do so through civil rights lawsuits *** not through federal habeas proceedings."). In both Circuits, a habeas petitioner may "challenge[] the fact or duration of his confinement and seek[] immediate release or a shortened period of confinement," but "a prisoner who challenges the conditions of his confinement must do so through a civil rights action." *Palma-Salazar* v. *Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012); accord *Spencer*, 774 F.3d at 469-470 (rejecting habeas jurisdiction because the petitioner's claim "relat[ed] to the conditions of his confinement"). In reconfirming this rule, the Eighth Circuit specifically noted the split "amongst [its] sister circuits," siding with the Fifth, Seventh, Ninth, and Tenth Circuits (though, as we explain below, the Fifth Circuit has mixed precedents). *Spencer*, 774 F.3d at 470-471.

3. The Ninth Circuit openly split with other courts of appeals over materially identical claims seeking release on the basis of COVID 19 prison conditions.

a. *Third Circuit*: The Third Circuit upheld habeas jurisdiction over a petition brought by immigration

detainees alleging that the conditions of their detention during the COVID pandemic violated due process. *Hope* v. *Warden York Cnty. Prison*, 972 F.3d 310, 317 (3d Cir. 2020). The petitioners stressed that "they d[id] not 'seek[] to *modify* their conditions [of confinement]' and 'the only relief sought by Petitioners—the only adequate relief for the constitutional claims—is release.'" *Id.* at 323. Framing the issue as "whether release sought on the basis of *conditions* of confinement is cognizable under the habeas statute," the court held that the "Petitioners' claim that unconstitutional conditions of confinement *** require their release is cognizable in habeas." *Id.* at 323-325.

The Third Circuit observed that "[w]here a petitioner seeks release from detention, habeas (not a § 1983 action seeking release) is proper." 972 F.3d at 323. While a prisoner alleging unconstitutional conditions "arguably might" bring the action under habeas or Section 1983, "the Supreme Court has made it clear that *** the narrower remedy, the habeas petition, is the only available avenue of relief" if the prisoner alleges violations that "necessarily impact[] the fact or length of detention." *Id.* at 323-324. The Third Circuit "expressly recognized that where the remedy sought was release from detention, the party was required to 'proceed by way of habeas petition.'" *Id.* at 324 (quoting *Leamer* v. *Fauver*, 288 F.3d 532, 540-541 (3d Cir. 2002)).

b. *Sixth Circuit*: In *Wilson* v. *Williams*, the Sixth Circuit confronted a similar § 2241 petition seeking release on the basis of unconstitutional COVID conditions. 961 F.3d 829, 833 (6th Cir. 2020). Like Sands, the *Wilson* petitioners claimed "that their confinement in the midst of the COVID-19 outbreak violate[d]

the Eighth Amendment." *Id.* at 835. Alleging that there was "no set of internal protocols or practices that, in light of the current conditions and population levels," would "prevent further disease and death inside the prison," the petitioners sought (1) the release of a "medically vulnerable" class of prisoners, and (2) "specific [COVID] mitigation efforts" for other prisoners. *Ibid*. The district court held that it had habeas jurisdiction over "the medically-vulnerable subclass because they sought release and 'ultimately [sought] to challenge the fact or duration of confinement as well.'" *Ibid.* It deemed the other "conditions of confinement claims properly brought under [Section] 1983." *Ibid.*

After the district court granted a preliminary injunction, the government appealed. The Sixth Circuit rejected the government's jurisdictional challenge, upheld habeas jurisdiction over the release claims, and reversed the preliminary injunction order. 961 F.3d at 837-839. The court reasoned "that petitioners' claims are properly brought under § 2241 because they challenge the fact or extent of their confinement by seeking release from custody." *Id.* at 837. Habeas jurisdiction was "proper under § 2241," the court explained, "[b]ecause petitioners seek release from confinement," which, under this Court's precedents, "is 'the heart of habeas corpus.'" *Id.* at 838 (quoting *Preiser*, 411 U.S. at 498).

The Sixth Circuit rejected the government's effort to treat the petitioners' claims as "conditions of confinement" claims, comparable to claims seeking "transfer or improvement" in conditions. 961 F.3d at 838. The petitioners "contend[ed] that the constitutional violations occurring at [FCI] Elkton as a result of the pandemic c[ould] be remedied only by release."

Ibid. The court reasoned that where the petitioners "claim that no set of conditions would be constitutionally sufficient," their "claim should be construed as challenging the fact or extent, rather than the conditions, of the confinement," thus invoking habeas jurisdiction. *Ibid.*

c. As the Ninth Circuit recognized, both its result and its reasoning are wholly at odds with the approach taken by these Circuits. The Ninth Circuit expressly declined to predicate habeas jurisdiction on "whether the prisoner requested release as opposed to some other form of relief," concluding that "a claim seeking release does not necessarily sound in habeas." App.25a-26a,27a. That is precisely the rule that the *Hope* and *Wilson* courts reconfirmed and applied to exercise habeas jurisdiction over COVID-related release claims.

The Third Circuit, for example, expressly held that "we are satisfied that [the petitioners'] § 2241 claim seeking only release on the basis that unconstitutional confinement conditions require it is not improper." *Hope*, 972 F.3d 324-325. Because the "traditional function of the writ of habeas corpus is to secure release from unlawful executive detention," the Third Circuit deemed it sufficient that the petitioners claimed "unconstitutional conditions of confinement *** require release." *Id.* at 323, 325. Similarly, the Sixth Circuit in *Wilson* upheld habeas jurisdiction because the petitioners there sought release and "claim[ed] that no set of [prison] conditions would be constitutionally sufficient." 961 F.3d at 838. By seeking a remedy at "'the heart of habeas corpus,'" the court explained, the petitioners were properly treated

as "challenging the fact or extent" of their imprisonment—not merely their conditions. *Ibid.*

4. The Opinion below reinforces a more fundamental split with Circuits that have held conditions-of-confinement claims cognizable in habeas even if they seek relief short of release from confinement.

a. The D.C. Circuit: In *Aamer* v. *Obama*, 742 F.3d 1023 (D.C. Cir. 2014), the D.C. Circuit held that habeas jurisdiction extended to claims brought by Guantanamo Bay detainees who challenged their conditions of confinement but did *not* seek release. When the petitioners began a hunger strike, the government instituted a force-feeding program. *Id.* at 1026. The petitioners invoked the district court's habeas jurisdiction and sought a preliminary injunction barring officials from force-feeding them. *Id.* at 1027. They alleged that the practice violated their constitutional rights and federal statutory law. *Ibid.* Two district courts held that the Military Commissions Act of 2006 stripped them of habeas jurisdiction, but the D.C. Circuit reversed.

Narrowing the jurisdictional issue to whether "petitioners' claims [were] the sort that may be raised in a federal habeas petition under section 2241," the D.C. Circuit held that they were. 742 F.3d at 1030. Because the "petitioners challenge[d] neither the fact nor the duration of their detention," the D.C. Circuit concluded that their claims "undoubtedly fall outside the historical core of the writ." *Id.* at 1030. Nonetheless, after canvassing this Court's cases and circuit authority, the D.C. Circuit held that conditions-of-confinement claims were "a 'proper subject of *statutory* habeas.'" *Ibid.* (citation omitted; emphasis added). Judge Tatel explained that while this Court had

treated "as an open question the writ's extension to conditions of confinement claims," the D.C. Circuit had resolved the issue. *Id.* at 1031-1032. Noting that "[h]abeas corpus tests not only the fact but also the form of detention," that court had long recognized "that one in custody may challenge the conditions of his confinement in a petition for habeas corpus." *Ibid.* This rule made sense, Judge Tatel reasoned, because "a court may simply order the prisoner released unless the unlawful conditions are rectified." *Id.* at 1035.

b. *The Second and First Circuits*: The Second Circuit has similarly held that habeas jurisdiction attaches where a prisoner asserts "a challenge to the conditions of his confinement." *Roba* v. *United States*, 604 F.2d 215, 219 (2d Cir. 1979); *Jiminian* v. *Nash*, 245 F.3d 144, 146-147 (2d. Cir. 2001) (Sotomayor, J.) (a Section 2241 petition "challenges the execution of a federal prisoner's sentence, including such matters as *** type of detention and prison conditions").

In *Thompson* v. *Choinski*, 525 F.3d 205 (2d Cir. 2008), the Court concluded that habeas jurisdiction extended to a petition seeking, among other things, "relief from federally imposed conditions of confinement," *id.* at 209, including "restrictions on the conditions of his confinement" resulting from a high security assignment, *id.* at 207; see also Opening Br. 2006 WL 6255331 (Aug. 14, 2006) (arguing petitioner was on "lock-down 22 1/2-hours per day"). The Court noted that it "ha[d] long interpreted § 2241 as applying to challenges to the execution of a federal sentence, 'including *** prison transfers, type of detention and prison conditions.'" *Thompson*, 525 F.3d at 209 (quoting *Jiminian*, 245 F.3d at 146). Consistent with this

rule, the Second Circuit has upheld habeas jurisdiction over petitions challenging custodial transportation orders, *Roba*, 604 F.2d at 219, and endorsed Judge Friendly's view that "habeas corpus under 28 U.S.C. § 2241 furnishe[d] a wholly adequate remedy" for a claim seeking conformance to Jewish dietary laws, *Kahane* v. *Carlson*, 527 F.2d 492, 498-500 (2d Cir. 1975) (Friendly, J., concurring); accord, *e.g.*, *Thompson*, 525 F.3d at 209.

While the First Circuit has yet to hold that habeas jurisdiction extends to conditions-of-confinement claims, it has clearly stated that "[i]f the conditions of incarceration raise Eighth Amendment concerns, habeas corpus is available." *United States* v. *DeLeon*, 444 F.3d 41, 59 (1st Cir. 2006). It has long recognized, albeit in dicta, that "Section 2241 provides a remedy for a federal prisoner who contests the conditions of his confinement," emphasizing that such a petition must "be filed and heard by the district court in whose jurisdiction the petitioner is confined." *Miller* v. *United States*, 564 F.2d 103, 105 (1st Cir. 1977); accord *Spencer*, 774 F.3d at 470 n.6.

c. The habeas jurisdiction rule for conditions-of-confinement claims that the D.C. and Second Circuits have adopted, and the First Circuit has endorsed, is broader than the approach followed by the Third and Sixth Circuits. Rather than focusing on whether the habeas petitioner seeks release from custody, these courts categorically extend habeas jurisdiction to conditions-of-confinement claims—without regard to the relief sought by the petitioner. The Opinion below conflicts even more fundamentally with this broader rule.

In its Opinion, the Ninth Circuit reconfirmed its rule that "the writ of habeas corpus is limited to attacks upon the legality or duration of confinement." App.10a (quoting *Crawford*, 599 F.2d at 891). It refused to exercise habeas jurisdiction over Sands's claim on the ground that it "neither goes to the fact of [his] confinement nor would require immediate release if successful." App.28a. That is directly contrary to the D.C. Circuit and Second Circuit rule, which treats petitioners' conditions-of-confinement claims as sounding in habeas even when they do *not* challenge the fact of their confinement or seek release. See *Aamer*, 742 F.3d at 1038; see also *id.* at 1036 (collecting authorities). Under that rule, a habeas petition may "test[] not only the fact but also the *form* of detention.'" *Id.* at 1032 (emphasis added).

Indeed, far from examining the substance of the petitioners' claim for relief—as the Ninth Circuit did here—Judge Tatel explained that such an inquiry would only lead to "formalistic, technical line-drawing." *Aamer*, 742 F.3d at 1035. The government in *Aamer* sought to distinguish conditions-of-confinement claims (like the one asserted by the Guantanamo petitioners) from claims challenging the place of confinement (which the government recognized as cognizable). *Ibid.* But the D.C. Circuit rejected the distinction as "largely illusory." *Ibid.* The injunctive relief sought in both types of cases, Judge Tatel explained, "may be reframed to comport with the writ's more traditional remedy of outright release," by "order[ing] the prisoner released unless the lawful conditions are rectified." *Ibid.* Here, in contrast, the Ninth Circuit not only deemed conditions-of-confinement claims non-cognizable, but also pierced Sands's prayer

for release to assess "whether, based on the allegations in the petition, release is *legally required*." App.27a.

d. <u>*The Fourth Circuit*</u>: The Fourth Circuit agrees that habeas lies—at least in some instances—when a prisoner challenges their conditions of confinement.

In *McNair* v. *McCune*, for example, the court held that "there is federal habeas corpus jurisdiction over the complaint of a federal prisoner who is challenging not the validity of his original conviction, but the imposition of segregated confinement without elementary procedural due process and without just cause." 527 F.2d 874, 875 (4th Cir. 1975). More recently, *Farabee* v. *Clarke* upheld habeas jurisdiction over a claim "that prison officials ha[d] used medication and solitary confinement to treat [the plaintiff's] mental illness and behavior"—claims which again addressed the conditions of the petitioner's confinement, and again did not require release as a remedy. 967 F.3d 380, 395 (4th Cir. 2020). Although the Fourth Circuit "ha[s] yet to address" the broader question of whether habeas is proper over all conditions of confinement claims, see *id.*, its position is irreconcilable with the Ninth Circuit's holding that habeas is entirely unavailable for such claims.

5. At least one circuit has taken inconsistent positions on whether habeas jurisdiction lies for petitions challenging a prisoner's conditions of confinement.

<u>*The Fifth Circuit*</u>: *Aamer* and other cases have pointed to the Fifth Circuit's "longstanding precedent in holding that a habeas petitioner may not challenge his treatment while in custody." *Aamer*, 742 F.3d at

1037.[2] More recently, however, that court has acknowledged that its cases "ha[ve] been less clear" than other Circuits on whether habeas jurisdiction extends to conditions-of-confinement claims. *Poree* v. *Collins*, 866 F.3d 235, 244 (5th Cir. 2017). After noting that some circuits—including the Ninth Circuit—have "limited habeas corpus to claims that challenge the fact or duration of confinement," while "[o]thers have not"—including the D.C. Circuit—the Fifth Circuit in *Poree* noted that it had taken inconsistent positions on the issue. *Id.* at 244 & n.28. The *Poree* court stopped short of "weigh[ing] in on that broader question," and "decline[d] to address whether habeas is available only for fact or duration claims." *Id.* at 244. Instead, it held narrowly that the petitioner's claim, which sought conditional release to a transitional home, sounded in habeas because it challenged "the fact of his confinement" in a mental institution. *Id.* at 243.

Poree's observation about the inconsistent state of Fifth Circuit case law on habeas jurisdiction is borne out by its unpublished decisions addressing COVID-related habeas claims like those presented here. In at least one decision, the Fifth Circuit held that an inmate's "request for release to home confinement in the context of a global pandemic was properly brought as an application for a writ of *habeas corpus* under Section 2241 because a favorable ruling from the district

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[2] *Aamer* and *Spencer* both cited language in *Cook* v. *Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979) ("Habeas corpus is not available to prisoners complaining only of mistreatment during their legal incarceration."), but the opinion was later revised, 596 F.2d 658, 660 n.1 (5th Cir. 1979).

court would accelerate his release." See *Cheek* v. *Warden of Fed. Med. Ctr.*, 835 F. App'x 737, 739 (5th Cir. 2020) (per curiam).

In another decision, however, a different Fifth Circuit panel took an approach similar to the Ninth Circuit's below, holding it lacked habeas jurisdiction over an immigration detainee's petition seeking release because "no conditions of confinement can protect him from [COVID]." *Nogales* v. *Dep't of Homeland Sec.*, 2022 WL 851738, at *1 (5th Cir. Mar. 22, 2022). The *Nogales* panel reasoned that "Nogales is not actually challenging the 'fact' of his confinement (though he contends otherwise); rather, his claim, at its heart, challenges the *conditions* of his confinement." *Ibid.* Citing its own precedent, the panel reasoned that "the Great Writ does not, in this circuit, afford release for prisoners held in state custody due to adverse conditions of confinement." *Ibid.* (quoting *Rice* v. *Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)).

As these decisions indicate, there is a deep split in the Courts of Appeals, with some courts extending habeas jurisdiction to all conditions-of-confinement claims, others limiting jurisdiction to claims seeking release, and still others barring such claims entirely by concluding that release is not legally required. This Court should settle this conflict.

II. The jurisdictional confusion over conditions-of-confinement claims results from this Court's precedents leaving open that important and recurring question.

In reaching their diverging holdings, the Circuits have noted, for decades, that this Court has "expressly

left 'to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement.'" *Glaus*, 408 F.3d at 387 (quoting *Wolfish*, 441 U.S. at 526 n.6); see also *Spencer*, 774 F.3d at 470 (similar); *Brennan* v. *Cunningham*, 813 F.2d 1, 4 (1st Cir. 1987) (similar). The Ninth Circuit made the same point below, "recogniz[ing] that the Supreme Court has left open the key question of whether there are circumstances when a challenge to the conditions of confinement is properly brought in a petition for writ of habeas corpus." App.32a. The Court should use this case to finally resolve this important and recurring question, and provide badly-needed guidance to the lower courts.

1. In *Preiser* v. *Rodriguez*, this Court held that habeas was the exclusive remedy for a prisoner seeking release, and that release was unavailable in a Section 1983 action. 411 U.S. at 489. Actions lie at "heart of habeas corpus," *Preiser* explained, if they "challeng[e] the very fact or duration of [the prisoner's] physical confinement itself," and "seek[] immediate release or a speedier release from that confinement." *Id.* at 499, 498. But the Court cautioned that its ruling was "not to say that habeas corpus may not also be available to challenge such prison conditions. *** When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal." *Id.* at 499.

Since *Preiser*, this Court has often acknowledged that it has "left open the question whether [prisoners] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus." *Ziglar*, 582 U.S. at 144 (citing *Preiser*, 411 U.S. at 499, and

Wolfish, 441 U.S. at 526-527). And it has at times seemed to assume, without holding, that habeas jurisdiction extends to conditions-of-confinement claims. In Z*iglar*, for example, the Court suggested that habeas challenges to conditions of detention were a "faster and more direct route to relief than a suit for money damages." 582 U.S at 145. And just last term, this Court suggested in *Jones* v. *Hendrix* that habeas jurisdiction would lie for "manner-of-confinement challenges." 599 U.S. at 476. In examining "the interplay between" Section 2241 and Section 2255, the Court concluded that Section 2255's savings clause preserved habeas jurisdiction "when a prisoner challenges 'the legality of his *detention*' without attacking the validity of his *sentence*." *Id.* at 475. It then offered, as a "few examples" of such "manner-of-detention challenges," petitions claiming that a prisoner "is being detained in a place or manner not authorized by the sentence, that he has unlawfully been denied parole or good-time credits, *or that an administrative sanction affecting the conditions of his detention is illegal*." *Id.* at 475-476 (emphasis added).

In 2005, Judge Wood noted that 25 years after *Wolfish*, the "day ha[d] yet to arrive" when the Court resolved the viability of habeas claims challenging conditions of confinement. *Glaus,* 408 F.3d at 387. Nearly 20 more years have now passed without further guidance from this Court, and the confusion among the Circuits has only grown.

2. Whether conditions-of-confinement claims are cognizable in habeas is an important, as well as recurring, question of federal jurisdiction.

As this Court has long recognized, "[t]here is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus." *Harris* v. *Nelson*, 394 U.S. 286, 292 (1969). The scope and clarity of jurisdiction under the federal habeas statutes is of critical importance, both to the petitioners bringing those suits and the federal courts adjudicating them.

The "great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defense of personal freedom." *Ex Parte Yerger*, 75 U.S. 85, 95 (1868). Blackstone described "habeas corpus "[a]s 'the great and efficacious writ, in all manner of illegal confinement.'" *Harris*, 394 U.S. at 291 (quoting 3 W. Blackstone, Commentaries *131 (Lewis ed. 1902)). Embracing that understanding, the Founders enshrined habeas as a "great constitutional privilege." *Ex parte Bollman*, 8 U.S. 75, 95 (1807). This Court has emphasized the writ's "practical importance," *Preiser*, 411 U.S. at 477, and its role as a "safeguard[] of liberty," *Boumediene*, 553 U.S. at 739. And because habeas is given "life and activity" through Congressional enactment, *Bollman*, 8 U.S. at 95, this Court has closely concerned itself with policing the boundaries of habeas jurisdiction.

As illustrated by the numerous, diverging cases on the issue, the federal courts must frequently grapple with whether and when Section 2241 gives them jurisdiction over conditions-of-confinement claims. The dispute has arisen in a wide variety of contexts involving core constitutional rights, including claims challenging unconstitutional disciplinary confinement, cf. *Johnson*, 393 U.S. at 484, deprivation of access to legal resources or religious observances, cf. *Thompson*,

525 F.3d at 206, removal of unconstitutional physical restraints, cf. *Aamer*, 742 F.3d at 1036, release to home confinement, cf. *Cheek*, 835 F. App'x at 739, and continued incarceration in violation of constitutional due process, cf. *Farabee*, 967 F.3d at 383. Indeed, the federal courts continue to be faced with habeas cases that, like those presented in *Wilson*, *Hope*, and this case, challenge COVID-related conditions, including cases applying the decision below. *E.g.*, *Hicks* v. *Cranston,* 2023 WL 6389096, at *4 (D.N.J. Oct. 2, 2023) (noting that petitioner challenged COVID-related conditions "as a stand alone claim" as well as a default excuse); *Lomeli* v. *Birkholz*, 2023 WL 5020596, at *2 (S.D. Cal. July 26, 2023) (citing Opinion here to dismiss petition challenging "the excessive COVID-19 risk at FCC Lompoc"). Lower courts tasked with resolving these important questions need clear guidance from this Court as to their subject matter jurisdiction.

III. This Court should use this case to resolve the open and disputed question of habeas jurisdiction over conditions-of-confinement claims, which is clearly and comprehensively presented here.

This case presents a good opportunity for this Court to finally resolve "the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement." *Wolfish*, 441 U.S. at 526 n.6.

1. This case squarely presents *both* disagreements that have developed among the Circuits. The Ninth Circuit's holding limiting habeas "to attacks upon the legality or duration of confinement," and thereby excluding conditions-of-confinement claims (App.18a (quoting *Crawford*, 599 F.2d at 891)), directly raises the question this Court reserved in *Preiser* and left

open in *Wolfish* and *Ziglar*. By answering this question, the Court would resolve the recognized split between the Ninth Circuit and the other courts rejecting habeas jurisdiction over conditions-of-confinement claims (the Seventh, Eighth, and Tenth Circuits) and the Circuits that uphold jurisdiction (the D.C., First, Second, and Fourth Circuits). It would also provide guidance to courts (like the Fifth Circuit) that have taken inconsistent positions on the issue.

This case also gives the Court the opportunity to resolve the more specific conflict that has developed between the Ninth and Seventh Circuits and the Third and Sixth Circuits over how to weigh and assess prayers for release in determining habeas jurisdiction. While the Third and Sixth Circuits have given dispositive weight to claims seeking release on the basis of unconstitutional conditions of confinement, see *Wilson*, 961 F.3d at 838; *Hope*, 972 F.3d at 323, the Ninth Circuit deemed this focus "on whether the prison requested release" to "go astray" of habeas principles (App.25a). Instead, it joined the Seventh Circuit in looking beyond the petitioner's prayer for relief, and examining whether the petition's allegations would "necessarily" compel release. App.22a.

All sides of the split are deeply intertwined. If this Court holds that habeas jurisdiction extends to "manner-of-detention challenges," *Jones*, 599 U.S. at 475, it would also need to decide whether a prisoner may invoke habeas to test "the form of detention" and seek relief short of release, *Aamer*, 742 F.3d at 1032. If it limits conditions-of-confinement claims to those seeking release, it should provide guidance on whether—at least at the pleading stage—it is sufficient to request release or whether release must be necessary

because "there are no set of conditions under which his confinement would be constitutional." App.29a-30a; cf. *Wilson*, 961 F.3d at 838 (upholding jurisdiction based on allegation "that no set of conditions would be constitutionally sufficient," such that release was required).

2. This case clearly presents the question reserved in *Preiser* and left open in *Wolfish* and *Ziglar*. Petitioner specifically pled that the COVID conditions he endured violated the Eighth Amendment; that no set of conditions could remedy that violation; and that release was therefore required. App.5a-6a,45a,50a. The district court rejected his claim by holding that it lacked habeas jurisdiction, concluding that a Section 2241 petition "is not the proper vehicle to challenge the conditions of confinement" (App.39a), and the Ninth Circuit affirmed that decision in a thoroughly reasoned, if erroneous, decision. This Court routinely reviews subject matter jurisdiction issues that, like this one, arise from dismissals on the pleadings, including "whether there is federal-court subject-matter jurisdiction over [a habeas petitioner's] complaint." *Skinner* v. *Switzer* 562 U.S. 521, 531 (2011); *e.g.*, *Jones*, 599 U.S. at 471; *Ziglar*, 582 U.S. at 130.

The petition's allegations underscore Sands's need for release, as he requested. Sands alleges ongoing constitutional violations stemming from the BOP's failure to adequately treat his serious and chronic medical conditions and to take adequate measures to protect him from the heightened risks he faces from COVID exposure.[3] His petition claimed that the

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[3] Prisoners still face significant and often inescapable danger from COVID-19. See Nancy Rosenbloom, "Three

Lompoc prison staff showed deliberate indifference to "his underlying conditions of hypertension and obesity" (App.28a)—conditions that Sands still suffers, that still require medical treatment, and that "increase [his] risk of severe illness or death both generally and specifically from COVID-19" (App.52). Sands also claimed that prison officials have recklessly failed to guard him against exposure to COVID, which poses a grave risk to inmates like him. App.5a. He specifically alleged that he "remain[s] in the same housing unit," and that prison officials permit COVID-positive prisoners "to remain therein and without implementing any measures that will effectively protect [his] health and safety." App.55a; cf. *Hutto* v. *Finney*, 437 U.S. 678, 682 (1978) (upholding Eighth Amendment claim where facility housed prisoners in crowded cells with others suffering from infectious diseases and risked spreading disease).

IV. The Ninth Circuit's analysis of habeas jurisdiction is fundamentally flawed.

The Ninth Circuit wrongly decided the important jurisdictional question presented here, adopting an approach to conditions-of-confinement claims that is fundamentally in tension with this Court's understanding of the writ's core purpose and scope.

1. The Ninth Circuit posited that claims seeking release do not necessarily sound in habeas; rather, a "successful claim sounding in habeas" must instead "necessarily result[] in release." App.26a-27a. In its

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Years Later, COVID-19 is Still a Threat to People Who Are Incarcerated" (Mar. 13, 2023), https://www.aclu.org/news/criminal-law-reform/covid-19-is-not-over-for-people-who-are-incarcerated.

view, "the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested." App.27a.

a. Even the Ninth Circuit recognized, however, that this Court has "emphasized the importance of release from custody when considering whether a claim sounds in habeas." App.24a. In *Preiser* itself, this Court treated claims for release as a touchstone of habeas, characterizing the writ "as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law." 411 U.S. at 485. "[T]he traditional purpose of habeas," this Court observed, was securing "immediate or more speedy release." *Id.* at 494. Shortly after *Preiser*, this Court analyzed whether prisoners could challenge "the procedures for depriving prisoners of good-time credits" in a Section 1983 suit, so long as the prisoners did not request release. *Wolff* v. *McDonnell*, 418 U.S. 539, 554 (1974). The Court held they could, saying that while the "sole federal remedy" for prisoners "seeking a speedier release" was habeas corpus, prisoners seeking damages could proceed under Section 1983. *Ibid.* To be clear, the sole difference between *Preiser* and *Wolff* was the relief sought by the petitioners, but that difference was dispositive of habeas jurisdiction—"only in habeas actions may relief be granted which will shorten the term of confinement." *Id.* at 579.

Since *Wolff*, this Court has repeatedly noted the intrinsic connection between requests for release and the writ of habeas corpus. Again and again, the Court has said that prisoners must use habeas "where the claim seeks *** present or future release," *Wilkinson*, 544 U.S. at 81; that "[h]abeas is the exclusive remedy *** for the prisoner who seeks 'immediate or speedier

release' from confinement," *Skinner*, 562 U.S. at 525 (quoting *Wilkinson*, 544 U.S. at 82); and that "[h]abeas is at its core a remedy for unlawful executive detention," where "[t]he typical remedy for such detention is, of course, release," *Munaf*, 553 U.S. at 693. Those decisions indicate that habeas is the appropriate vehicle when a prisoner seeks release.

b. The Ninth Circuit was equally wrong in requiring habeas petitioners to demonstrate that "release is *legally required* irrespective of the relief requested." App.26a. *Boumediene*, for example, held that a "habeas court must have the power to order the conditional release of an individual unlawfully detained," but that "release need not be the exclusive remedy and *is not the appropriate one in every case in which the writ is granted*." 553 U.S. at 779 (emphasis added). That principle is reflected in the governing habeas statutes, which do not limit habeas to claims where release is the sole remedy. Instead, Section 2243 grants the district court broad authority to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; see also *Peyton* v. *Rowe*, 391 U.S. 54, 66 (1968) ("the statute does not deny the federal courts power to fashion appropriate relief other than immediate release"). And using that broad authority, courts routinely grant lesser forms of relief than release. See, *e.g.*, *Morrell* v. *Wardens*, 12 F.4th 626, 634 (6th Cir. 2021) (granting habeas relief and ordering "a full resentencing," not release); *Jackson* v. *Leonardo*, 162 F.3d 81, 87 (2d Cir. 1998) (ordering removal of firearm conviction from record).

2. The Ninth Circuit's general rule barring "conditions-of-confinement claim[s] under § 2241" (App.18a)

is also in tension with core habeas principles outlined in *Preiser* and *Jones*.

a. *Preiser* held that when a state prisoner's claim goes to the "heart of habeas corpus"—meaning, he challenges "the fact or duration of his physical confinement itself" and seeks "immediate release or a speedier release from that confinement"—he must proceed via habeas, not Section 1983. 411 U.S. at 498. But *Preiser* expressly stated that its interpretation of Section 1983 did not mean "that habeas corpus may not also be available to challenge *** prison conditions." 411 U.S. at 499 (citing *Wilwording* v. *Swenson*, 404 U.S. 249, 251 (1971); *Johnson*, 393 U.S. at 490). Instead, *Preiser* implied (without deciding) that prisoners challenging the conditions of their confinement *could* proceed via habeas, saying: "When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal." *Id.* at 499 (citation omitted).

Preiser also made clear that habeas jurisdiction is not limited to challenges to the original sentence or judgment. The petition there challenged the state's administrative revocation of good-time credits, not the validity of the prisoners' underlying criminal judgments. 411 U.S. at 476. The Court nevertheless concluded that the petitioners' challenge was "*just as close* to the core of habeas corpus as an attack on the *** conviction," and therefore could not be asserted in a Section 1983 action. *Id.* at 489 (emphasis added).

Despite that reasoning, the Opinion below invoked *Preiser* to limit habeas to claims "that custody was not authorized to begin with." App.22a (emphasis removed). In so doing, the Ninth Circuit clearly misread

Preiser. And that misreading led it to the wrong conclusion: while the Ninth Circuit now says that "a claim seeking release does not necessarily sound in habeas" (App.27a), *Preiser* is clear that a claim sounds in habeas whenever a prisoner is "challenging [his] confinement and seeking release," 411 U.S. at 484; see *Wilson*, 961 F.3d at 838 (reading *Preiser* correctly).

b. The Opinion below also conflicts with this Court's reasoning last term in *Jones*, 599 U.S. at 475-476. Congress established Section 2255 as the exclusive means of collaterally attacking a prisoner's sentence, and barred successive petitions seeking such relief. *Id.* at 473. *Jones* held that Section 2255's saving clause, which allows prisoners to proceed under Section 2241 where Section 2255 is "inadequate or ineffective," did not permit prisoners to avoid Section 2255's bar on successive petitions. See *id.* at 481-482. The Court reasoned that the saving clause *instead* "ensures that § 2255(e) does not displace § 2241 when a prisoner challenges 'the legality of his *detention'* without attacking the validity of his sentence." *Id.* at 475. In particular, "the saving clause guards against the danger that § 2255(e) might be construed to bar manner-of-detention challenges," including petitions arguing that the prisoner "is being detained in a place or manner not authorized by the sentence *** or that an administrative sanction affecting *the conditions of his detention* is illegal." *Ibid.* (emphasis added).

But what *Jones* assumed was permissible, the Ninth Circuit deemed categorically unavailable: Section 2241 jurisdiction to challenge the "conditions" and "manner" of a prisoner's confinement. That reasoning was integral to the Court's decision: it would make little sense to say the "saving clause guards

against the danger that § 2255(e) might be construed to bar manner-of-detention challenges," if such challenges were unavailable a priori. *Id.* at 476. The Ninth Circuit's holding that such claims do not invoke habeas jurisdiction is thus inconsistent with *Jones*.

3. This Court should either adopt the approach followed by the Third and Sixth Circuits, holding that habeas "is proper" if "a petitioner seeks release from detention," *Hope*, 972 F.3d at 323, or hold generally that habeas is a suitable vehicle for conditions-of-confinement claims. Giving jurisdictional weight to a prisoner's claim for release from custody—particularly at the pleading stage—accords with the writ's "traditional purpose." *Preiser*, 411 U.S. at 494. Alternatively, allowing conditions-of-confinement claims to proceed in habeas aligns with the reasoning of *Jones* and *Preiser*, which suggest that habeas ought to be available to challenge unconstitutional conditions or restraints during his incarceration. That rule also accords with *Boumediene*'s understanding that habeas is linked to the court's authority to order release, even if that remedy is not required. 553 U.S. at 779. As Judge Tatel recognized, even where release is not required, a habeas court "may simply order the prisoner released unless the unlawful conditions are rectified." 742 F.3d at 1035.

In contrast to the Opinion below, both of these approaches reflect the traditional flexibility of habeas corpus, which has long been understood to "reach all manner of illegal detention." *Harris*, 394 U.S. at 291; see *Boumediene*, 553 U.S. at 779. Because the district court "has broad discretion in conditioning a judgment granting habeas relief," *Hilton* v. *Braunskill*, 481 U.S. 770, 775 (1987), habeas jurisdiction cannot be limited

to cases where release is legally compelled, to the exclusion of any other remedy.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

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