No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

LONNIE EUGENE LILLARD, AMADOR SANCHEZ MENDOZA,

Petitioners,

v.

DEWAYNE HENDRIX,
Warden, FCI Sheridan,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Elizabeth G. Daily
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204
(503) 326-2123

Attorney for Petitioners

QUESTION PRESENTED

Under *Jones v. Hendrix*, 599 U.S. 465 (2023), may federal prisoners challenge the manner, location, or conditions of detention through a habeas corpus petition under 28 U.S.C. § 2241?

PARTIES TO THE PROCEEDINGS

Lonnie Eugene Lillard and Amador Sanchez Mendoza were the petitioners/appellants in the proceedings below.

DeWayne Hendrix, in his official capacity as the Warden of FCI Sheridan, was respondent/appellee in the proceedings below.

RELATED PROCEEDINGS

- *Mendoza v. Salazar*, No. 3:22-cv-00559-SB, and *Lillard v. Salazar,* No. 3:22-cv-00966-SB, consolidated with and decided under lead case, *Stirling v. Salazar*, No. 3:20-cv-00712-SB, U.S. District Court for the District of Oregon. Judgment entered November 15, 2022.
- *Lillard v. Hendrix*, Nos. 23-35049, 23-35059, U.S. Court of Appeals for the Ninth Circuit. Judgment entered June 20, 2024, petition for rehearing denied December 5, 2024.

TABLE OF CONTENTS

Page

Table of Authorities vii

Opinions Below 1

Jurisdictional Statement 2

Relevant Statutory and Constitutional Provisions 2

Statement of the Case 3

A. Lillard's and Mendoza's Habeas Petitions 4

B. District Court Proceedings 6

C. This Court's Decision in *Jones v. Hendrix* 7

D. The Ninth Circuit's Decision 9

Reasons for Granting the Petition 10

A. This Court's precedent culminating in *Jones* confirms that federal prisoners can use a § 2241 habeas petition to challenge the manner, location, and conditions of their confinement 11

1. Jones confirmed precedent suggesting that § 2241 allows federal prisoners to challenge unlawful detention based on the manner, location, and conditions of confinement. 11

2. The Ninth Circuit's decision rests on precedent navigating state-federal comity concerns that are inapplicable to federal prisoners. 14

B. The Ninth Circuit's decision adds to the long-standing inter-jurisdictional confusion over whether claims alleging unlawful detention based on the manner, location, and conditions of confinement are cognizable in habeas. 17

1. At least three circuits allow federal prisoners to challenge the conditions of their confinement using a writ of habeas corpus, regardless of whether they seek release as their remedy. 17

2. The Fourth and Fifth Circuits have allowed jurisdiction over habeas claims even when the petitioners did not seek release, despite not formally determining the limits of habeas jurisdiction. 19

3. The Third and Sixth Circuits have allowed federal prisoners to seek release due to COVID-19 conditions..... 20

4. At least three circuits have precluded habeas challenges to a prisoner's conditions of confinement. 21

C. Allowing federal prisoners to challenge the manner, location, and conditions of confinement under § 2241 ensures that habeas corpus stands as a safeguard against unlawful detention. 23

Conclusion..... 24

INDEX TO APPENDIX

Appendix A: Memorandum Opinion, *Lillard v. Hendrix*, Nos. 23-35049, 23-35059, 2024 WL 3066047 (9th Cir. June 20, 2024)

Appendix B: Opinion and Order, *Stirling et al. v. Salazar*, No. 3:20-cv-00712-SB, 2022 WL 16948810 (D. Or. Nov. 15, 2022)

Appendix C: Order Denying Petition for Rehearing, *Lillard v. Hendrix*, Nos. 23-35049, 23-35059 (9th Cir. Sept. 5, 2024)

Appendix D: Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus, *Stirling et al. v. Salazar*, No. 3:20-cv-00712-SB (D. Or., filed June 30, 2020) (Docket Entry 16)

Appendix E: Petitioners' Proposed Findings of Fact and Conclusions of Law, *Lillard v. Hendrix*, No. 3:22-cv-00966-SB (D. Or., filed Sept. 8, 2022) (Docket Entry 15-1)

TABLE OF AUTHORITIES

Page

CASES

Aamer v. Obama,
742 F.3d 1023 (D.C. Cir. 2014) 18

Bell v. Wolfish,
441 U.S. 520 (1979) 13

Bivens v. Six Unknown Fed. Narcotics Agents,
403 U.S. 388 (1971) 13, 16

Boumediene v. Bush,
553 U.S. 723 (2008) 24

Farabee v. Clarke,
967 F.3d 380 (4th Cir. 2020) 20

Glaus v. Anderson,
408 F.3d 382 (7th Cir. 2005) 22

Harris v. Nelson,
394 U.S. 286 (1969) 23, 24

Heck v. Humphrey,
512 U.S. 477 (1994) 12, 15

Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California,
411 U.S. 345 (1973) 23

Hope v. Warden York Cnty. Prison,
972 F.3d 310 (3d Cir. 2020) 21

Hudson v. Hardy,
424 F.2d 854 (D.C. Cir. 1970) 17-18

Johnson v. Avery,
393 U.S. 483 (1969) 11, 12, 20

Jones v. Cunningham,
371 U.S. 236 (1963) 23, 24

Jones v. Hendrix,
599 U.S. 465 (2023) 4, 7-11, 13, 14, 23, 24

Lillard v. Hendrix,
Nos. 23-35049, 2024 WL 3066047 (9th Cir. June 20, 2024) 4

McNair v. McCune,
527 F.2d 874 (4th Cir. 1975) 19, 20

Nettles v. Grounds,
830 F.3d 922 (9th Cir. 2016) (en banc) 15, 16

Pinson v. Carvajal,
69 F.4th 1059 (9th Cir. 2023) 9, 15, 22

Poree v. Collins,
866 F.3d 235 (5th Cir. 2017) 19

Preiser v. Rodriguez,
411 U.S. 475 (1973) 12-17, 21, 24

Roba v. United States,
604 F.2d 215 (2d Cir. 1979) 18

Roman v. Wolf,
977 F.3d 935 (9th Cir. 2020) 16

Skinner v. Switzer,
562 U.S. 521 (2011) 15

Spencer v. Haynes,
774 F.3d 467 (8th Cir. 2014) 22

Standifer v. Ledezma,
653 F.3d 1276 (10th Cir. 2011) 22

Stirling et al. v. Salazar,
No. 3:20-cv-00712-SB, 2022 WL 16948810 (D. Or. Nov. 15, 2022) 4

Thompson v. Choinski,
525 F.3d 205 (2d Cir. 2008) 18

United States v. DeLeon,
444 F.3d 41 (1st Cir. 2006) 19

West v. Atkins,
487 U.S. 42 (1988) 16

Wilkinson v. Dotson,
544 U.S. 74 (2005) 6, 12, 15

Willis v. Ciccone,
506 F.2d 1011 (8th Cir. 1974) 22

Wilson v. Williams,
961 F.3d 829 (6th Cir. 2020) 20-21

Wilwording v. Swenson,
404 U.S. 249 (1971) 12

Woodall v. Federal Bureau of Prisons,
432 F.3d 235 (3d Cir. 2005) 21

Ziglar v. Abbasi,
582 U.S. 120 ..... 10, 13, 16, 21

STATUTES

10 U.S.C. 801 3

28 U.S.C. § 1254 2

28 U.S.C. § 2241 ..... 1-4, 6-11, 13, 14, 16, 17, 19, 21-24

28 U.S.C. § 2254 ..... 12, 14, 15

28 U.S.C. § 2255 ..... 7, 8, 14

42 U.S.C. § 1983 ..... 12, 14, 15, 16

42 U.S.C. § 1997e 17

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

LONNIE EUGENE LILLARD, AMADOR SANCHEZ MENDOZA,

Petitioners,

v.

DEWAYNE HENDRIX,
Warden, FCI Sheridan,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

The petitioners, Lonnie Eugene Lillard and Amador Sanchez Mendoza, respectfully request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on June 20, 2024, affirming the denial of habeas corpus relief.

Opinions Below

The United States District Court for the District of Oregon denied the petition for writ of habeas corpus under 28 U.S.C. § 2241 in an unpublished opinion issued on

November 15, 2022 (Appendix B). The Ninth Circuit affirmed the denial of habeas corpus relief in an unpublished opinion on June 20, 2024 (Appendix A). The Ninth Circuit denied panel and en banc rehearing on September 5, 2024 (Appendix C).

Jurisdictional Statement

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Relevant Statutory and Constitutional Provisions

28 U.S.C. § 2241 – Power to Grant Writ

(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.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(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.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Statement of the Case

This is an appeal from the dismissal of consolidated habeas corpus petitions filed under 28 U.S.C. § 2241 by federal prisoners incarcerated at the Federal Correctional Institution in Sheridan, Oregon (FCI Sheridan). Over 150 petitioners sought release from custody on the basis that FCI Sheridan's response to the COVID-19 pandemic, which included inhumane periods of confinement and grossly inadequate medical care, violated their Eighth Amendment rights. The district court did not reach the merits of petitioners'

claims—instead, the court dismissed all 167 petitions as not cognizable because the petitioners challenged the conditions, as opposed to the validity or duration, of their confinement. The Ninth Circuit Court of Appeals affirmed, agreeing with the district court that petitioners' claims were not cognizable in habeas because they had not alleged that "no set of conditions exist that would cure the constitutional violations." *Lillard v. Hendrix*, No. 23-35049, 2024 WL 3066047, at *1 (9th Cir. June 20, 2024). In doing so, the Ninth Circuit misconstrued this Court's precedent, ignored this Court's recent opinion in *Jones v. Hendrix*, 599 U.S. 465 (2023), which stated that § 2241 allows federal prisoners to challenge the manner, location, and conditions of confinement, and deepened a long-running circuit split regarding the extent of habeas corpus jurisdiction.

A. Lillard's and Mendoza's Habeas Petitions

At the outset of the COVID-19 pandemic, John Philip Stirling, an individual in federal custody at FCI Sheridan, filed a pro se petition for a writ of habeas corpus in the District of Oregon, challenging the institution's pandemic response. While Stirling's petition was pending, dozens of additional individuals in custody at Sheridan, including petitioners Lillard and Mendoza, filed similar habeas corpus petitions relating to the facility's pandemic response. After appointing counsel, the district court consolidated the habeas petitions to address "common legal and factual issues relating to the Bureau of Prisons' modified prison operations during the COVID-19 pandemic." Consolidation Order, *Stirling et al. v. Salazar*, No. 3:20-cv-00712-SB (D. Or., filed Nov. 10, 2020)

(Docket Entry 50). By the time of the final opinion, 167 petitions had been consolidated with the *Stirling* docket.

Through counsel, the consolidated petitioners filed an amended petition arguing that Sheridan's warden had (1) failed to take sufficient public health measures to reduce the spread of the virus, (2) failed to use available transfer and release authority to reduce the prison population to the point where social distancing would be possible, and (3) resorted to "draconian lockdown measures" that caused physical and emotional harm. App'x D at 2.

The amended petition asserted that habeas corpus relief was appropriate because the petitioners' detentions "violate[d] the laws and Constitution of the United States." *Id.* at 2. Petitioners raised claims under the Eighth Amendment prohibition of cruel and unusual punishment. *Id.* at 16. They asserted that, under the unique convergence of circumstances brought on by the COVID-19 pandemic, habeas corpus relief was available because the confinement itself was unlawful. *Id.* at 16-17. "Given the decision of the Bureau to lock down every inmate rather than de-densify, and because that strategy nevertheless risks exposing [petitioners] to infection from the coronavirus, no conditions of confinement at Sheridan can meet constitutional requirements." *Id.* at 18. The amended petition asked the court to grant release as the appropriate remedy. *Id.* at 25.

Following extensive discovery and an inspection of the prison, the petitioners filed a 106-page proposed findings of fact in September 2022 that described in detail the facility

conditions over the 2.5-year period of litigation. App'x E. The introduction summarized the deprivations and resulting harm to residents:

> The [Bureau of Prisons'] pandemic response has included inhumane periods of confinement in small cells and unresolved staffing shortages leading to grossly inadequate medical, dental, and mental health care and severe limits on 1) time outside; 2) the provision of adequate food; 3) contact with families; and 4) programs for rehabilitation. The effect on mental and physical health of incarcerated people has been devastating. Repeated waves of coronavirus infections, and the long-term effects of isolation, indeterminate confinement, and deprivation, have pushed residents at FCI Sheridan to the breaking point. Their pleas for help, reaching even the point of a hunger strike, have been met largely with indifference and at times violent retaliation. One person committed suicide; at least five others have died from medical ailments. Based on the proposed findings of fact below, this Court should conclude that the Warden has violated the Eighth Amendment rights of convicted detainees . . . at FCI Sheridan[.]

App'x E at 5.

B. District Court Proceedings

The magistrate judge issued an opinion and order holding that "claims challenging prison conditions created by the COVID-19 pandemic are not cognizable under [28 U.S.C. §] 2241, even if the petitioner seeks release from custody." App'x B at 23. The court therefore dismissed all of the consolidated petitions for lack of jurisdiction. *Id.* at 24.

In her analysis, the magistrate judge relied on Supreme Court precedent applicable only to state prisoners to conclude that "a claim should proceed in habeas only if the petitioner's success on that claim would 'necessarily demonstrate the invalidity of [his] confinement or its duration.'" *Id.* at 14 (citing, *inter alia*, *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)). The judge reasoned that the petitioners' challenges to the lack of social

distancing, lack of protection from COVID-19, and inhumane treatment did not suggest "that their convictions or sentences were invalid" or that they were "being held in excess of a lawfully imposed term of imprisonment." *Id.* at 18. Instead, the claims "exclusively concern the conditions at Sheridan," which the magistrate judge deemed beyond the scope of habeas corpus. *Id.* at 19.

The court also reasoned that, even if habeas were available when no remedy other than release can cure the constitutional violation, that was not the case here. *Id.* at 21. Rather, "[p]etitioners acknowledge in the amended petition that there are measures Respondent could take short of release to improve conditions during the COVID-19 pandemic[.]" *Id.*

Thus, the magistrate judge concluded that the petitioners' claims "were not cognizable in habeas" and ordered the consolidated petitions dismissed for lack of jurisdiction under § 2241. *Id.* at 23-24. Because the parties had consented to the magistrate's jurisdiction, the magistrate judge entered a final judgment of dismissal based on the opinion and order. Two of the consolidated petitioners, Lillard and Mendoza, appealed.

C. This Court's Decision in *Jones v. Hendrix*

While petitioners' appeals were pending before the Ninth Circuit, this Court decided *Jones v. Hendrix*, 599 U.S. 465, 475 (2023). In *Jones*, this Court addressed the interplay between 28 U.S.C. § 2241, the general habeas corpus statute, and 28 U.S.C. § 2255, which provides an alternative postconviction remedy for federal prisoners to challenge the

validity of their conviction or sentence. *Id.* at 469-70. The question in *Jones* was whether the "saving clause" in § 2255(e), which generally bars a federal prisoner from proceeding under § 2241 "unless . . . the [§ 2255] remedy by motion is inadequate or ineffective to test the legality of his detention," allows federal prisoners to bring a challenge to their sentence that would otherwise be barred by the second or successive restrictions on § 2255 motions. *Id.* at 469-70; 28 U.S.C. § 2255(h) (prohibiting second or successive motions unless they rest on newly discovered evidence demonstrating innocence or a new rule of constitutional law made retroactive by the Supreme Court).

In defining the scope of § 2241 as distinct from § 2255, the Court in *Jones* explained that a petitioner can use § 2241 to challenge the "'the legality of his *detention*' without attacking the validity of his *sentence*." 599 U.S. at 475 (emphases in original). The Court provided examples of legitimate § 2241 petitions that were not limited to claims that would necessarily result in earlier release. *Id.* To the contrary, several had to do with the manner, location, or conditions of the individual's detention and could be remedied, short of release, by altering the unlawful conditions. *Id.* For example, the Court referenced a federal prisoner receiving "an administrative sanction *affecting the conditions of his detention*," or "being detained in *a place or manner* not authorized by the sentence" as claims going to the legality of a federal prisoner's detention that would be permissible under § 2241. *Id.* (emphases added).

D. The Ninth Circuit's Decision

On appeal, petitioners argued that, under *Jones*, their Eighth Amendment challenges to the manner, location, and conditions of their detention were cognizable under § 2241. In a memorandum disposition, a panel for the Ninth Circuit Court of Appeals affirmed the District Court's decision without reference to *Jones*. Instead, the panel relied on *Pinson v. Carvajal*, 69 F.4th 1059, 1068-69 (9th Cir. 2023), which the Ninth Circuit had decided just two weeks before this Court issued its opinion in *Jones*.

In *Pinson*, the Ninth Circuit had held that, even for federal prisoners, the "the writ of habeas corpus is limited to attacks upon the legality or duration of confinement,"—so-called "core" habeas corpus claims that necessarily resulted in speedier release. *Id.* A federal prisoner's Eighth Amendment challenge to restrictive conditions of confinement is not a "core" claim, according to *Pinson*, unless "no set of conditions" could satisfy the constitution, making release the only viable remedy. *Id.* at 1073-75.

The panel here applied *Pinson*'s "no set of conditions" rule to affirm the district court's dismissal without further analysis:

> The district court correctly dismissed Petitioners' petitions for lack of jurisdiction because their conditions of confinement claims are not cognizable in habeas. *See Pinson v. Carvajal*, 69 F.4th 1059, 1068–69 (9th Cir. 2023), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024). In *Pinson*, we acknowledged that there may be "circumstances when a challenge to the conditions of confinement is properly brought in a petition for writ of habeas corpus," but concluded that the facts alleged failed to establish that "no set of conditions exist that would cure the constitutional violations." *Id.* at 1075. The facts alleged by Petitioners here are materially indistinguishable from those alleged in *Pinson*.

App'x A at 2.

The Ninth Circuit denied panel and en banc rehearing on September 5, 2024. App'x C at 1.

Reasons for Granting the Petition

This Court should grant a writ of certiorari to resolve a critical question that it has so far formally "left open": whether federal prisoners may challenge their confinement conditions via a petition for a writ of habeas corpus under 28 U.S.C. § 2241. *Ziglar v. Abbasi*, 582 U.S. 120, 144 (2017). Although this Court's ruling last term in *Jones* assumed that federal prisoners may use a § 2241 petition to challenge the manner, location, and conditions of detention, the circuits have remained in disarray regarding the scope of habeas corpus. In the panel decision here, the Ninth Circuit ignored *Jones* and dismissed the federal petitioners' claims because "the facts alleged failed to establish that 'no set of conditions exist that would cure the constitutional violations.'" App'x A at 2. The Ninth Circuit's position misconstrues this Court's precedent, expanding a rule applicable only to *state* prisoners without sufficient basis in the purely *federal* interests at play. The decision also adds to a long-standing circuit split regarding the extent of habeas jurisdiction: while several circuit courts agree that habeas jurisdiction exists to cure conditions rendering detention unlawful, others, like the Ninth Circuit, are entrenched in the view that habeas jurisdiction does not extend to petitions that challenge conditions of confinement for which a remedy other than release is viable. This Court should grant certiorari to settle the inter-jurisdictional confusion and formally hold, consistent with *Jones*, that habeas corpus

extends to federal prisoners' claims that the manner, location, or conditions of their confinement render their detention unlawful.

A. This Court's precedent culminating in *Jones* confirms that federal prisoners can use a § 2241 habeas petition to challenge the manner, location, and conditions of their confinement.

Although this Court has formally left the question open, the clear import of this Court's precedent, as reflected in *Jones*, is that a writ of habeas corpus under § 2241 is available for federal prisoners to challenge conditions of confinement that render detention unlawful. The line of precedent the Ninth Circuit drew on to reach the opposite conclusion has no bearing here: it distinguishes between competing statutory civil rights and habeas remedies for *state* prisoners, but its reasoning is inapplicable to *federal* prisoners' claims like those at issue here for which habeas corpus is the most viable remedy.

1. Jones confirmed precedent suggesting that § 2241 allows federal prisoners to challenge unlawful detention based on the manner, location, and conditions of confinement.

In at least two early decisions, this Court allowed habeas corpus claims challenging the conditions of confinement. First, in *Johnson v. Avery*, the Court permitted a state prisoner to challenge his conditions of confinement—specifically, discipline imposed for assisting other prisoners with legal work—using a writ of habeas corpus. 393 U.S. 483 (1969). There, the Court emphasized the "fundamental importance of the writ of habeas corpus in our constitutional scheme," reminding that "there is no higher duty than to maintain [the writ] unimpaired." *Id.* at 485. Two years later, citing *Johnson*, the Court

acknowledged that a challenge to living conditions and disciplinary measures was "cognizable in federal habeas corpus." *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971).

After *Johnson* and *Wilwording*, this Court decided a series of cases addressing the tension between conflicting statutory remedies available to state prisoners: habeas corpus under 28 U.S.C. § 2254, which requires full exhaustion of state remedies as a prerequisite to filing, and a civil rights cause of action under 42 U.S.C. § 1983, which does not. *See, e.g., Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Heck v. Humphrey*, 512 U.S. 477 (1994); *Wilkinson v. Dotson*, 544 U.S. 74 (2005). Starting with *Preiser* in 1973, those cases developed a habeas-funneling rule, requiring that claims that fall within the core of habeas corpus *must* be brought under § 2254 to ensure exhaustion of state remedies. As a corollary, state prisoners may not circumvent exhaustion by bringing "core" habeas claims in a § 1983 suit.

Although *Preiser* and its progeny address when claims *must* be brought in habeas, not when they cannot, the growing delineation between civil rights and habeas remedies led the Court to question whether conditions of confinement claims remain cognizable in a habeas petition. *Preiser*, 411 U.S. at 499. In *Preiser*, for example, the Court made clear that requiring core habeas claims to be filed under § 2254 did not necessarily bar conditions challenges from also being cognizable in habeas corpus. *Id.* But despite citing *Johnson* and *Wilwording*, the Court described the availability of habeas corpus as merely "arguable":

> 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 custody illegal.

411 U.S. at 499; *see also Bell v. Wolfish*, 441 U.S. 520, 527 n.6 (1979) ("[W]e leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself.").

When the conditions of confinement question arose again in 2017, the Court characterized it as having been "left open" *Ziglar*, 582 U.S. at 144 (citing *Preiser* and *Bell*). Although the Court did not have occasion to answer that question in *Ziglar*, which involved constitutional challenges to "large-scale policy decisions concerning the conditions of confinement imposed on hundreds of prisoners," the Court nonetheless recognized that habeas "would have provided a faster and more direct route to relief" than the *Bivens*[1] suit for damages that was filed. *Id.* at 145. "A successful habeas petition would have required officials to place respondents in less-restrictive conditions immediately; yet this damages suit remains unresolved some 15 years later." *Id.*

In the Court's most recent decision, *Jones*, the Court again did not have occasion to squarely address whether § 2241 allows conditions claims, but the opinion is telling for the Court's assumption that § 2241 allows federal prisoners to pursue claims that would not necessarily result in release. 599 U.S. at 475-76. As examples of legitimate § 2241 petitions, the Court included claims challenging "the conditions" and "place or manner" of detention. *Id.* Presumably, those claims would be remedied by altering the individual's

[1] *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

conditions or location of detention rather than by granting release. Indeed, this Court explained that "the saving clause guards against the danger that § 2255(e) might be construed to bar *manner-of-detention* challenges even though they are not within § 2255's substantive scope." 599 U.S. at 476.

Thus, the arc of this Court's guidance, culminating in *Jones*, provides a strong basis to conclude that § 2241 is an available cause of action for federal prisoners to challenge the manner, location, and conditions of confinement, despite that the claims can be remedied short of granting release.

2. The Ninth Circuit's decision rests on precedent navigating state-federal comity concerns that are inapplicable to federal prisoners.

The Ninth Circuit's opinion that federal prisoners can only bring "core" habeas corpus claims—specifically, those claims that necessarily require release as the remedy—under § 2241 was built on a faulty foundation: it applied to federal prisoners a rule derived from state-federal comity considerations and applicable only to state prisoners.

As noted, the habeas-funneling rule developed in *Preiser* and its progeny sought to prevent state prisoners from circumventing § 2254's exhaustion-of-state-remedies requirement by styling core habeas corpus claims as civil rights actions under § 1983. In *Preiser*, for example, this Court held that state prisoners were required to bring claims for restoration of good time credits in a § 2254 habeas corpus petition, and not in a § 1983 civil suit, so that the claims would first be subject to exhaustion. 411 U.S. at 500. The ruling was intended "to avoid the unnecessary friction between the federal and state court systems

that would result if a lower federal court upset a state court conviction without first giving the state court system an opportunity to correct its own constitutional errors." *Id.* at 490; *see also Heck*, 512 U.S. at 486-87 (requiring a state prisoner's claim to be brought in habeas corpus rather than § 1983 if it would "necessarily imply the invalidity of his [state] conviction or sentence"). By contrast, in *Wilkinson*, this Court concluded that a claim outside the core of habeas corpus could be brought under § 1983 without "break[ing] faith with principles of federal/state comity" because the claim would not ask the federal court in the first instance to "necessarily invalidate state-imposed confinement." 544 U.S. at 84.

In *Nettles v. Grounds*, the Ninth Circuit for the first time held that, for state prisoners, § 2254 and § 1983 are mutually exclusive remedies: Not only must core habeas claims be brought under § 2254, but a § 1983 civil rights complaint is also "the exclusive vehicle for claims brought by state prisoners that are *not* within the core of habeas corpus." 830 F.3d 922, 927 (9th Cir. 2016) (en banc). *Nettles* relied on what it deemed "considered dicta" from this Court "strongly suggesting" a firm line between habeas and § 1983. *Id.* at 930 (citing, *inter alia*, *Skinner v. Switzer*, 562 U.S. 521, 535 n.13 (2011)). However, *Nettles* expressly limited its holding to state prisoner claims, acknowledging that "[d]ifferent rules apply to state and federal prisoners seeking relief." *Id.* at 931 n.6.

The Ninth Circuit's later holding in *Pinson* that federal prisoners are subject to the same delineation between habeas corpus and civil rights actions as state prisoners finds no support in *Preiser* and its progeny. Unlike for state prisoners, there is no need to define the scope of coexisting statutory remedies afforded to federal prisoners: "[T]here is no

alternative statutory remedy for federal prisoners, and so no possibility of statutory overlap." *Nettles*, 830 F.3d at 946 (Berzon, J., dissenting). Section 1983 provides relief only against persons acting "under color of" state law. 42 U.S.C. § 1983; *West v. Atkins*, 487 U.S. 42, 48 (1988). For individuals in federal custody, no alternative statutory remedy squarely applies to claims seeking equitable relief for confinement rendered unlawful due to the manner, location, or conditions of confinement. The limited, judicially-created remedy under *Bivens* extends only to damages, not equitable relief. And although a potential implied cause of action in equity has been acknowledged, *see Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020), an implied remedy would not create the same statutory conflict undergirding the result in *Preiser* and *Nettles.*

In narrowing habeas remedies for federal prisoners, the Ninth Circuit has never identified any specific alternative cause of action that is more suitable than § 2241 for a claim of unlawful conditions of confinement, let alone one that would be impaired if the claims were pursued through § 2241. In fact, as the Court recognized in *Ziglar*, habeas provides a "more direct route to relief," because a successful habeas petition can remedy unconstitutional conditions immediately. 582 U.S. at 145.

The state-federal comity and exhaustion concerns driving *Preiser* and *Nettles* also have no bearing on federal prisoner habeas petitions challenging unconstitutional conditions of confinement. A challenge brought under *federal* law by individuals in *federal* custody against *federal* officials cannot infringe on *state* autonomy. Nor can petitioners circumvent administrative remedies by resorting to § 2241, as exhaustion is required as a

prudential matter under § 2241 and as a mandatory claim-processing rule under the Prison Litigation Reform Act (PLRA). 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.").

The Ninth Circuit's narrowing of federal habeas corpus remedies for federal prisoners expands the *Preiser* line of precedent beyond the circumstances that gave rise to it. Because this Court has already recognized the viability of habeas corpus claims challenging unconstitutional confinement based on the manner, location and conditions of incarceration as early as 1969 and most recently in *Jones*, the Ninth Circuit's limitation on habeas corpus remedies is unfounded.

B. The Ninth Circuit's decision adds to the long-standing inter-jurisdictional confusion over whether claims alleging unlawful detention based on the manner, location, and conditions of confinement are cognizable in habeas.

The Ninth Circuit's decision deepens a state of disarray in the Courts of Appeals over whether a federal prisoner may challenge unlawful conditions of confinement via a writ of habeas corpus. The confusion will only worsen without this Court's intervention.

1. At least three circuits allow federal prisoners to challenge the conditions of their confinement using a writ of habeas corpus, regardless of whether they seek release as their remedy.

The D.C. and Second Circuits have endorsed a broad approach to manner-of-detention claims, finding that habeas jurisdiction will lie regardless of whether the petitioner seeks release. The D.C. Circuit recognizes that, at least for federal prisoners and detainees, "Habeas corpus tests not only the fact but also the form of detention." *Hudson*

v. Hardy, 424 F.2d 854, 856 n.3 (D.C. Cir. 1970). In *Aamer v. Obama*, for example, the court considered challenges brought by Guantánamo detainees to their force-feeding during a hunger strike. 742 F.3d 1023, 1026 (D.C. Cir. 2014). The court recognized that these challenges implicated "neither the fact nor the duration of their detention" and thus fell outside of the core of habeas corpus. But the court nonetheless concluded that the claim—"that their treatment while in custody renders that custody illegal"—was "the proper subject of statutory habeas." *Id.* at 1030.

The court in *Aamer* provided a thoroughly reasoned opinion, grounded in this Court's precedent, concluding that the place and conditions of confinement can be subject to federal habeas corpus review when they implicate the legality of the detention:

> The illegality of a petitioner's custody may flow from the fact of detention, . . . the duration of detention, . . . the place of detention, . . . or the conditions of detention . . .. In all such cases, the habeas petitioner's essential claim is that his custody in some way violates the law, and he may employ the writ to remedy such illegality.

742 F.3d at 1036 (citations omitted).

Similarly, the Second Circuit has held that habeas jurisdiction extends to "a challenge to the conditions of his confinement." *Roba v. United States*, 604 F.2d 215, 219 (2d Cir. 1979) (upholding habeas jurisdiction over petitions challenging custodial transportation orders). In *Thompson v. Choinski*, the Court found that a federal prisoner could use a writ of habeas corpus to challenge conditions of confinement resulting from a high security assignment. 525 F.3d 205, 207 (2d Cir. 2008). The Court emphasized that it had "long interpreted § 2241 as applying challenges to the execution of a federal sentence,

'including such matters as the administration of parole, . . . prison disciplinary actions, prison transfers, type of detention and prison conditions.'" *Id.* at 209.

Though the First Circuit has not squarely decided this issue, it has embraced the view of the D.C. and Second Circuits, stating in dicta 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).

2. The Fourth and Fifth Circuits have allowed jurisdiction over habeas claims even when the petitioners did not seek release, despite not formally determining the limits of habeas jurisdiction.

Several circuits have not formally decided whether habeas jurisdiction will lie for petitions challenging unconstitutional conditions, but their precedent demonstrates that claims are cognizable in habeas even when release is not the requested remedy. The Fifth Circuit, for example, held that a claim seeking transfer to a less restrictive transitional home was cognizable in habeas but declined to decide the "broader question" of whether habeas claims are limited to "fact or duration" claims. *Poree v. Collins*, 866 F.3d 235, 243-44 (5th Cir. 2017). In *Poree*, the Fifth Circuit acknowledged that its own precedent regarding manner-of-detention claims is "less clear" than other circuits. *Id.*

Similarly, the Fourth Circuit has not reached the broader question but has recognized a prisoner's right to challenge at least some conditions of confinement if imposed without due process or just cause. In *McNair v. McCune*, the Fourth Circuit considered a federal prisoner's challenge to his segregated confinement and denial of access to "legal effects." 527 F.2d 874, 875 (4th Cir. 1975). Citing this Court's decision in

Johnson v. Avery, the Fourth Circuit 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." *Id.* The court's decision in *McNair* did not rest on whether the petitioner sought to challenge the fact or duration of his confinement; instead, the court found that the petitioner had sufficiently invoked "federal jurisdiction in habeas corpus to redress punitive segregation imposed without a hearing for the relatively innocuous offense of 'wearing the wrong kind of clothing.'" *Id.*

In *Farabee v. Clarke*, 967 F.3d 380 (4th Cir. 2020), the Fourth Circuit upheld habeas jurisdiction where the petitioner claimed that prison officials "used medication and solitary confinement to treat his mental illness and behavior" which worsened his physical and mental health. But the court acknowledged that whether a prisoner can challenge conditions of confinement through a habeas petition "is an unsettled question of law" among the circuits. *Id.* at 395.

3. The Third and Sixth Circuits have allowed federal prisoners to seek release due to COVID-19 conditions.

The Third and Sixth Circuits, faced with habeas challenges nearly identical to petitioners' here, held that habeas jurisdiction lies to challenge conditions of confinement during COVID-19, but only because the petitioners sought release and not another form of remedy. *Wilson v. Williams*, 961 F.3d 829, 838-39 (6th Cir. 2020) (finding habeas jurisdiction where petitioner sought release due to prison conditions during COVID-19);

Hope v. Warden York Cnty. Prison, 972 F.3d 310, 324-325 (3d Cir. 2020) (holding that, due to the "extraordinary circumstances that existed in March 2020 because of the COVID-19 pandemic," detainees' "§ 2241 claim seeking only release on the basis that unconstitutional confinement conditions require it is not improper."). The Third Circuit in *Hope* highlighted the lack of any clearly applicable Supreme Court precedent, citing both *Preiser* and *Ziglar*. *Id.* at 324.

While the Third Circuit's decision in *Hope* limited conditions-of-confinement challenges to those "extreme cases" where a petitioner sought release, the Third Circuit has also held that claims challenging the execution of a sentence are cognizable in habeas, even when release is not sought. *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 238-39 (3d Cir. 2005). The habeas petitioner in *Woodall* challenged BOP regulations that limited the amount of time he could be placed in a Community Corrections Center ("CCC"). 432 F.3d 235, 238-39 (3d Cir. 2005). After surveying conflicting positions among the Courts of Appeals, the Third Circuit found habeas jurisdiction, emphasizing that, because carrying out a sentence at a CCC differed significantly from an "ordinary penal institution," the petitioner's claim "cross[ed] the line beyond a challenge to, for example, a garden variety prison transfer." *Id.* at 243.

4. At least three circuits have precluded habeas challenges to a prisoner's conditions of confinement.

The Seventh, Eighth, and Tenth Circuits have departed from the D.C., Second, and First Circuits to hold that habeas jurisdiction does not extend to claims challenging

conditions of confinement. *Glaus v. Anderson*, 408 F.3d 382, 388 (7th Cir. 2005) (where claimant sought release but release was "unavailable," his challenge "can only concern the conditions of his confinement," and habeas petition was not proper); *Spencer v. Haynes*, 774 F.3d 467, 468 (8th Cir. 2014) ("Our precedent precludes conditions-of-confinement claims using the vehicle of a habeas petition."); *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, as opposed to its fact or duration, must do so through civil rights lawsuits," not habeas proceedings).

But even within these circuits, there is conflicting precedent. For example, the Eighth Circuit has acknowledged "that habeas corpus is a proper vehicle for any prisoner, state or federal, to challenge unconstitutional actions of prison officials," suggesting that habeas relief my still be available even if a petitioner does not seek release. *Willis v. Ciccone*, 506 F.2d 1011, 1014 (8th Cir. 1974). Adding to the confusion, the Ninth Circuit in *Pinson* recognized that, aside from "core" habeas claims, "challenges to 'conditions *of a sentence's execution*' may be properly brought under § 2241." *Pinson*, 69 F.4th at 1059 (emphasis in original). But the Court in *Pinson* did not explain why sentence execution claims are permitted while claims related to the conditions of an individual's confinement are not, nor did it clarify precisely how the two categories differ.

The divergent approaches among and even within the Courts of Appeals demonstrate the state of confusion surrounding whether and when habeas corpus jurisdiction extends to claims challenging unlawful detention due to the manner, location,

or conditions of confinement. Without this Court's intervention, this inter-jurisdictional confusion will continue. This Court should use this case to provide clear and binding precedent to guide the Courts of Appeals.

C. Allowing federal prisoners to challenge the manner, location, and conditions of confinement under § 2241 ensures that habeas corpus stands as a safeguard against unlawful detention.

This Court's position in *Jones* that habeas corpus extends to federal prisoners' claims that the manner, location, or conditions of their confinement render their detention unlawful is consistent with the "grand purpose" of habeas corpus, which this Court has described as "the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). A writ of habeas corpus is "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969). This Court has thus "consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements." *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 350 (1973). Instead, habeas is intended to be "above all, an adaptable remedy" whose "precise application and scope change[] depending upon the circumstances." *Boumediene v. Bush*, 553 U.S. 723, 780 (2008).

In furtherance of the "grand purpose" of the writ, *Jones*, 371 U.S. at 243, courts are directed to administer the writ "with the initiative and flexibility essential to insure that

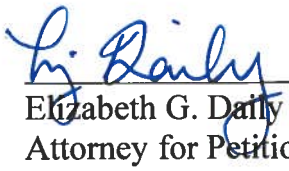
miscarriages of justice within its reach are surfaced and corrected." *Harris*, 394 U.S. at 291. A rigid rule limiting habeas corpus jurisdiction only to "core" claims necessarily requiring immediate or speedier release is at odds with this Court's guidance because it ignores that the lawfulness of detention encompasses both its duration *and* its form. Unconstitutional restraints can render otherwise lawful custody unlawful. *See Preiser*, 411 U.S. at 499 ("[I]t is arguable that habeas corpus will lie to remove the restraints making custody illegal.").

Jones struck the right balance and recognized that § 2241 encompasses challenges to the legality of detention—separately from challenging the underlying basis of detention—including claims that can be remedied by changing the place, manner, or conditions of detention. 599 U.S. at 475. Because the circuit courts are caught in an intractable split with no clear consensus toward one manner of analysis, this is not an issue that will benefit from further development in the circuits. Without course-correction from this Court, the split will only worsen, and the availability of the Great Writ will remain dependent on the location of an individual's confinement. The Court should grant a writ of certiorari.

Conclusion

For the foregoing reasons, the Court should issue a writ of certiorari.

Dated this 4th day of December 2024.



Elizabeth G. Daily
Attorney for Petitioners

On the Brief
Ellie Riegel, Assistant Federal Public Defender