No. 23-488

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The Opposition acknowledges "some disagreement among the courts of appeals." BIO6. While the government goes on to argue the "absence of any developed conflict" (BIO19), that argument directly contradicts its previous submissions to this Court, where it insisted *four times* that there is "a *well-established* circuit conflict regarding whether prisoners may bring conditions-of-confinement challenges through habeas." Reply in Support of Stay *7, *Williams* v. *Wilson*, No. 19A1047 (June 4, 2020) (emphasis added); see Application for Stay *5; see also No. 19A1041 (Application for Stay *20; Reply *7).

The Circuits agree that they "are divided on whether habeas petitions are appropriate procedural vehicles by which to remedy conditions-of-confinement claims." *Spencer* v. *Haynes*, 774 F.3d 467, 470 & n.6 (8th Cir. 2014). The Opinion below not only deepens that split, but opens a new fault-line over the weight given prayers for release. Indeed, even on the government's flawed reading, there is a split with the D.C. Circuit on the general question, and a split with the Third and Sixth Circuits on whether habeas lies in "extraordinary circumstances." BIO 15-16.

The government insists that the "once-in-a-century [COVID] pandemic" that led to Sands's claims weighs against review. BIO20. But Sands's case for certiorari turns on a fundamental question of habeas jurisdiction that vexed courts long before the pandemic; recent cases simply deepened that split. Now is the best time to resolve it, rather than awaiting the next emergency and leaving the government (or prisoners) to again seek immediate relief in this Court.

Indeed, the Executive has warned that we face another serious pandemic "*within the next decade*." AMERICAN PANDEMIC PREPAREDNESS: TRANSFORMING OUR CAPABILITIES 5 (Sept. 2021) (emphasis added).[1]

More than 50 years ago, *Preiser* v. *Rodriguez* reserved whether the writ is "available to challenge [unconstitutional] prison conditions." 411 U.S. 475, 499 (1973). The Court should use this case—which raises all aspects of the split—to finally answer that question. Habeas has long been recognized as "the exclusive remedy *** for the prisoner who seeks 'immediate or speedier release' from confinement," *Skinner* v. *Switzer*, 562 U.S. 521, 525 (2011) (citation omitted), and there are powerful reasons to believe that habeas courts' discharge powers give them jurisdiction over conditions-of-confinement claims, see *Boumediene* v. *Bush*, 553 U.S. 723, 739 (2008). Yet, uncertainty over the extent of habeas jurisdiction has left prisoners invoking habeas to seek release for unconstitutional prison conditions, only for different Circuits to reach different jurisdictional outcomes. While the government would have this Court again wait "for another day," *Bell* v. *Wolfish*, 441 U.S. 520, 526 n.6 (1979), it makes no sense to delay until another set of "extraordinary circumstances" (BIO19-20) tests the courts on such a fundamental question. Nor would answering that question require this Court to decide whether Sands's COVID-19 claims are meritorious or merely "garden-variety Eighth Amendment claim[s]" (BIO16).

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[1] Available at https://www.whitehouse.gov/wp-content/uploads/2021/09/American-Pandemic-Preparedness-Transforming-Our-Capabilities-Final-For-Web.pdf.

That issue is properly left for the district court on remand.

I. Multiple circuits have recognized the split on the question presented.

1. Whether an inmate may "challenge his conditions of confinement through a habeas petition" is "an unsettled question of law among [the] circuits." *Farabee* v. *Clarke*, 967 F.3d 380, 395 (4th Cir. 2020). Despite suggesting the "absence of any developed conflict" (BIO19), the government has previously characterized the conflict over the question presented as "well-established," *Williams*, Stay Reply, 19A1047, at *7.

The Circuits agree. As the Eighth Circuit explained in *Spencer*, "[t]he D.C. Circuit, the Second Circuit, the Third Circuit, the Fourth Circuit, and the Sixth Circuit firmly stand in the camp of allowing conditions-of-confinement claims to be brought in the habeas corpus context, with the First Circuit contributing dictum to this view." 774 F.3d at 470 n.6. The D.C. Circuit agrees. *Aamer* v. *Obama*, 742 F.3d 1023, 1036 (D.C. Cir. 2014) (Tatel, J.). The Fifth Circuit similarly acknowledges that the D.C., First, Second, Third, and Sixth Circuits find jurisdiction over such claims. *Poree* v. *Collins*, 866 F.3d 235, 243 & n.27 (5th Cir. 2017).

The government also ignores that the Circuits have divided along at least two axes. Pet.10-11, 18-24. Some courts, such as the D.C. and Second Circuits, hold that habeas jurisdiction categorically lies for conditions-of-confinement claims; others, such as the Seventh and Tenth Circuits, categorically reject it for such claims; while still others, such as the Third and Sixth Circuits, hold that jurisdiction (at least) lies

where the petitioner seeks release. Because Sands alleged that his conditions of confinement were unconstitutional *and* sought release, his habeas petition implicates all sides of the split.

2. Despite the Ninth Circuit's express criticism that the Third and Sixth Circuits had "go[ne] astray" (App.25a), the government argues that they are *aligned* with the Ninth Circuit and other courts (BIO13).

The Ninth Circuit understood that its decision put it athwart the Third and Sixth Circuits. The Third Circuit has rejected the "proposition that a prisoner's challenge to the 'conditions of his confinement' must fall outside of habeas." *Woodall* v. *Fed. Bureau of Prisons*, 432 F.3d 235, 242 n.5 (3d Cir. 2005). In its view, "where a petitioner seeks release from detention, habeas (not a § 1983 action seeking release) is proper." *Hope* v. *Warden York County Prison*, 972 F.3d 310, 323 (3d Cir. 2020). The government cites *Doe* v. *Pennsylvania Board of Probation & Parole* (BIO 13), but *Doe* held only that ordinary "challenge[s] to the circumstances of *** confinement may be brought under Section 1983," *not* that such claims are barred in habeas. 513 F.3d 95, 99 n.3 (3d Cir. 2008).

Similarly, the Sixth Circuit holds that habeas lies where "a petitioner claims that no set of conditions would be constitutionally sufficient." *Wilson* v. *Williams*, 961 F.3d 829, 838 (6th Cir. 2020); accord *Adams* v. *Bradshaw*, 644 F.3d 481, 482-483 (6th Cir. 2011). *Luedtke* v. *Berkebile*, which denied jurisdiction over claims alleging (*i.e.*) discrimination "against white inmates in favor of black inmates and 'illegal aliens from Mexico,'" shows only that the Sixth Circuit puts some jurisdictional limits on prison-condition

claims. 704 F.3d 465, 466 (6th Cir. 2013). Those limits do not alter the Sixth Circuit's rule here, because as in *Wilson* (and unlike *Luedtke*), Sands requested release—"the heart of habeas corpus." 961 F.3d at 838 (quoting *Preiser*, 411 U.S. at 498).

The Ninth Circuit correctly read *Wilson* and *Hope* to focus "on whether the prisoner requested release," parting ways with its "sister circuits" on "this critical step in the analysis." App.25a. That pivot, and the Circuit's "go[ing] astray" charge (*ibid.*), would make no sense if the decisions were charting the same course.

3. The government's effort to minimize the broader split is equally meritless.

a. In the Second Circuit, habeas lies for a "challenge to the conditions of [the prisoner's] confinement," and "a habeas corpus court is obliged to adjudicate the merits of such a claim." *Roba* v. *United States*, 604 F.2d 215, 219 (2d Cir. 1979). The government has repeatedly recognized that position before the courts. In *Wilson*, for example, the government informed this Court that the "circuits are divided" because the Second Circuit "permit[s] petitioners to bring conditions of confinement claims under Section 2241." Application for Stay *19, No. 19A1047. Similarly, in *Cohen* v. *Trump*, the government told the Second Circuit that its precedents allow a prisoner to "seek habeas relief related to the execution of his sentence, *including* *** *conditions of confinement*, under 28 U.S.C. § 2241." Brief for Federal Defendants-Appellees, 2023 WL 5277239, at *23 (2d. Cir. July 24, 2023) (emphasis added). In support, it cited *Roba* and *Thompson* v. *Choinski*—the same cases it now discounts (BIO17-18). What's more, the government *prevailed* on that

argument. See *Cohen* v. *United States*, 640 F. Supp. 3d 324, 339 (S.D.N.Y. 2022), *aff'd sub nom. Cohen* v. *Trump*, 2024 WL 20558, *3 (2d Cir. Jan. 2, 2024).

Understandably so. While *Thompson* reversed on multiple grounds, the *first* was that the Second Circuit "has long interpreted § 2241" as covering conditions-of-confinement claims. 525 F.3d 205, 209 (2d Cir. 2008). *Jiminian* v. *Nash* is likewise clear that habeas lies where the prisoner challenges his "prison conditions." 245 F.3d 144, 146 (2d Cir. 2001) (Sotomayor, J.). And while the government tries to diminish *Roba* as involving custody during transfer (BIO18), the Circuit concluded that habeas was proper there *because* the petitioner challenged "the conditions of his confinement." 604 F.2d at 219.

b. The government admits that in the D.C. Circuit, "a prisoner 'may challenge the conditions of his confinement in a petition for habeas corpus.'" BIO18 (quoting *Aamer*, 742 F.3d at 1032). While the government dismisses *Aamer* as an "outlier" (*ibid.*), that characterization rests on its misreading of decisions within and outside the circuit. *Banks* v. *Booth* did "not decide anything with reference to [plaintiffs' habeas] claim," 3 F.4th 445, 449 (D.C. Cir. 2021), and courts within the D.C. Circuit treat *Aamer* as controlling on conditions-of-confinement claims, *Pinson* v. *DOJ*, 514 F. Supp. 3d 232, 244 n.5 (D.D.C. 2021). That brings the D.C. Circuit squarely in line with the Second Circuit and the First Circuit. See *United States* v. *DeLeon*, 444 F.3d 41, 59 (1st Cir. 2006).

c. The government's confusion over Fourth and Fifth Circuit precedents confirms the need for review.

While the government correctly notes that the Fourth Circuit has "left *** open" whether habeas covers *all* conditions-of-confinement claims (BIO17), it elides *Farabee*'s holding, which *found jurisdiction* over the conditions-of-confinement claims there. See 967 F.3d at 395 (challenging "medication" and "solitary confinement"). *Farabee* contradicts the decision below, which held that habeas never lies for such claims.

The same is true of the Fifth Circuit. Although often included among the circuits rejecting habeas jurisdiction over prison-condition claims, the Fifth Circuit has acknowledged that its caselaw is unclear. *Poree*, 866 F.3d at 244. And while the government suggests that *Rice* v. *Gonzalez* resolved that issue, *Rice* actually construed a petition as seeking "habeas relief"—thus *giving that court "jurisdiction over the case"*—before dismissing on the merits under Rule 12(b)(6). 985 F.3d 1069, 1070 (5th Cir. 2021) (emphasis added).

3. Well before the pandemic, multiple circuits openly acknowledged the split on the question presented. *Poree*, 866 F.3d at 243 & n.27; *Aamer*, 742 F.3d at 1036; *Spencer*, 774 F.3d at 470 & n.6; see also *Wilborn* v. *Mansukhani*, 795 F. App'x 157, 163 (4th Cir. 2019). Far from diminishing the split, *Hope*, *Wilson*, and other decisions issued "at the height of the initial wave of the pandemic" (BIO15) sharpened it. Even the government concedes a clear split on whether habeas lies for conditions-of-confinement claims under "extraordinary circumstances." See BIO15-16. That the conflict is entrenched in the circumstances presented here is a reason to grant, not deny, review.

II. This case is an ideal vehicle, at an ideal time, to resolve the question presented.

1. This Court has long recognized "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976). It has likewise said "[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). But the "day has yet to arrive" for this Court to resolve the vital question of habeas jurisdiction raised here. *Glaus* v. *Anderson,* 408 F.3d 382, 387 (7th Cir. 2005) (Wood., J.).

This petition is an ideal vehicle to decide, at last, the extent to which habeas jurisdiction lies for prison-conditions claims. The government acknowledges that this Court has "'left open the question' whether a prison-conditions claim *also* may be pursued in habeas" (BIO8 (quoting *Ziglar* v. *Abbasi*, 582 U.S. 120, 144-145 (2017)), and does not dispute that the Opinion below presents that question (Pet.28-30). Rarely is such a critical question so clearly unresolved and so neatly presented.

2. The government has it exactly backward in suggesting the pandemic is an "inappropriate" occasion to clarify habeas jurisdiction (BIO20). Pandemic-related claims like Sands's led to differing results on the *same* facts, making it easy to disentangle the controlling legal principles. The government dismisses this opportunity because pandemic risks have "abated" and occur "once-in-a-century" (*ibid.*), but the Executive itself says "there is a reasonable likelihood that another serious pandemic that may be worse than COVID-19

will occur soon—*possibly within the next decade,*" AMERICAN PANDEMIC PREPAREDNESS, *supra*. The best time to address the question is now, when the Court can consider it in the ordinary course, rather than awaiting future "extraordinary circumstances," when parties will again be scrambling to raise the question—like the government *twice* did in *Wilson*—in emergency requests.

3. This important jurisdictional question stands apart from the merits of Sands's claims. The government suggests that "no prisoner could establish today" that COVID-related conditions warrant release, even if they might have "three years ago." BIO20. Sands's allegations of ongoing, heightened medical risks refute that suggestion (Pet.31)—but either way, the merits of Sands's claims neither obscure nor diminish the *jurisdictional* question presented by the Opinion below. Cf. *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). Granting review will allow the Court to draw a clear jurisdictional line, whether it chooses to focus on Sands's claim for release, to hold that conditions-of-confinement claims may generally be brought in habeas, or to adopt a general rule foreclosing jurisdiction.

4. The prior petitions cited by the government (BIO6, 13) only illustrate why this case presents a unique opportunity to resolve *Preiser*'s jurisdictional question. None of those petitions sought *release* based on prison conditions. *Rodriguez* v. *Ratledge*, 715 F. App'x 261, 266 (4th Cir. 2017) (reduction in level of custody); *Stanko* v. *Quay*, 356 F. App'x 208, 209 (10th Cir. 2009) (same); *Robinson* v. *Sherrod*, 631 F.3d 839, 840 (7th Cir. 2011) (change in medical treatment).

Two of the petitions predate the D.C. Circuit's decision in *Aamer*, which deepened the split, and all of them predate the pandemic, which sharpened it.

III. Sands's claims invoke habeas jurisdiction.

1. The Court's decisions and reasoning support habeas jurisdiction here.

a. The government asserts that decisions limiting Section 1983 somehow govern "converse situation[s]" involving the scope of habeas. BIO10. But *Preiser* itself rejected that leap in logic, saying the "extent to which [§] 1983 is a permissible alternative to the traditional remedy of habeas corpus" *does not* set "the appropriate limits of habeas corpus as an alternative remedy to a proper action under [§] 1983." 411 U.S. at 500. This Court's later cases are in accord. *Ziglar*, while leaving the question open, suggested that habeas was an available "alternative form[] of judicial relief." 582 U.S. at 145. And *Jones* v. *Hendrix*, 599 U.S. 465, 476 (2023), construed 28 U.S.C. § 2255's "saving clause" to preserve "manner-of-detention challenges"—a broader holding than that advanced by the government (BIO11).

b. This Court's precedents also refute the government's attempt to minimize "the relief sought" by petitions seeking release (BIO10). In assessing jurisdiction, this Court has long made clear that prayers for release from custody are a hallmark of habeas. Pet.32-33. Holding that habeas *at least* lies where the petitioner seeks release would align perfectly with this Court's rulings that "[h]abeas is the exclusive remedy *** for the prisoner who seeks 'immediate or

speedier release' from confinement." *Skinner*, 562 U.S. at 525 (citation omitted); see Pet.32-33.[2]

c. Nor do this Court's precedents support the Ninth Circuit's approach of piercing Sands's prayer for release and assessing whether "release is legally required." App.27a. The government maintains that Sands's claim that release was constitutionally compelled "is a legal conclusion," which the Circuit properly rejected "at the pleading stage." BIO9. But the Ninth Circuit refused habeas jurisdiction because Sands's allegations did not satisfy its categorical test—"demonstrat[ing] that the *detention itself* is without legal authorization" by challenging his conviction or sentence. App.21a-22a. That holding is what cries out for review.

To the extent the Circuit purported to assess whether Sands's conditions were *factually* inadequate to "necessarily result[] in release" (App.27a), it not only conflated jurisdiction with the merits, but also contravened *Boumediene*, which held that "release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted."

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[2] Although Sands may soon become eligible for transition to a half-way house, the government does not argue that such a transition would vitiate the need for review. Nor could it: Sands would remain in BOP custody, 18 U.S.C. § 3624(g)(5), keeping live his prayer for "immediate release from custody" (App.45a). The Court need "take up here only the question of whether there is federal-court subject-matter jurisdiction," *Skinner*, 562 U.S. at 530, leaving for remand whether Sands can adequately allege that his "risk of severe illness or death from COVID-19" still compels release (App.54a).

553 U.S. at 779; accord *Aamer*, 742 F.3d at 1035 (habeas court "may simply order the prisoner released unless the unlawful conditions are rectified"). The government ignores *Boumediene*, while suggesting that Sands's position would turn habeas into a "word game." BIO9. Like any civil plaintiff, however, habeas petitioners must satisfy *Twombly* and *Iqbal*'s pleading standards, giving the government ample opportunity to seek dismissal of meritless claims. *E.g.*, *Ndoromo* v. *Holder*, 2010 WL 302123, at *2 (E.D.N.Y. Jan. 20, 2010). Moreover, the government recognizes that courts will ultimately undertake "judicial review of petitioner's claims [and] others like them," whether brought under habeas or another procedural vehicle. BIO19.

2. The Prison Litigation Reform Act is not at issue here. As the government admits, "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)" (BIO11), and Sands directly challenged his "fact or duration of confinement" by seeking release. See *Wilson*, 961 F.3d at 838 (PLRA inapplicable to similar claims). If the Court holds that habeas jurisdiction lies generally for condition-of-confinement claims, the PLRA, by its terms, may still apply to "habeas proceedings" that do *not* challenge the "fact or duration of confinement."

CONCLUSION

Certiorari should be granted.

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