No. 23-488

In the Supreme Court of the United States

BRUCE R. SANDS, JR., PETITIONER

v.

PATRICIA V. BRADLEY, WARDEN

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a federal prisoner's claim that the prison inadequately responded to the COVID-19 pandemic is cognizable in habeas corpus under 28 U.S.C. 2241.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 69 F.4th 1059. The order of the district court (Pet. App. 36a) is not published in the Federal Supplement but is available at 2021 WL 2808696. The report and recommendation of the magistrate judge (Pet. App. 37a-42a) is not published in the Federal Supplement but is available at 2021 WL 2810160.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 2023. On August 29, 2023, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including November 5, 2023. The petition for a writ of certiorari was filed on November 6, 2023 (Monday). See Sup. Ct. R. 30.1; *Union National Bank* v. *Lamb*, 337 U.S. 38, 40-41 (1949). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Central District of California, petitioner was convicted on four counts of aiding and abetting mail fraud, in violation of 18 U.S.C. 1341 and 2; five counts of aiding and abetting wire fraud, in violation of 18 U.S.C. 1343 and 2; and two counts of aiding and abetting transactional money laundering, in violation of 18 U.S.C. 1957 and 2. 13-cr-489 D. Ct. Doc. 125, at 1-2 (July 29, 2016) (Amended Judgment); see 13-cr-489 D. Ct. Doc. 1, at 1-23 (July 18, 2013) (Indictment). He was sentenced to 135 months of imprisonment, to be followed by three years of supervised release. Amended Judgment 2. The court of appeals struck one special condition of supervised release but otherwise affirmed. *United States* v. *Sands*, 719 Fed. Appx. 634, 635 (9th Cir. 2018) (mem.).

In 2021, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. 2241. See Pet. App. 43a-55a. The district court dismissed the petition, adopting a magistrate judge's report and recommendation. *Id.* at 36a; see *id.* at 37a-42a. The court of appeals affirmed. *Id.* at 1a-35a.

1. From 2007 to 2010, petitioner engaged in a scheme to defraud purchasers of certain precious metals and collectible coins. Indictment 1-18. In 2016, petitioner pleaded guilty to eleven counts involving mail fraud, wire fraud, and transactional money laundering. Amendment Judgment 1-2. He was sentenced to 135 months of imprisonment, to be followed by three years of supervised release. *Id.* at 2.

In 2021, petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the Central District of California, the district where he was confined, alleging that the prison violated the Eighth Amendment by fail-

ing to adequately respond to the COVID-19 pandemic. Pet. App. 43a-55a. Specifically, petitioner alleged that prison officials did not: provide adequate medical care for his hypertension and obesity, which he alleged increased his risks from COVID-19; implement certain guidelines for mitigating the spread of COVID-19, such as screening staff for the virus, providing face masks, and enforcing social distancing; reduce the inmate population at the prison; and isolate and retest petitioner after he received an inconclusive COVID-19 test. *Id.* at 47a-49a, 52a-55a; see Pet. 5-6. Petitioner sought release from custody on the theory that "no set of conditions under the present circumstances" could remedy those alleged constitutional violations. Pet. App. 45a.

The magistrate judge recommended dismissing the petition. Pet. App. 37a-42a. The judge explained that under Ninth Circuit precedent, a Section 2241 petition "is not the proper vehicle to challenge the conditions of confinement." *Id.* at 39a; see *id.* at 39a-40a. The judge also explained that "to the extent that [the petition] is actually a disguised motion for compassionate release," it did not comply with the procedural requirements of 18 U.S.C. 3582(c)(1)(A). Pet. App. 40a; see *id.* at 40a-41a. The district court adopted the magistrate judge's report and recommendation and dismissed the petition. *Id.* at 36a.

2. The court of appeals affirmed. Pet. App. 1a-35a. The court observed that it had "long 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.'" *Id.* at 10a (ellipsis omitted) (quoting *Crawford* v. *Bell*, 599 F.2d 890, 891 (9th Cir. 1979)). The court

rejected both of petitioner's attempts to demonstrate that his claims nevertheless "sound in habeas." *Id.* at 11a.

First, the court of appeals rejected petitioner's argument that his claims were cognizable in habeas under circuit precedent because they "pertain[] 'to the execution of his federal sentence.'" Pet. App. 15a (brackets omitted); see *Hernandez* v. *Campbell*, 204 F.3d 861, 864 (9th Cir. 2000) (per curiam). The court explained that "challenging the conditions of carrying out a sentence or putting the sentence into effect * * * is not synonymous with challenging conditions of confinement." Pet. App. 18a; see *id.* at 13a-14a (stating that cognizable habeas claims related to the execution of a sentence include challenges to parole eligibility determinations, good-time credit computations, and denials of parole).

Second, the court of appeals rejected petitioner's argument that his claims were within the historic "core of habeas corpus" because he purported to seek "immediate release from [his] confinement." Pet. App. 19a (citation omitted); see *id.* at 19a-33a. Relying on this Court's decisions in *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), and *Edwards* v. *Vannoy*, 141 S. Ct. 1547 (2021), the court of appeals examined the "history of the writ of habeas corpus" and determined that "a claim is at the core of habeas" when, if successful, it would "demonstrate[] that the *detention itself* is without legal authorization." Pet. App. 19a, 21a. "By contrast," the court observed, "claims that if successful would not necessarily lead to the invalidity of the custody are not at the core of habeas corpus." *Id.* at 23a (citing *Skinner* v. *Switzer*, 562 U.S. 521 (2011), and *Wilkinson* v. *Dotson*, 544 U.S. 74 (2005)).

The court of appeals thus observed that "a successful claim sounding in habeas necessarily results in release, but a claim seeking release does not necessarily sound in habeas." Pet. App. 27a. The court acknowledged the relevance of "the relief requested," but explained that "whether a claim goes to the core of habeas does not turn * * * solely on whether the prisoner requested release as opposed to some other form of relief." *Id.* at 25a-26a. Instead, the court stated that "the relevant question is whether, based on the allegations in the petition, release is *legally required*." *Id.* at 27a.

Here, the court of appeals determined that petitioner's claims—all of which relate to the prison's response to the COVID-19 pandemic or his preexisting medical conditions—do not sound in habeas because, if successful, those claims would not demonstrate that his detention was itself unlawful or entitle him to release. See Pet. App. 27a-33a (analyzing each of petitioner's claims). For example, the court explained that petitioner's claim that the prison violated the Eighth Amendment by not following certain CDC guidelines could be remedied by the prison's "adherence to [those] CDC guidelines" without requiring his release. *Id.* at 29a. The court acknowledged petitioner's assertion "that 'no set of conditions under the present circumstances' could exist that would constitutionally permit" his continued detention, but explained that it was obligated to accept only petitioner's "factual allegations as true," not "his legal conclusions." *Id.* at 27a-28a.

The court of appeals "recognize[d] the grave risks to public health and the tragic mortality rates that attended the COVID-19 pandemic," and disclaimed any intent to "discount those risks or trivialize the suffering experienced by far too many during the pandemic, es-

pecially individuals who, like [petitioner], were lawfully detained during its height." Pet. App. 32a. But the court explained that the appropriate vehicle to seek to "cure the alleged constitutional violations" that petitioner raised is a civil-rights action, not habeas corpus. *Ibid.*; see *id.* at 31a-33a.

ARGUMENT

Petitioner renews his contention (Pet. 31-37) that his claims challenging the prison's response to the COVID-19 pandemic are cognizable in a petition for a writ of habeas corpus under 28 U.S.C. 2241. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court. And although there is some disagreement among the courts of appeals as to the precise contours of habeas in this context, petitioner overstates the extent of the conflict. The Court has denied multiple petitions for writs of certiorari raising the question whether a prisoner may challenge the conditions of his confinement via habeas. See, *e.g.*, *Rodriguez* v. *Ratledge*, 139 S. Ct. 77 (2018) (No. 17-8768); *Robinson* v. *Sherrod*, 565 U.S. 941 (2011) (No. 10-10351); *Stanko* v. *Quay*, 562 U.S. 844 (2010) (No. 09-10182). The Court should follow the same course here. Indeed, this case would be an unsuitable vehicle in which to address that question because petitioner's claims rest on an extraordinary public-health crisis that has now abated.

1. The court of appeals correctly determined that petitioner's claims are not cognizable in habeas corpus.

a. Section 2241 authorizes federal courts to issue a writ of habeas corpus to a state or federal prisoner who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2241(c)(3). At the same time, civil-rights laws also "enable[] a prisoner

to complain of 'unconstitutional treatment at the hands of [government] officials.'" *Nance* v. *Ward*, 597 U.S. 159, 167 (2022) (citation omitted). Specifically, 42 U.S.C. 1983 "broadly authorizes suit against state officials for the 'deprivation of any rights' secured by the Constitution," *Nance*, 597 U.S. at 167 (citation omitted), and similar suits may be available against federal officials under certain circumstances, see, *e.g.*, *Carlson* v. *Green*, 446 U.S. 14, 20-21 (1980) (damages for certain Eighth Amendment claims); *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 327 (2015) (equitable relief). Lest such suits allow a prisoner to circumvent the specific statutory and historical limitations on habeas relief, however, this Court has acknowledged that general civil-rights suits are unavailable "for actions that lie 'within the core of habeas corpus.'" *Nance*, 597 U.S. at 167 (citation omitted); see *Wilkinson* v. *Dotson*, 544 U.S. 74, 78-79 (2005).

"[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and * * * the traditional function of the writ is to secure release from illegal custody." *Preiser* v. *Rodriguez*, 411 U.S. 475, 484 (1973). Accordingly, "where an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence," that claim "fall[s] within the core of federal habeas corpus" and thus may not be pursued in a civil-rights action. *Nelson* v. *Campbell*, 541 U.S. 637, 643 (2004); see *Preiser*, 411 U.S. at 489. Similarly, "an inmate must proceed in habeas when the relief he seeks would 'necessarily imply the invalidity of his conviction or sentence.'" *Nance*, 597 U.S. at 167 (citation omitted); see *Heck* v. *Humphrey*, 512 U.S. 477, 487 (1994).

"By contrast, constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core." *Nelson*, 541 U.S. at 643. "Such a suit—for example, challenging the adequacy of a prison's medical care—does not go to the validity of a conviction or sentence." *Nance*, 597 U.S. at 168. Accordingly, such claims may be pursued in a civil-rights action. See *ibid.*; *Preiser*, 411 U.S. at 498-499. This Court has, however, "left open the question" whether a prison-conditions claim *also* may be pursued in habeas. *Ziglar* v. *Abbasi*, 582 U.S. 120, 144-145 (2017); see *Bell* v. *Wolfish*, 441 U.S. 520, 526 n.6 (1979) (leaving "to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement"); *Preiser*, 411 U.S. at 499.

b. The court of appeals correctly held that petitioner's prison-conditions claims are not cognizable in habeas. Petitioner acknowledges (Pet. i) that his claims are "conditions-of-confinement claims" that do not challenge the validity of his conviction or sentence. Petitioner also acknowledges that his petition seeks to "exten[d]" habeas jurisdiction beyond its historic core to encompass such claims. Pet. 26; see Pet. 25-26, 34-35. The court correctly rejected that invitation.

Historically, habeas was available only to determine whether "the court of conviction lacked jurisdiction over the defendant or his offense." *Brown* v. *Davenport*, 596 U.S. 118, 129 (2022). The writ has over time "evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law." *Preiser*, 411 U.S. at 485. But this Court has never "recognized habeas as the sole remedy, *or even an available one*, where the relief sought would 'neither terminate

custody, accelerate the future date of release from custody, nor reduce the level of custody.'" *Skinner* v. *Switzer*, 562 U.S. 521, 534 (2011) (quoting *Dotson*, 544 U.S. at 86 (Scalia, J., concurring)) (emphasis added; brackets omitted). The court of appeals correctly recognized that petitioner's asserted injuries from allegedly unlawful prison conditions arising from the COVID-19 pandemic could be fully redressed by a change in those conditions—and thus would not require termination of custody, acceleration of the future date of release from custody, or a reduction in the level of custody. Pet. App. 27a-33a

Petitioner contends (Pet. 31-34) that he may nevertheless proceed via habeas because his petition *asked for* immediate release from custody. That contention lacks merit. For one thing, as the court of appeals recognized, petitioner's assertion that "'no set of conditions under the present circumstances' could exist that would constitutionally permit [petitioner's] detention" is a *legal* conclusion, not a factual assertion that a court must accept as true at the pleading stage. Pet. App. 28a (citation omitted). For another, accepting petitioner's contention would convert "the dividing line between [civil-rights actions] and the federal habeas statute," *Nance*, 597 U.S. at 167, into nothing but a word game, in which a claim outside habeas's scope as a substantive matter could be brought within it simply by tacking on a request for immediate release. Cf. *Preiser*, 411 U.S. at 489-490 (declining to permit litigants to "evade" statutory requirements "by the simple expedient of putting a different label on their pleadings").

More fundamentally, petitioner's contention confuses cause and effect. It is certainly true that "the traditional meaning and purpose of habeas corpus" is "to

effect release from illegal custody." *Preiser*, 411 U.S. at 486 n.7; see *Skinner*, 562 U.S. at 525 ("Habeas is the exclusive remedy * * * for the prisoner who seeks 'immediate or speedier release' from confinement.") (citation omitted). But that is because a proper petition for a writ of habeas corpus attacks the "fact or length" (or level) of confinement. *Preiser*, 411 U.S. at 494; see *Skinner*, 562 U.S. at 534. Such an attack, if successful, necessarily would result in immediate or speedier release from (or transfer to a lower level of) confinement. It is thus the substantive nature of the underlying claim that determines whether habeas is appropriate; the relief sought is relevant only insofar as it sheds light on the nature of that underlying claim. See Pet. App. 21a, 25a-26a.

This Court has thus explained that a prisoner must proceed by habeas "no matter the relief sought * * * *if* success in that action would necessarily demonstrate the invalidity of confinement or its duration." *Dotson*, 544 U.S. at 82; see Pet. App. 23a. It would be inconsistent with that principle to give the "relief sought" dispositive weight in the converse situation presented by this case, as the court of appeals recognized. See Pet. App. 27a (explaining that "the relevant question is whether, based on the allegations in the petition, release is legally required irrespective of the relief requested") (emphasis omitted).

Petitioner's reliance (Pet. 35-36) on *Jones* v. *Hendrix*, 599 U.S. 465 (2023), is misplaced. *Jones* held that a federal prisoner who has already filed a prior motion for postconviction relief under 28 U.S.C. 2255 may not seek relief in habeas under the "saving clause" in Section 2255(e) based on a claim that his conviction or sentence is invalid in light of a subsequent decision inter-

preting the relevant statute. 599 U.S. at 471. The Court stated that habeas might be available if the prisoner challenged "'the legality of his *detention*' without attacking the validity of his *sentence*," such as if he argued "that he 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. Read in context, that statement simply reflects the settled principle that habeas is appropriate for claims attacking the length or level of confinement. See *Skinner*, 562 U.S. at 534.

c. Finally, petitioner's position is inconsistent with the limitations on prisoner civil-rights actions that Congress erected in the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66; see 42 U.S.C. 1997e. The PLRA established a carefully calibrated scheme for "the entry and termination of prospective relief in civil actions challenging prison conditions." *Miller* v. *French*, 530 U.S. 327, 331 (2000). It applies to "any civil action with respect to prison conditions," which Congress defined broadly to include "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." 18 U.S.C. 3626(a)(3)(A) and (g)(2).

Critically, even though the PLRA does not apply to "habeas corpus proceedings challenging the fact or duration of confinement in prison," 18 U.S.C. 3626(g)(2), it expressly contemplates that actions challenging "prison conditions" to which the PLRA does apply may lead to release in carefully delineated circumstances, 18 U.S.C. 3626(a). The PLRA specifies that such a "prisoner re-

lease order" may, for example, be "entered only by a three-judge court," only after "a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation * * * sought to be remedied," and only after "the defendant has had a reasonable amount of time to comply with" that order. 18 U.S.C. 3626(a)(3)(A) and (B). The restrictions apply both to an order "that directs the release from or nonadmission of prisoners to a prison" and to "any order[] * * * that has the purpose or effect of reducing or limiting the prison population." 18 U.S.C. 3626(g)(4). Those provisions underscore that even a prison-conditions claim for which release is actually found to be a necessary remedy is not a "fact or duration" challenge cognizable under habeas. Cf. *Brown* v. *Plata*, 563 U.S. 493, 530 (2011) (applying the PLRA to a prison-overcrowding suit in which release was found to be the required remedy).

Allowing prison-conditions claims to be brought in habeas would blur those distinctions and enable prisoners to circumvent the PLRA simply by alleging that release is the only viable remedy. That would threaten to transform habeas into a forum for litigating every type of "garden-variety" prison-conditions claim, Pet. App. 28a, without regard for the stringent limitations that Congress imposed on prison litigation in the PLRA, see, *e.g.*, *Ross* v. *Blake*, 578 U.S. 632, 638-641 (2016) (discussing the PLRA's strict exhaustion requirement in 42 U.S.C. 1997e); *Coleman* v. *Tollefson*, 575 U.S. 532, 537-540 (2015) (discussing the PLRA's "three strikes" provision in 28 U.S.C. 1915(g)). That result would be inconsistent with Congress's objective of "reduc[ing] the quantity and improv[ing] the quality of prisoner suits." *Porter* v. *Nussle*, 534 U.S. 516, 524 (2002). It also would

undermine the purpose of drawing a "dividing line" between civil-rights suits and habeas, *Nance*, 597 U.S. at 167—namely, to prevent circumvention of specific statutory limitations applicable to certain types of claims, see *Dotson*, 544 U.S. at 78-79. And it would contravene the historical understanding of habeas as an "extraordinary remedy," *Brecht* v. *Abrahamson*, 507 U.S. 619, 633 (1993), by "utterly sever[ing] the writ from its common-law roots," *Dotson*, 544 U.S. at 86 (Scalia, J., concurring).

2. Petitioner contends (Pet. 12-24) that the decision below implicates a circuit conflict on whether prison-conditions claims are cognizable in habeas. But petitioner overstates the extent of the conflict, which this Court has repeatedly declined to address. See, *e.g.*, *Rodriguez*, *supra* (No. 17-8768); *Robinson*, *supra* (No. 10-10351); *Stanko*, *supra* (No. 09-10182). The Court should follow the same course here, especially because the decision below simply applied longstanding circuit precedent and thus does not deepen the conflict. See Pet. App. 10a.

a. Like the Ninth Circuit below, the Third, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits have explicitly rejected efforts to bring prison-conditions claims within the scope of habeas.* As summarized by Judge Posner:

> If the prisoner is seeking what can fairly be described as a quantum change in the level of custody

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* See, *e.g.*, *Doe* v. *Pennsylvania Board of Probation & Parole*, 513 F.3d 95, 100 n.3 (3d Cir. 2008) (explaining that habeas is limited to "[a]ttacks on the fact or duration of the confinement" and does not encompass "[c]hallenges to conditions of confinement"); *Carson* v. *Johnson*, 112 F.3d 818, 820-821 (5th Cir. 1997) ("If 'a favorable determination would not automatically entitle the prisoner to acceler-

> * * * then habeas corpus is his remedy. But if he is seeking a different program or location or environment, then he is challenging the conditions rather than the fact of his confinement and his remedy is under civil rights law, even if, as will usually be the case, the program or location or environment that he is challenging is more restrictive than the alternative that he seeks.

Graham v. *Broglin*, 922 F.2d 379, 381 (7th Cir. 1991).

Citing *Poree* v. *Collins*, 866 F.3d 235 (5th Cir. 2017), petitioner suggests (Pet. 22-24) that the Fifth Circuit might have reconsidered its view, but *Poree* expressly "decline[d] to address whether habeas is available only for fact or duration claims," and in fact reiterated "the instructive principle * * * that challenges to the fact or duration of confinement are properly brought under ha-

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ated release,' the proper vehicle is a §1983 suit.") (brackets, citation, and ellipsis omitted); *Luedtke* v. *Berkebile*, 704 F.3d 465, 466 (6th Cir. 2013) (explaining that a habeas petition "is not the proper vehicle for a prisoner to challenge conditions of confinement"); *Glaus* v. *Anderson*, 408 F.3d 382, 387 (7th Cir. 2005) (explaining that a prisoner's claim that "concerns only the conditions of his confinement * * * must be brought as either a civil rights claim" or other tort claim, not in a habeas petition); *Spencer* v. *Haynes*, 774 F.3d 467, 469 (8th Cir. 2014) (explaining that habeas is available only to challenge the "validity of [one's] conviction or the length of [one's] detention") (citation omitted); *Palma-Salazar* v. *Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012) (explaining that habeas is for "a prisoner who challenges the fact or duration of his confinement and seeks immediate release or a shortened period of confinement," but a civil rights action is for "a prisoner who challenges the conditions of his confinement"); *Hutcherson* v. *Riley*, 468 F.3d 750, 754 (11th Cir.) ("When an inmate challenges the 'circumstances of his confinement' but not the validity of his conviction and/or sentence, then the claim is properly raised in a civil rights action.") (citation omitted), cert. denied, 549 U.S. 990 (2006).

beas, while challenges to the conditions of confinement are properly brought" in civil-rights actions. 866 F.3d at 243-244 (citation omitted). And in a more recent decision, the Fifth Circuit specifically held that prison-conditions claims challenging a prison's response to the COVID-19 pandemic are not cognizable in habeas even where the prisoner unequivocally requests release as the remedy. See *Rice* v. *Gonzalez*, 985 F.3d 1069, 1069-1070 & n.2, cert. denied, 142 S. Ct. 216 (2021).

Petitioner also asserts (Pet. 14-17) that the decision below conflicts with decisions from the Third and Sixth Circuits that permitted COVID-related claims to proceed under habeas. See *Hope* v. *Warden*, 972 F.3d 310 (3d Cir. 2020); *Wilson* v. *Williams*, 961 F.3d 829 (6th Cir. 2020). But both of those courts had previously held that prison-conditions claims are not cognizable in habeas. See p. 13 n.*, *supra*. And the decisions in *Hope* and *Wilson*—which were issued at the height of the initial wave of the pandemic—do not suggest that the Third and Sixth Circuits would have allowed petitioner's claim to proceed.

In *Hope*, the Third Circuit explicitly limited its holding to "the extraordinary circumstances that existed in March 2020" and declined to address "whether a § 2241 claim may be asserted in less serious circumstances." 972 F.3d at 324-325 & n.5. More recently, the Third Circuit held that a "conditions-of-confinement claim related to the conditions of the facilities or the lack of adequate medical care" related to COVID-19 were "non-cognizable" in habeas, in part because the "'extraordinary circumstances [that] existed in March 2020 because of the COVID-19 pandemic'" had dissipated. *Folk* v. *Warden*, No. 23-1935, 2023 WL 5426740, at *1-2

(Aug. 23, 2023) (per curiam) (quoting *Hope*, 972 F.3d at 324).

In *Wilson*, the Sixth Circuit allowed some class members' claims to proceed in habeas on the theory that "where a petitioner claims that no set of conditions would be constitutionally sufficient" to permit continued detention, "the claims should be construed as challenging the fact or extent, rather than the conditions, of the confinement." 961 F.3d at 838. But in that case—which, again, was decided at the very height of the pandemic—the district court had actually held that the relevant claims justified outright release. *Id.* at 836, 838-839. The Sixth Circuit did not suggest that a prisoner could proceed in habeas merely by adding an implausible request for release to a garden-variety conditions-of-confinement claim.

The court of appeals' decision here is not inconsistent with *Wilson*. The court suggested that petitioner's claim *would* have been cognizable in habeas if he had plausibly alleged "that 'no set of conditions under the present circumstances' could exist that would constitutionally permit [his] detention." Pet. App. 28a. But the court held that none of petitioner's claims met that standard because they consisted of "a garden-variety Eighth Amendment claim" and other claims in which petitioner himself had refuted his asserted entitlement to release by specifying "precisely the set of conditions that would be needed to remedy the alleged constitutional violations." *Id.* at 28a-29a; *see id.* at 29a-32a.

b. Petitioner also contends (Pet. 18-22) that the decision below conflicts with holdings of the First, Second, Fourth, and D.C. Circuits. But petitioner acknowledges that the First Circuit has "yet to hold that habeas jurisdiction extends to conditions-of-confinement claims."

Pet. 20 (citing dicta in *United States* v. *DeLeon*, 444 F.3d 41 (1st Cir. 2006)). The Fourth Circuit, too, has expressly left the issue open. See *Farabee* v. *Clarke*, 967 F.3d 380, 395 (2020) (stating that whether a prisoner may "challenge his conditions of confinement through a habeas petition" is "an unsettled question of law" that the court "ha[s] yet to address * * * in a published opinion"); cf. *Rodriguez* v. *Ratledge*, 715 Fed. Appx. 261, 266 (4th Cir. 2017) (per curiam) ("Rodriguez's transfer to ADX Florence is not a cognizable § 2241 claim, because this petition challenges the conditions of his confinement, not its fact or duration."), cert. denied, 139 S. Ct. 77 (2018).

None of the Second Circuit decisions that petitioner cites (Pet. 19-20) hold that ordinary prison-conditions claims like the ones petitioner brings here are cognizable in habeas. In *Jiminian* v. *Nash*, 245 F.3d 144 (2d Cir. 2001), the court held that a prisoner could *not* bring his claims in a habeas petition but instead had to proceed via a second or successive motion under Section 2255, and stated that a habeas petition—as distinct from a Section 2255 motion—"generally challenges the *execution* of a federal prisoner's sentence, including such matters as the administration of parole, computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions." *Id.* at 146. The stray inclusion, in dicta, of "prison conditions" at the end of a long list of challenges does not establish that the Second Circuit has made habeas relief available for prison-conditions claims writ large.

In *Thompson* v. *Choinski*, 525 F.3d 205 (2008), cert. denied, 555 U.S. 1118 (2009), the Second Circuit quoted *Jiminian*'s "prison conditions" language, but decided

the case on other grounds. See *id.* at 209 ("we need not rest on this ground"). *Thompson* also cited *Carmona* v. *United States Bureau of Prisons*, 243 F.3d 629 (2d Cir. 2001), but that case involved a challenge to "the loss of good time credits," *id.* at 632, not a prison-conditions claim. Finally, *Roba* v. *United States*, 604 F.2d 215 (2d Cir. 1979), involved a challenge to the execution of a removal warrant, which raises a different interpretive question in light of the provision in the habeas statute expressly precluding appeal from an "order in a proceeding to test the validity of a warrant to remove." *Id.* at 217 (citation omitted); see 28 U.S.C. 2253(b).

That leaves the D.C. Circuit, which petitioner correctly observes (Pet. 18-19) has held that a prisoner "may challenge the conditions of his confinement in a petition for habeas corpus." *Aamer* v. *Obama*, 742 F.3d 1023, 1032 (2014). But *Aamer* is an outlier; it elicited a strong dissent, see *id.* at 1044-1050 (Williams, J., dissenting); and it involved unusual claims brought by noncitizens detained at the U.S. Naval Base at Guantanamo Bay who, unlike federal prisoners, do not have the ability to bring civil-rights actions, cf. *Jawad* v. *Gates*, 832 F.3d 364, 367 (D.C. Cir. 2016) (observing that Congress had "strip[ped] federal courts of jurisdiction" to "'hear or consider any non-habeas action'" brought by detainees classified as enemy combatants) (brackets and citation omitted). *Aamer* thus raised unique considerations not presented by run-of-the-mill prison-conditions claims. Accordingly, in any future case involving prison-conditions claims brought by a federal or D.C. prisoner, the D.C. Circuit might well view *Aamer* as limited to the unusual circumstances presented in that case. Cf. *Banks* v. *Booth*, 3 F.4th 445, 449 (D.C. Cir. 2021) (observing in dicta that "[h]abeas corpus

tests the fact or duration of the confinement, rather than conditions" in a case involving challenges to COVID-19 conditions in D.C. jails).

3. Particularly given the absence of any developed conflict, the question presented does not raise an issue of broad importance warranting this Court's review. Federal and state prisoners generally may challenge the conditions of their confinement in civil-rights actions, see p. 7, *supra*, so the ruling below does not foreclose judicial review of petitioner's claims or others like them. Indeed, some courts of appeals have converted habeas petitions raising prison-conditions claims into civil-rights actions, when appropriate. See, *e.g.*, *Nettles* v. *Grounds*, 830 F.3d 922, 936 (9th Cir. 2016) (en banc), cert. denied, 580 U.S. 1063 (2017); *Spencer* v. *Haynes*, 774 F.3d 467, 471 (8th Cir. 2014); *Robinson* v. *Sherrod*, 631 F.3d 839, 841 (7th Cir.), cert. denied, 565 U.S. 941 (2011); cf. *Wilwording* v. *Swenson*, 404 U.S. 249, 251 (1971) (per curiam) (pre-PLRA case stating that when habeas petitions "may also be read to plead causes of action under the Civil Rights Acts," the prisoners may be "entitled to have their actions treated as claims for relief under the Civil Rights Acts"). An inmate in federal custody also may file a motion for compassionate release with the court that ordered his confinement, subject to certain statutory requirements. See 18 U.S.C. 3582(c)(1)(A); see also Pet. App. 41a (noting that petitioner moved for compassionate release before his sentencing court). The decision below does not disturb any of those available avenues for relief.

4. Finally, even if the question presented otherwise warranted this Court's review, this case would be an unsuitable vehicle in which to consider it. Petitioner's claims rest on the extraordinary circumstances that the

COVID-19 pandemic presented within correctional facilities in 2020 and 2021. Cf. Pet. App. 45a (habeas petition alleging that petitioner's continued confinement was unconstitutional "under the present circumstances"). The risks associated with COVID-19 have substantially abated since that time. Even if some federal prisoners might have been able to establish three years ago that immediate release from custody was required to cure a purported Eighth Amendment violation—a proposition that no court of appeals accepted at that time—no prisoner could establish that today. A case premised on allegations stemming from a once-in-a-century pandemic is an inappropriate vehicle in which to address general principles that would govern prison-conditions claims more broadly.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 2024