24-6816

No.

in the

Supreme Court

of the

United States

Term,

JOSHUA ANDERSON,

Petitioner,

vs.

FERNANDO GARZA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I.

Whether a Federal court's refusal to permit a prisoner from challenging their conditions of confinement via a writ of habeas corpus violates the Fifth Amendment's Due Process Clause and possibly results in an unconstitutional suspension of the writ of habeas corpus pursuant to United States Constitution Article 1, Section 9, Clause 2?

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The Petitioner, Joshua Anderson, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled proceeding on August 7, 2024.

OPINIONS BELOW

1. The original conviction of Petitioner was appealed to the United States Navy-Marine Corps Court of Criminal Appeals, which modified the findings and approved his sentence to confinement for 30 years reported at 2013 CCA LEXIS 517 (Jun. 27, 2013) (unpub. op.) is attached hereto in Appendix A.

2. The decision of the Navy-Marine Corps Court of Criminal Appeals on Petitioner's military habeas petition reported at 2022 CCA LEXIS 3 (Jan. 5, 2022) (unpub. op.) is attached hereto in Appendix B.

3. The decision of the United States Court of Appeals for the Armed Forces on Petitioner's writ-appeal petition reported at 2022 CAAF LEXIS 228 (Mar. 22, 2022) (unpub. op.) is attached hereto in Appendix C.

4. The decision of the United States District Court for the Northern District of Ohio on Petitioner's Section 2241 motion reported at 2023 U.S. Dist. LEXIS 174763 (Sept. 29, 2023) (unpub. op.) is attached hereto in Appendix D.

5. The opinion of the Court of Appeals below is reported at 2024 U.S. App. LEXIS 19928 (Aug. 7, 2024) (unpub. op.) and attached hereto in Appendix E.

6. The decision of the United States Sixth Circuit Court of Appeals denying Petitioner's motion for rehearing in this matter reported at 2024 U.S. App. LEXIS 28132 (Nov. 5, 2024) (unpub. op.) is attached hereto in Appendix F.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 7, 2024. A timely petition for rehearing was denied by the United States Court of Appeals on November 5, 2024, and a copy of the order denying rehearing appears at Appendix F. The mandate was filed on November 13, 2024. This petition is timely filed. The jurisdiction of this Court is invoked under Title 28 U.S.C.S. Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Article 1, Section 9, Clause 2 states:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or invasion the public safety may require it.

Title 28 U.S.C.S. Section 2241 states:

> 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 to a prisoner who is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

The facts necessary to place in their setting the question now raised are stated as follows:

A. COURSE OF PROCEEDINGS IN THE MILITARY COURTS NOW BEFORE THIS COURT.

Petitioner, Joshua G. Anderson, a former active-duty member of the United States Navy, was convicted in 2012, in accordance with his pleas, of conspiracy to rape a child, rape of a child, indecent liberties with a child, possession of child pornography (2 counts), distribution of child pornography, using indecent language (2 counts), fraudulent enlistment, communicating a threat, and wearing unauthorized medals or badges, in violation of Articles 81, 83, 120, and 134, UCMJ.

The military trial judge sentenced Petitioner to thirty (30) years of confinement, reduction in rank to E-1, forfeiture of all pay and allowances, and a dishonorable discharge from the U.S. Navy. The United States Marine Corps Convening Authority approved the sentence as adjudged and ordered it executed.

On direct review, the Navy-Marine Corps Court of Criminal Appeals ("NMCCA") modified the findings, reassessed the sentence, and affirmed the modified findings and original sentence. United States v. Anderson, No. 201200499, 2013 CCA LEXIS 517, at *11 (N-M. Ct. Crim. App. June 27, 2013) (Appendix A).

On November 2, 2021, Petitioner filed a Petition for Extraordinary Relief in the Nature of a Writ of Habeas Corpus with the NMCCA, seeking four-for-one credit towards his sentence for each day he was confined in immediate association with a foreign national in violation of Title 10 U.S.C.S. Section 812.

The court dismissed Petitioner's military habeas petition for lack of jurisdiction (Appendix B) on January 5, 2022. Petitioner appealed the NMCCA's dismissal of his writ of habeas corpus petition to the Court of Appeals for the Armed Forces ("CAAF") on February 21, 2022. On March 22, 2022, the CAAF dismissed Petitioner's habeas writ-appeal petition for lack of jurisdiction (Appendix C).

"[N]either the Uniform Code of Military Justice nor the Manual for Courts-Martial provides for collateral review within the military courts." Witham v. United States, 355 F.3d 501, 505 (6th Cir. 2004) (citing United States v. Murphy, 50 M.J. 4, 5 (C.A.A.F. 1998)). Accordingly, although Petitioner's right to habeas corpus in the military justice system has ended or is non-existent, "[federal] courts have the same responsibilities as do the [military] courts to protect a person from a violation of [their] rights." Burns v. Wilson, 346 U.S. 137, 142 (1953) (emphasis added). Thus, the "merits of [P]etitioner's claims are now for the federal [] court[s], rather than [the military], to decide." Gray v. Belcher, 70 M.J. 646, 648 (A.C.C.A. 2012).

The problem with that is the long-standing federal court disagreement over whether conditions-of-confinement claims can be brought under habeas and the fact it has proved to be "a salient obstacle to relief." Lee Kovarsky, Essay, Pandemics, Risks, and Remedies, 106 Va. L. REV. ONLINE 71, 80 (2020). The issue is a vital one because habeas is one of few avenues of relief for prisoners - especially federal ones - seeking to challenge unlawful conditions of confinement.

B. COURSE OF PROCEEDINGS IN THE SECTION 2241 CASE NOW BEFORE THIS COURT.

On May 3, 2022, Petitioner filed a petition for a writ of habeas corpus at the United States District Court for the Northern District of Ohio, seeking release from his unlawful confinement that violates federal law. To obtain habeas relief under Section 2241, a petitioner must demonstrate that he is detained in federal custody "in violation of the Constitution or laws or treaties of the United States." Title 28 U.S.C.S. Section 2241(c)(3). Petitioner filed a habeas petition in federal court due to the fact "no member of the Armed Forces (which Petitioner legally remains) may be placed in confinement in immediate association with enemy prisoners or other foreign nationals, not members of the Armed Forces." Title 10 U.S.C.S. Section 812. Military courts have defined "immediate association" as "being confined in a manner so that military personnel would be directly connected or combined with [foreign nationals]." United States v. Wise, 64 M.J. 468 (C.A.A.F. 2007) (emphasis added).

Petitioner transferred from military custody to federal custody in June 2015 and has been consistently, and from the very beginning, confined in the immediate association of foreign nationals.

"Given the approximately 350,000 foreign nationals incarcerated in local jails, state, and federal prisons, it is virtually impossible for the armed forces to make use of civilian confinement facilities without ensuring that civilian prisons take the proper precautions to comply with Article 12." United States v. McPherson, 73 M.J. 393, 400 (C.A.A.F. 2014) (Baker, J., dissenting).

Warden Garza conceded "the heart of Anderson's petition for habeas relief is whether relief may be had where a servicemember is placed in the same housing unit as a foreign national." Yet, he argued "Anderson's claim challenges the conditions of his confinement and is not a proper habeas petition." However, habeas is appropriate and federal courts have the jurisdiction to ensure that a military prisoner's sentence is executed in a manner consistent with Article 12, even if the violation occurs as a condition of their confinement.

The District Court failed to properly consider the facts of Petitioner's case, and on September 29, 2023, the court held "Petitioner cannot challenge the conditions of his confinement via a Petition for Habeas Relief" and dismissed the petition for failure to state a claim upon which relief can be granted. Petitioner appealed the dismissal of his habeas petition with prejudice to the Sixth Circuit Court of Appeals on October 18, 2023. That court affirmed the district court's judgment on August 7, 2024; finding Petitioner's "claim was a conditions-of-confinement claim not appropriately considered under Section 2241." A timely petition for rehearing/rehearing en banc was filed with the appellate court and denied on November 5, 2024.

C. HISTORICAL BACKGROUND OF CONDITION-OF-CONFINEMENT HABEAS CASES IN THE COURTS.

Habeas is a centuries-old avenue for challenging unlawful confinement, used to seek outright release or a conditional release order mandating that the government either remedy unlawful aspects of custody or release the individual. See Wilkinson v. Dotson, 544 U.S. 74, 81 (2005); id. at 87 (Scalia, J., concurring). However, for many, the long-standing federal court disagreement over whether conditions-of-confinement claims can be brought under habeas proved "a salient obstacle to relief." Lee Kovarsky, Essay, Pandemics, Risks, and Remedies, 106 VA. L. REV. ONLINE 71, 80 (2020); cf.

Wilson v. Williams, 961 F.3d 829, 837 (6th Cir. 2020) (holding the district court had jurisdiction to consider a habeas petition alleging unconstitutional confinement). This Court has explicitly "left open the question whether [prisoners] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus," Ziglar v. Abbasi, 137 S. Ct. 1843, 1862-63 (2017); see also Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979), although some earlier Court cases allowed them to do just that. See Wilwording v. Swenson, 404 U.S. 249, 249-51 (1971) (per curiam); Johnson v. Avery, 393 U.S. 483, 484-86 (1969). Circuit courts have meanwhile divided sharply on the issue. See Wilborn v. Mansukhani, 795 F. App'x 157, 163 (4th Cir. 2019) (per curiam) (collecting cases); Aamer v. Obama, 742 F.3d 1023, 1036-38 (D.C. Cir. 2014) (same).

This question is a vital one because habeas is one of few avenues of relief for prisoners - especially federal ones - seeking to challenge unlawful conditions of confinement. State prisoners seeking federal relief from unlawful conditions of confinement can do so through Section 1983 of the Civil Rights Act, Title 42 U.S.C.S. Section 1983, which allows individuals to sue state officials who violate their federal rights, Id., or via the less common approach of Sections 2254 or 2241 of the habeas statutes, which allow federal courts to hear petitions for writs of habeas corpus by individuals in state custody under certain circumstances. Title 28 U.S.C.S. Sections 2241, 2254. States also have their own methods through which state prisoners may seek relief from unlawful prison conditions, including state habeas statutes. See Kelsey v. State, 283 N.W.2d 892, 895 (Minn. 1979); Valena E. Beety, Changed Science Writs and State Habeas Relief, 57 HOUS. L. REV. 483, 489-91 (2020); George L. McGaughey, Recent Case, In re Lamb, 34 Ohio App. 2d 85, 296 N.E.2d 280 (1973), 25 CASE W. RSRV. L. REV. 684, 685 (1975) (discussing an Ohio case holding that habeas corpus relief was available to state prisoners protesting detention in solitary confinement).

Individuals incarcerated in federal prisons, meanwhile, cannot bring suits against federal prison officials under the Civil Rights Act, because Section 1983 applies only to state and local, not federal, officials. See Title 42 U.S.C. Section 1983 (allowing suit exclusively against persons under the power of "any State or Territory or the District of Columbia"). Instead, federal prisoners have four possible options: the Federal Tort Claims Act (FTCA), suits under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, mandamus, and Section 2241 of the habeas statutes. Timothy J.

Kilgallon, Note, The Bivens Remedy in Prisoners' Rights Litigation, 40 WASH. & LEE L. REV. 215, 218 (1983). The FTCA, Bivens, and mandamus all have severe limitations. The FTCA provides only for monetary damages and does not authorize a court to issue injunctive relief, so it may not successfully alleviate unlawful conditions. See PRIYA PATEL, NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD, FEDERAL TORT CLAIMS ACT: FREQUENTLY ASKED QUESTIONS FOR IMMIGRATION ATTONEYS 5-6 (2013), https://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/fed/2013_24Jan_ftca_faq.pdf. It also is limited to tort-based recovery, see WILLIAM B. WRIGHT, THE FEDERAL TORT CLAIMS ACT: ANALYZED AND ANNOTATED 11-22 (1957); which may not encompass all claims related to a prisoner's unlawful conditions of confinement. Bivens was a landmark Supreme Court case in 1971 that created a cause of action against federal officials similar to the one available against state officials under Section 1983. Bivens, 403 U.S. at 395-97. The Court initially expanded this remedy further. See Carlson v. Green, 446 U.S. 14, 24 (1980); Davis v. Passman, 442 U.S. 228, 229-30 (1979); Kilgallon, supra, at 220-24. But this Court in recent years has repeatedly narrowed the remedy nearly to the exact facts of Bivens itself, all but cutting off this route for prisoners challenging unlawful conditions. See, e.g., Hernandez v. Mesa, 140 S. Ct. 735, 743 (2020); Ziglar v. Abbasi, 137 S. Ct. 1843, 1859 (2017); see also Laurence H. Tribe, Death by a Thousand Cuts: Constitutional Wrongs Without Remedies After Wilkie v. Robbins, 2006-2007 CATO SUP. CT. REV. 23, 26 ("[T]he best that can be said of the Bivens doctrine is that it is on life support with little prospect of recovery."); The Supreme Court, 2019 Term - Leading Cases, 134 HARV. L. REV. 410, 550 (2020) (discussing Hernandez, 140 S. Ct. 735, and the Court's trend toward limiting Bivens). Lastly, mandamus allows federal courts "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff," Title 28 U.S.C.S. Section 1361, but it is a "'drastic and extraordinary' remedy." Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367, 380 (2004) (quoting Ex parte Fahey, 332 U.S. 258, 259 (1947)). Mandamus also erects high hurdles for obtaining relief. In fact, a petitioner generally must establish the lack of any other adequate remedy, a "clear and indisputable" right to the relief, and that the writ is appropriate under the circumstances. Id. at 380-81 (quoting Kerr v. U.S. Dist. Ct. for the N. Dist. of Cal., 426 U.S. 394, 403 (1976)). Given the limitations of these other avenues, habeas may sometimes be the only way for a federal prisoner to challenge and remedy unlawful conditions of confinement. And

although state prisoners have the alternative of Section 1983, habeas still can offer an important avenue for relief, given evolving differences in procedural requirements between habeas and Section 1983.

Despite the importance of the question, this Court has yet to squarely address the issue. See, e.g., Martin A. Schwartz, The Preiser Puzzle: Continued Frustrating Conflict Between the Civil Rights and Habeas Corpus Remedies for State Prisoners, 37 DEPAUL L. REV. 85, 150 & n.394 (1988). A scholar writing in 1987 on this topic wrote then that "[t]he time has come for the Supreme Court to announce a rule regarding the use of habeas corpus to challenge improper prison conditions." Scott Singer, "To Be or Not to Be: What is the Answer?" The Use of Habeas Corpus to Attack Improper Prison Conditions, 13 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 149, 170 (1987). Yet in the three decades since, the issue has not been resolved. If anything, it has grown more complicated in tandem with Congress's efforts to erect greater hurdles to prison litigation via the Prison Litigation Reform Act (PLRA) in 1996. See Elizabeth Alexander, Prison Litigation Reform Act Raises the Bar, 16 CRIM. JUST. 10, 11 (2002).

Amid this uncertainty, there has been very little discussion over whether the text of the habeas statutes actually covers conditions of confinement - arguments on the issue have instead focused primarily on originalist understandings of habeas or on how other statutes, like Section 1983 or the PLRA, impact the scope of habeas. To that point, the federal courts are sharply divided as to whether conditions-of-confinement claims can be brought under the habeas statutes. This Court has equivocated on the issue but recently indicated in dicta that conditions-of-confinement claims may indeed be cognizable under habeas. See Ziglar v. Abbasi, 137 S. Ct. 1843, 1862-63 (2017); Johnson v. Avery, 393 U.S. 483, 484 (1969). Circuit courts have meanwhile diverged both within and between circuits. See Wilborn v. Mansukhani, 795 F. App'x 157, 163 (4th Cir. 2019) (per curiam) (collecting cases); Aamer v. Obama, 742 F.3d 1023, 1036-38 (D.C. Cir. 2014) (same).

1. Supreme Court Precedent

This Court's stance on the issue has evolved over the past half century, shifting from allowing conditions-of-confinement claims to proceed under habeas to now referring to the issue as an open

question. In 1969, in Johnson v. Avery, 393 U.S. 483 (1969), the Court allowed a state prisoner to use habeas to challenge a prison regulation barring him from providing legal assistance - a condition of confinement. The Court, following a line of cases in which it had struck down regulations hampering access to the writ, Id. at 485-86 (citing Smith v. Bennett, 365 U.S. 708, 708-09 (1961); Long v. Dist. Ct. of Iowa, 385 U.S. 192, 193-94 (1966) (per curiam); Lee v. Washington, 390 U.S. 333, 333-34 (1968) (per curiam); Ex parte Hull, 312 U.S. 546, 549 (1941)), held that the prison regulations unlawfully interfered with the right of prisoners to petition for habeas corpus at a federal court. Id. at 485, 490. It did not directly discuss the issue of whether conditions of confinement could be challenged under habeas, but that may be because the issue was not in contention - both the district court and the Sixth Circuit had upheld the petitioner's ability to bring the "motion for law books and a typewriter" under habeas. Id. at 484 (quoting Johnson v. Avery, 382 F.2d 353, 354 (6th Cir. 1967), rev'd, 393 U.S. 483 (1969)); see Johnson, 382 F.2d at 355 ("[I]t seems clear that [petitioner] has been subjected to a restraint upon his liberties unauthorized by the life sentence he is serving. In such a case, habeas corpus will lie to inquire into the lawfulness of this added punishment, even though it will not result in his unconditional release from prison.").

Two years later, in Wilwording v. Swenson, 404 U.S. 249 (1971) (per curiam), the Court affirmed this understanding of Johnson, citing it for the conclusion that the state prisoners' claims challenging living conditions and disciplinary measures were "cognizable in federal habeas corpus." Id. at 251; see Wilwording v. Swenson, 439 F.2d 1331, 1332 n.2 (8th Cir. 1971), rev'd, 404 U.S. 249 (1971) (per curiam). Although the habeas issue was not central to the case, this Court nevertheless wrote in dicta that the claims were cognizable under habeas, responding directly to the Eighth Circuit's contention that they might not be. See Wilwording, 439 F.2d at 1337.

The next case to address this issue was Preiser v. Rodriguez, 411 U.S. 475 (1973). See Singer, supra, at 153. The respondents had brought claims under Section 1983 alleging that state prison administrators had unconstitutionally deprived them of good-time credits. Preiser, 411 U.S. at 476. Because the remedy of restoring those credits would have led to the respondents' immediate release, the Court determined that the claims were ultimately seeking release from confinement and therefore fell at the "core", Id. at 487, 489, or "heart" of habeas corpus. Id. at 498. The Court then held that

claims "challenging the very fact or duration of... physical imprisonment" where the relief sought is immediate or speedier release must be brought under habeas rather than Section 1983. Id. at 500. The Court reasoned that because Section 1983 allowed state prisoners to bring claims without an exhaustion of state remedies, while habeas required exhaustion, it "would wholly frustrate explicit congressional intent to hold that the respondents in the present case could evade this requirement by the simple expedient of putting a different label on their pleadings." Id. at 489-90. Yet, at the close of its opinion, the Court carefully left open the reverse possibility: challenging conditions of confinement under habeas. See id. at 499-500; see also John Flannery, Habeas Corpus Bores a Hole in Prisoners' Civil Rights Actions - An Analysis of Preiser v. Rodriguez, 48 ST. JOHN'S L. REV. 104, 109-10 (1973) (suggesting that habeas could be used to challenge conditions of confinement after Preiser). Although the issue was not directly before it, the Court noted that "[w]hen a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal." Preiser, 411 U.S. at 499.

Standing alone, Preiser seemed to leave unchanged the Court's prior precedents allowing for conditions-of-confinement claims under habeas. See Singer, supra, at 155 ("The Court's previous decisions in Avery and Wilwording regarding the use of habeas corpus to challenge conditions of confinement... went unchanged."). But six years later, the Court in Bell v. Wolfish, 441 U.S. 520 (1979), suggested more explicitly that the issue was not yet settled, dropping a footnote that read: "[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 confinement itself." Id. at 526 n.6 (citing Preiser, 411 U.S. at 499-500).

This question has remained unresolved by this Court for decades now. In 2017, the Court in Ziglar v. Abbasi, 137 S. Ct. 1843 (2017), again called the question an open one but suggested that habeas may actually offer a more expedient avenue for relief than filing a Bivens suit for monetary damages. Id. at 1863; see id. at 1862-63 (citing Bell, 441 U.S. at 526 n.6; Preiser, 411 U.S. at 499). Individuals held in federal detention after the September 11, 2001, attacks had brought a Bivens action alleging federal officials had violated their constitutional rights by subjecting them to punitive strip searches; guard abuse; and harsh pretrial conditions on account of race, religion, or national origin. Id. at 1853. They could not bring a Section 1983 claim because they were detained in federal custody, Id. at 1854, and the

Ziglar Court ruled they couldn't bring a Bivens claim for most of their case either. Id. at 1869. In pertinent part, the Court reasoned that a Bivens remedy is typically not available when other relief, such as an injunction or habeas, is. Id. at 1862-63. The Court touted the likelihood that habeas "would have provided a faster and more direct route to relief than a suit for money damages," requiring "officials to place respondents in less-restrictive conditions immediately; [whereas] this damages suit remains unresolved some 15 years later." Id. at 1863. The Court ultimately declined to "determine the scope or availability of the habeas corpus remedy," since that issue was not before it, but did rely on habeas to deny Bivens relief. Id. Thus, though this Court has yet to rule definitively on the issue, dicta in its most recent case suggest that habeas is potentially available for conditions-of-confinement claims.

2. Circuit Court Split.

While this Court has called the conditions-of-confinement issue an open question, the circuit courts have stepped in to fill the void, diverging significantly both between and within circuits. The D.C. and Second Circuits clearly allow conditions-of-confinement claims to proceed under habeas. In 2014, the D.C. Circuit in Aamer v. Obama, 742 F.3d 1023 (D.C. Cir. 2014), reasoned that custody may be illegal due to "the fact of detention, the duration of detention, the place of detention, or the conditions of detention." Id. at 1036 (citations omitted). 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." Id. The Second Circuit has also "long interpreted Section 2241 [of the habeas statutes] as applying to challenges to the execution of a federal sentence, 'including such matters as... prison conditions.'" Thompson v. Choinski, 525 F.3d 205, 209 (2d Cir. 2008) (quoting Jiminian v. Nash, 245 F.3d 144, 146 (2d Cir. 2001)); see also Kahane v. Carlson, 527 F.2d 492, 498 (2d Cir. 1975) (Friendly, J., concurring) (arguing that Section 2241 "furnishes a wholly adequate remedy" to challenge conditions of confinement).

Other circuits, including the First and Third, have referred to the proposition that conditions-of-confinement claims may be brought under habeas in a more offhand way, seemingly taking the proposition to be a given. See, e.g., United States v. DeLeon, 444 F.3d 41, 59 (1st Cir. 2006) ("If the conditions of incarceration raise Eighth Amendment concerns, habeas corpus is available."); Woodall v.

Fed. Bureau of Prisons, 432 F.3d 235, 238-39, 242 & n.5 (3d Cir. 2005) (finding that "even if what is at issue here is 'conditions of confinement,'" id. at 242 n.5, the suit would be cognizable under habeas); Miller v. United States, 564 F.2d 103, 105 (1st Cir. 1977) ("Section 2241 provides a remedy for a federal prisoner who contests the conditions of his confinement."). But cf. Cardona v. Bledsoe, 681 F.3d 533, 537 (3d Cir. 2012) (holding that in order to properly challenge the "execution" of a sentence under Section 2241, the petitioner would have to "allege that [the Bureau of Prisons's] conduct was somehow inconsistent with a command or recommendation in the sentencing judgment"). And others once embraced a similar conclusion prior to Preiser and Bell. See, e.g., Willis v. Ciccone, 506 F.2d 1011, 1014 (8th Cir. 1974) ("[I]t is generally acknowledged that habeas corpus is a proper vehicle for any prisoner, state or federal, to challenge unconstitutional actions of prison officials."); Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944) (per curiam). In Coffin v. Reichard, for example, the Sixth Circuit reasoned that, even if a person is validly convicted of a crime, "[h]is conviction and incarceration deprive him only of such liberties as the law has ordained he shall suffer for his transgressions." Coffin, 143 F.2d at 445. However, the Sixth Circuit has more recently shifted away from allowing conditions-of-confinement claims under habeas. See Wilson v. Williams, 961 F.3d 829, 838 (6th Cir. 2020).

By contrast, circuit courts ruling that conditions-of-confinement claims cannot be brought under habeas have done so primarily on two key grounds: (1) that conditions-of-confinement claims are outside the scope of the essential definition of the writ of habeas corpus, see e.g., Crawford v. Bell, 599 F.2d 890, 891-92 (9th Cir. 1979); Cook v. Hanberry, 592 F.2d 248, 249 (5th Cir.) (per curiam), modified, 596 F.2d 658 (5th Cir. 1979) (per curiam); and (2) that Section 1983 and the PLRA evince Congress's intent that conditions-of-confinement claims should fall outside habeas. See, e.g., Wilborn v. Mansukhani, 795 F. App'x 157, 163-64 (4th Cir. 2019) (per curiam); Nettles v. Grounds, 830 F.3d 922, 932-33 (9th Cir. 2016); Palma-Salazar v. Davis, 677 F.3d 1031, 1035 (10th Cir. 2012); Graham v. Broglin, 922 F.2d 379, 381 (7th Cir. 1991). Under the first approach, courts have cited to Preiser's emphasis on release constituting the core of habeas to support the very proposition Preiser disclaimed. See, e.g., Crawford, 599 F.2d at 891 (citing Preiser v. Rodriguez, 411 U.S. 475, 484-86 (1973)). The Ninth Circuit in Crawford v. Bell, 599 F.2d 890 (9th Cir. 1979), for example, cited to Preiser to conclude that:

"According to traditional interpretation, the writ of habeas corpus is limited to attacks upon the legality or duration of confinement." Id. at 891 (citing Preiser, 411 U.S. at 484-86). The Ninth Circuit failed to acknowledge that this reversed its earlier holdings that habeas was available to challenge conditions of confinement. Workman v. Mitchell, 502 F.2d 1201, 1208 n.9 (9th Cir. 1974); see also Mead v. Parker, 464 F.2d 1108, 1111 (9th Cir. 1972) ("Nor can it be said that habeas corpus is not available because the petitioners do not ask to be released from custody, but only certain aspects of that custody be found illegal.... . The Supreme Court has permitted the use of the writ for just such purposes."). The Fifth Circuit has also adopted this "traditional interpretation" analysis, holding that conditions-of-confinement claims do not fall within the "purpose" of habeas corpus. Cook v. Hanberry, 592 F.2d 248, 249 (5th Cir.) (per curiam), modified, 596 F.2d 658 (5th Cir. 1979) (per curiam).

Under the second approach, courts have inverted Preiser's reasoning. In Preiser, this Court argued that because the habeas statutes are more specific than the broad relief afforded by Section 1983, Congress intended for habeas to be the exclusive remedy for claims falling within its core. Preiser, 411 U.S. at 489-90. But some courts have taken this to mean that habeas and Section 1983 provide mutually exclusive forms of relief, see, Nettles v. Grounds, 830 F.3d 922, 929 (9th Cir. 2016); and Kruger v. Erickson, 77 F.3d 1071, 1073 (8th Cir. 1996); even though they cite cases dealing only with whether relief must be brought under habeas, not whether it cannot be. See, e.g., Nettles, 830 F.3d at 930 (citing Skinner v. Switzer, 562 U.S. 521, 533-35 (2011)); id. at 929 (citing Wilkinson v. Dotson, 544 U.S. 74, 82 (2005)); id. at 928 (citing Wolff v. McDonnell, 418 U.S. 539, 554 (1974)). And other courts have gone further by extending this holding to individuals in federal custody, even though there is no correlative Section 1983 available to underpin the reasoning. See Spencer v. Haynes, 774 F.3d 467, 469-70 (8th Cir. 2014).

Another aspect of this congressional intent argument is that the PLRA indicated Congress's intent that all conditions-related claims should be channeled through Section 1983 rather than habeas. Nettles, 830 F.3d at 932-33. Such relief is available only to state prisoners, but the court noted that federal prisoners can bring claims under Bivens or the FTCA. Id. at 931 n.6. The PLRA was intended to curb prisoner litigation and erected a series of hurdles to prisoners' efforts to address illegal prison conditions. See Alexander, supra, at 11. A number of courts have held that certain barriers in the PLRA

do not apply to habeas actions. See, e.g., Walker v. O'Brien, 216 F.3d 626, 628-29 (7th Cir. 2000); Carson v. Johnson, 112 F.3d 818, 820 (5th Cir. 1997). The Ninth Circuit has thus reasoned that Congress intended the PLRA's exhaustion requirements to apply to "all inmate suits about prison life" and that it would "'wholly frustrate explicit congressional intent' to hold that prisoners could evade the requirements of the PLRA 'by the simple expedient of putting a different label on their pleadings.'" Nettles, 830 F.3d at 932 (quoting Porter v. Nussle, 534 U.S. 516, 532 (2002); Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973)). The Ninth Circuit did not squarely address whether this same holding would apply to individuals in federal detention, given their lack of a correlative Section 1983 remedy.

D. THE SCOPE OF THE HABEAS STATUTES.

Despite the widespread doctrinal disagreement on this issue, few courts have spent much time, if any, examining the text of the habeas statutes themselves. This silence may be because habeas corpus is a strange hybrid of English common law, constitutional law, and statutory law. The writ of habeas corpus traces its history back as early as 1220 C.E. in England. See Developments in the Law - Federal Habeas Corpus, 83 HARV. L. REV. 1038, 1042 (1970). Moreover, the U.S. Constitution explicitly incorporates the concept of the writ via the Suspension Clause; and Congress has enacted a series of statutes, spanning from the Judiciary Act of 1789 to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), setting out details of how habeas functions in the United States.

At its core, though, the power of the federal courts to issue writs of habeas corpus is primarily a statutory issue rather than an originalist one. The courts' power to issue the writ is not an inherent authority but rather is determined by congressional enactments. See Ex parte Bollman, 8 U.S. (4 Cranch) 75, 94 (1807). The constitutional element of the Suspension Clause does protect some minimum bound of the writ "as it existed in 1789," INS v. St. Cyr, 533 U.S. 289, 301 (2001) (quoting Felker v. Turpin, 518 U.S. 651, 664 (1996)), superseded by statute, Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, as recognized in Nasrallah v. Barr, 140 S. Ct. 1683 (2020); but it is widely acknowledged that the habeas statute "has expanded habeas corpus 'beyond the limits that obtained during the 17th and 18th centuries.'" Rasul v. Bush, 542 U.S. 466, 474 (2004) (quoting Swain v. Pressley, 430 U.S. 372, 380 n.13 (1977)), superseded by statute, Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2739.

The habeas statutes are outlined in Chapter 153 of Title 28 of the U.S. Code, encompassing Sections 2241-2255. These sections provide federal courts the power to grant the writ of habeas corpus, outline limitations on when the courts can grant the writ, and detail procedures for handling habeas cases. The key provisions that could provide for conditions-of-confinement claims are Section 2241, which provides broad power for federal courts to grant the writ to individuals in state and federal custody, and Section 2254, which provides more limited power for federal courts to grant the writ to individuals in state custody. Individuals in federal custody can also attack unlawful sentences via Section 2255, but that section likely does not provide a basis for conditions-of-confinement claims. Section 2241 provides that:

> (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. Id. Section 2241 (a).

And:

> (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... (5) It is necessary to bring him into court to testify or for trial. Id. Section 2241(c).

Section 2254 meanwhile provides that:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. Id. Section 2254(a).

There are three key aspects of this statute that require analysis: (1) what "writ of habeas corpus" means, (2) in what circumstances the court can extend the writ of habeas corpus to state and federal prisoners, and (3) whether the remedies available would allow courts to redress conditions-of-confinement claims.

1. The Writ of Habeas Corpus.

The habeas statute notably does not define what a "writ of habeas corpus" actually is. It merely provides federal courts with the power to issue one. Id. Section 2241(a). So what is a writ of habeas corpus?

The origins of habeas corpus stretch back centuries. Developments in the Law - Federal Habeas Corpus, supra, at 1042. Its use evolved widely through both common law and statutory law, expanding from initially concerning only private custody to including custody by the Crown. Id. at 1042-45. The form of habeas corpus that is most well-known today - the form that involved illegal confinement - was habeas corpus ad subjiciendum. Id. at 1043 & n.8. Blackstone defines it as a writ "directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention, ... to do, submit to, and receive whatsoever the judge or court awarding such writ shall consider in that behalf." 3 WILLIAM BLACKSTONE, COMMENTARIES *131.

But habeas corpus ad subjiciendum was only one of multiple types of habeas corpus in England, see id. at *129-30; Charles Porterfield, Habeas Corpus, in 15 THE AMERICAN AND ENGLISH ENCYCLOPAEDIA OF LAW 125, 131-32 (David S. Garland & Lucius P. McGehee eds., 2d ed. 1900); and some of these other forms are also incorporated into U.S. law. See, e.g., 28 U.S.C. Section 2241(c)(5) (authorizing federal courts to issue writs of habeas corpus to bring prisoners to testify in court). Other types of habeas in England included the mandate to bring a prisoner before court (1) to testify or be prosecuted or tried in the proper jurisdiction (ad testificandum, prosequendum, and deliberandum), (2) to be charged with a new action when someone had a new cause of action against them (ad respondendum), (3) for the process of execution of a judgment if the prisoner had a judgment against him by a plaintiff (ad satisfaciendum), or (4) to remove the case from an inferior court to a superior one (ad faciendum et recipiendum). 3 BLACKSTONE, supra, at *129-30. Though they dealt with different purposes, the common element of these writs is that they involved directing the person who had custody of the prisoner to bring them into court. This understanding accords with the literal meaning of "habeas corpus": "You shall have the body." Habeas Corpus, MERRIAM-WEBSTER, https://

merriam-webster.com/dictionary/habeas%20corpus [https://perma.cc/F693-HKWX]. The essential definition of "writ of habeas corpus" has therefore historically been an order to produce the body of the person.

Turning to the text of today's habeas statutes, the definition of "writ of habeas corpus" is not limited merely to habeas corpus ad subjiciendum. First, both Title 28 U.S.C.S. Sections 2241 and 2254 suggest that the definition of "writ of habeas corpus" encompasses something broader than what the statute allows the courts to grant. Section 2241(a) first gives federal courts the power to grant the writ. Section 2241(c) then limits the breadth of that power, providing that the writ "shall not extend to a prisoner" unless one of the listed conditions is met. Similarly, Section 2254(a) grants the power to the federal courts to "entertain an application for a writ of habeas corpus" then limits that power to "only" if the individual is "in custody in violation of the Constitution or laws or treaties of the United States." The structure of each of these provisions suggests that Congress understood the possible scope of a "writ of habeas corpus" to be something courts could potentially issue in a wide range of circumstances and then limited the circumstances under which the writ can issue to prisoners.

Second, and more tellingly, Section 2241 incorporates elements that go beyond the writ of habeas corpus ad subjiciendum. Section 2241(c)(5) provides that a writ of habeas corpus may extend to a prisoner if "[i]t is necessary to bring him into court to testify or for trial." The use of the term "writ of habeas corpus" in this context clearly does not require an inquiry into the unlawfulness of confinement. Here, the term is presumably used in the sense of the old writs of habeas ad testificandum, prosequendum, and deliberandum. Thus, the words "writ of habeas corpus" here refer to the essential element of habeas corpus: the power to direct a person holding another in custody to bring that person into court.

There is a well-established textualist canon that presumes that the same words used throughout the same statute have the same meaning. See Stephen M. Durden, Textualist Canons: Cabining Rules or Predilective Tools, 33 CAMPBELL L. REV. 115, 138-40 (2010). Hence, the same instance of the words "writ of habeas corpus" in Section 2241(c) is used to refer to both the situation of bringing a prisoner to court to testify and to the situation of a prisoner who is in custody in violation of the laws of the United States. Therefore, "writ of habeas corpus" would merely mean an order to produce the body, whether for testifying or for inquiring into unlawful custody or for some other purpose.

Based on this interpretation, the statutory definition cannot mean something so narrow as what the Fifth Circuit suggested in Cook v. Hanberry, 592 F.2d 248, 249 (5th Cir. 1979) (per curiam), modified, 596 F.2d 658 (5th Cir. 1979) (per curiam). In Cook, the Fifth Circuit held that habeas corpus is not available to remedy unlawful conditions because the relief would merely be "equitably-imposed restraint, not freedom from otherwise lawful incarceration," and the court saw habeas's only purpose as providing freedom rather than a change in conditions. Id. Admittedly, habeas corpus ad subjiciendum was typically used for total freedom from confinement rather than a change in conditions. 3 BLACKSTONE, supra, at *131. But, as shown above, the statutory term "writ of habeas corpus" encompasses something broader than merely a situation in which the prisoner seeks release.

2. When the Writ May Extend to a Prisoner.

As discussed above, the habeas statutes begin by providing the federal courts with authority to grant a writ of habeas corpus, then limit that power only to certain situations. The second question that requires statutory analysis is when a prisoner falls under those situations. For individuals in federal custody, this question is easily resolved - Section 2241(c)(1) provides that the writ may extend to a prisoner who "is in custody under or by color of the authority of the United States or is committed for trial before some court thereof." This language tracks with the Judiciary Act of 1789, which empowered federal courts to grant habeas relief to individuals in custody under federal, rather than state, law. Under the statute, the federal courts may extend a writ of habeas corpus, that is, an order to produce the body, to anyone detained pursuant to federal law.

For state prisoners, the issue is more complicated. There is no catch-all provision for individuals in state custody similar to Section 2241(c)(1). Instead, federal courts can generally only issue writs of habeas to individuals in state custody if they are "in custody in violation of the Constitution or laws or treaties of the United States." See Title 28 U.S.C.S. Sections 2241(c)(3), 2254(a). Taking a plain-meaning approach, this language seems to encompass claims that the manner or conditions of a prisoner's custody violate federal law, even if the prisoner could be legally held in some form of custody. Someone who is in custody where the conditions constitute cruel and unusual punishment is "in custody

in violation of the Constitution." As the Sixth Circuit wrote in Coffin v. Reichard, "[a] prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law." Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944) (per curiam). Thus, someone who has further rights taken from them while in custody is "in custody in violation of" the law.

That the language of Sections 2241 and 2254 carries this meaning is reinforced by the "whole act" canon of construction, which requires "looking to the other parts of the statute to ensure the will of the legislature is executed." Nancy Staudt et al., Judging Statutes: Interpretive Regimes, 38 LOV. L.A. L. REV. 1909, 1934 (2005) (footnote omitted). Section 2255, the final section of the habeas corpus chapter, provides a remedy for federal custody in narrower circumstances, providing that:

> (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence. Title 28 U.S.C.S. Section 2255(a).

This language deals specifically with sentencing and is narrower than the broad language of Sections 2241 and 2254, which merely requires the prisoner to be "in custody in violation of the Constitution or laws or treaties of the United States." Where Congress uses different language within the same statute, that difference is deemed to be significant. Staudt et al., supra, at 1933. Here, given that they are part of the same chapter on habeas corpus and were amended at the same time in 1996, Sections 2241 and 2254 must, at least, mean something broader than Section 2255's mere violation in sentencing.

The alternative possible meaning of the phrase "in custody in violation of the Constitution or laws or treaties of the United States" would be that the fact of someone's being in custody at all is in violation of federal law. In other words, the person's being in custody, versus out of custody, is in violation of the Constitution or laws or treaties of the United States. But this reading is largely foreclosed by more than a century of precedent. In 1894, when the habeas statute employed nearly identical language, this Court in In re Bonner, 151 U.S. 242 (1894), held that the writ could issue where the prisoner had been validly convicted by a federal court but where the sentence imposed was unlawful because it was ordered to be carried out in a state prison instead of a federal one, in contravention of a federal law. Id. at 254-55, 262. The Court emphasized that the power to impose imprisonment does not allow for infliction of that

imprisonment in any manner desired. Id. at 258. Absent this rule, the Court noted, "[i]mprisonement might be accompanied with inconceivable misery and mental suffering, by its solitary character, or other attending circumstances," and "[d]eath might be inflicted by torture or by starvation, or by drawing and quartering." Id. Other courts have similarly allowed conditions-of-confinement claims to proceed insofar as they challenge the "place of confinement - for example, solitary confinement or maximum security detention within a hospital - even if other custody, perhaps within the same prison even, is valid. See, e.g., Krist v. Ricketts, 504 F.2d 887, 887 (5th Cir. 1974) (per curiam) ("Generally, habeas corpus has been available to persons who seek release from solitary confinement within the context of general incarceration."); Bryant v. Harris, 465 F.2d 365, 366-67 (7th Cir. 1972); Walters v. Henderson, 352 F. Supp. 556, 557 (N.D. Ga. 1972); Covington v. Harris, 419 F.2d 617, 623-24 (D.C. Cir. 1969); Miller v. Overholser, 206 F.2d 415, 419-20 (D.C. Cir. 1953).

As a practical matter, there is arguably a line that can be drawn between cases involving the "place" of confinement and other conditions of confinement, and many courts have attempted to draw it. But such a distinction is not evident from the statute itself. Place-based habeas cases have to do with custody that in some way violates federal law, not with whether the individual can be validly held in some form of custody. As the D.C. Circuit acknowledged in Aamer, the substantive inquiry courts apply in place of confinement and conditions-of-confinement challenges "will often be identical," asking at their core: "[D]o the conditions in which the petitioner is currently being held violate the law? Aamer v. Obama, 742 F.3d 1023, 1035 (D.C. Cir. 2014). Similarly, courts have consistently allowed Eighth Amendment challenges to the method of execution in capital punishment cases to proceed via habeas, even if the ultimate sentence to death is not being challenged. See, e.g., Hill v. McDonough, 547 U.S. 573, 579-80 (2006); Nance v. Comm'r, Ga. Dep't of Corr., 981 F.3d 1201, 1207 (11th Cir. 2020).

Thus, the better, more accurate meaning of "in custody in violation of the Constitution or laws or treaties of the United States" is the one that encompasses any unlawful custody, no matter the reason for its being unlawful. Even if such a reading were not adopted for state prisoners, federal prisoners would nevertheless continue to have access to the courts under Section 2241(c)(1), discussed at the beginning of this section.

3. What Remedy Is Available Under Habeas?

Having already established that "writ of habeas corpus" statutorily means an order to produce the body and that a writ of habeas corpus can extend to both federal and state prisoners, the final question is whether the available remedies fit with the complaint. The unequivocal answer here is that they do.

Historically, the writ of habeas corpus ad subjiciendum was used primarily to order release from unlawful custody. Fay v. Noia, 372 U.S. 391, 427 n.38 (1963), overruled in part by Wainwright v. Sykes, 433 U.S. 72 (1977); In re Medley, 134 U.S. 160, 173 (1890). But statutory changes have broadened the type of remedy available. Section 2243 of the habeas chapter outlines the procedures for issuing the writ, holding a hearing, and reaching a decision. Title 28 U.S.C.S. Section 2243. It provides that "[t]he court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." Id. This statutory directive is exceptionally broad and does not limit the remedies available to mere release from custody. As Justice Scalia noted in Wilkinson v. Dotson, 544 U.S. 74 (2005), the Court has "interpreted this broader remedial language to permit relief short of release." Id. at 85 (Scalia, J., concurring).

The most common approach courts have taken is a conditional release order, triggering release only if the unlawful aspects of custody are not corrected within a certain timeframe. See, e.g., Jackson v. Denno, 378 U.S. 368, 395-96 (1964); Harvest v. Castro, 531 F.3d 737, 741-42 (9th Cir. 2008); Gentry v. Deuth, 456 F.3d 687, 692 (6th Cir. 2006). The "sole distinction between a conditional and an absolute grant of the writ of habeas corpus is that the former lies latent unless and until the state fails to perform the established condition, at which time the writ springs to life." Gentry, 456 F.3d at 692. And conditional release orders may not be the only option available - as this Court wrote in Boumediene v. Bush, 553 U.S. 723 (2008), "the habeas court must have the power to order the conditional release of an individual unlawfully detained - though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." Id. at 779.

Conditions-of-confinement cases can be handled in the exact same manner as other habeas cases involving conditional release orders. The Court may order release if the unlawful conditions are not

remedied within a certain time period. Thus, there is nothing in the remedies available under habeas that forecloses the ability to bring claims challenging unlawful conditions.

Under this interpretation of the habeas statutes, courts have significant leeway to address conditions-of-confinement claims for those in federal custody and likely for those in state custody as well. But that power is still discretionary, given that the statute grants courts the power to issue writs of habeas corpus rather than a mandate to do so in certain circumstances. See Title 28 U.S.C.S. Section 2241.

E. COMMON LAW UNDERSTANDING OF HABEAS DOES NOT EXCLUDE CONDITIONS-OF-CONFINEMENT CLAIMS.

Under this view, "writ of habeas corpus" may indeed mean an order to produce the body, but only in a limited set of circumstances as they were defined under common law. In other words, courts have the power to issue writs of habeas corpus ad testificandum or habeas corpus ad subjiciendum, but they cannot or should not issue the writ in situations that would not have accorded with these prior definitions.

Justice Scalia provided a version of this reasoning in his concurrence in Wilkinson, 544 U.S. 74, 85-87 (2005) (Scalia, J., concurring). He acknowledged that the writ of habeas corpus has changed over time due to changes in the habeas statutes and judicial interpretations that allow for relief short of total release, such as the conditional release orders discussed above or orders to change the type of restraint from incarceration to parole. Id. at 86. But he emphasized that this expansion of habeas is different from "authoriz[ing] federal courts to order relief that neither terminates custody, accelerates the future date of release from custody, nor reduces the level of custody. Id. Justice Scalia wrote that such an expansion "would utterly sever the writ from its common-law roots." Id.

Looking at those common law roots, habeas corpus ad subjiciendum likely would not have encompassed conditions-of-confinement claims. It is not clear whether there are any decisions from England or the early years after the Founding that used habeas to challenge conditions of confinement. In fact, English decisions or early American cases directly on point do not appear to exist. See Richard

H. Fallon, Jr. & Daniel J. Meltzer, Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror, 120 HARV. L. REV. 2029, 2063 (2007) ("We have been unable to find decisions from the early Republic on the availability of habeas to challenge conditions of confinement.....").

However, the history of the writ also makes clear that it was a flexible remedy that evolved significantly over time. For example, English courts departed from a strict definition of custody involving physical restraint to grant the writ in cases where the party was only under a legal restraint, such as being indentured or being in the legal custody of a different parent. See Jones v. Cunningham, 371 U.S. 236, 238-39, 243 (1963) (discussing English cases and writing that habeas "is not now and never has been a static, formalistic remedy, its scope has grown to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty," id. at 243). Both the majority and the dissent in Boumediene acknowledged this flexibility, writing that "common-law habeas corpus was, above all, an adaptable remedy" and that "[i]ts precise application and scope changed depending upon the circumstances." Boumediene v. Bush, 553 U.S. 723, 779 (2008); see id. at 813 (Roberts, C.J., dissenting) ("[H]abeas is, as the majority acknowledges, a flexible remedy rather than a substantive right... . The shape of habeas review ultimately depends on the nature of the rights a petitioner may assert.").

Although this flexibility may not have extended to unlawful conditions at the time of the Founding or in England, that is not a reason to foreclose that pathway now. The relevant substantive constitutional principles regarding conditions-of-confinement claims were not yet developed in the early Republic. See Fallon & Meltzer, supra, at 2063. The Eighth Amendment barring cruel and unusual punishment was not ratified until 1791. Bryan A. Stevenson & John F. Stinneford, The Eighth Amendment, NAT'L CONST. CTR., https://constitutioncenter.org/interactive-constitution/interpretation/amendment-viii/clauses/103 [https://perma.cc/693G-AH74]. Even then (and for at least another century), punishments such as whipping, forced sterilization, and banishment were not seen as cruel or unusual. Stanley Mosk, The Eighth Amendment Rediscovered, 1 LOY. U. L.A. L. REV. 4, 9 (1968). Additionally, as Justice Scalia himself acknowledged in Wilkinson, the statutory grant of habeas authority to courts has changed over time, now allowing courts to "dispose of the matter as law and justice require" rather than merely ordering release. Wilkinson v. Dotson, 544 U.S. 74, 85 (2005) (Scalia, J., concurring) (quoting 28 U.S.C.S. Section 2243).

Based on this shift in both the habeas statutes and the substantive protections for incarcerated individuals, allowing habeas claims challenging unlawful conditions of confinement to proceed does not seem to conflict with core concepts of habeas. There may indeed be valid reasons for the federal courts to defer to prison administrators on certain conditions of confinement. But that decision is ultimately a discretionary one, not one that is mandated by the nature of habeas. And for conditions-of-confinement claims rising to the level of Eighth Amendment violations, there are strong reasons for courts to hear such claims. In particular, for federal prisoners with limited or perhaps no other form of relief, allowing such claims to proceed under habeas may be the only way to ensure a remedy for constitutional wrongs. As Professors Richard Fallon and Daniel Meltzer argue, completely stripping individuals of a path to remedy unconstitutional conditions may itself be unconstitutional "because it contravenes a broader postulate of the constitutional structure...: that some court must always be open to hear an individual's claim to possess a constitutional right to judicial redress of a constitutional violation." Fallon & Meltzer, supra, at 2063. Allowing individuals in federal custody to bring such claims under habeas would resolve this constitutional concern.

F. CONGRESS NEVER INTENDED PLRA TO FORECLOSE THE USE OF HABEAS FOR UNLAWFUL CONDITIONS OF CONFINEMENT.

Some courts, like the Ninth Circuit, have argued that the PLRA demonstrates Congress's intent that all conditions-of-confinement claims should be channeled through vehicles other than habeas, such as Section 1983 for individuals in state custody. Nettles v. Grounds, 830 F.3d 922, 932-33 (9th Cir. 2016). Such a view is inherently circular and fails to adequately anchor itself in the text of the PLRA.

The PLRA was enacted to reduce prisoner litigation and restrict the actions federal courts could take on such cases. See Alexander, supra, at 11. It includes provisions increasing filing fees, requiring exhaustion of administrative remedies before filing litigation regarding prison conditions, and limiting the types of prospective relief courts can provide. See id. at 11-14; 42 U.S.C. Section 1997e(a); 28 U.S.C. Section 1915(b), (f)(2); 18 U.S.C. Section 3626. The exhaustion requirements apply to actions "brought with respect to prison conditions under section 1983... or any other Federal

law," the filing fee requirements apply to any "civil action" brought by a prisoner, and the prospective relief portions apply to "any civil action with respect to prison conditions."

Other courts have held that the filing fee requirements in the PLRA do not apply to habeas petitions because habeas does not count as a "civil action." See, e.g., Walker v. O'Brien, 216 F.3d 626, 628-29 (7th Cir. 2000) (collecting cases); Carson v. Johnson, 112 F.3d 818, 820 (5th Cir. 1997); McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811-12 (10th Cir. 1997); see also Katherine Bennett & Rolando V. del Carmen, Note, A Review and Analysis of Prison Litigation Reform Act Court Decisions: Solution or Aggravation?, 77 PRISON J. 405, 431-32 (1997) (discussing circuit split over Section 2241 habeas actions). This distinction has provided fodder for courts attempting to exclude conditions-of-confinement claims from habeas and restrict them to Section 1983 - a civil action. For example, the Ninth Circuit has reasoned that allowing petitioners to bring such claims through habeas instead of Section 1983 would allow them to evade the PLRA's requirement by simply changing the label on their lawsuit, an outcome that would "wholly frustrate explicit congressional intent." Nettles v. Grounds, 830 F.3d 922, 932 (9th Cir. 2016) (quoting Preiser v. Rodriguez, 411 U.S. 475, 489 (1973)); see also id. at 931-33.

However, this reasoning is circular in a way that fails to show Congress intended the PLRA to foreclose the use of habeas for unlawful conditions of confinement. A key feature of the cases distinguishing habeas from other civil actions is their focus on the inability to bring conditions-of-confinement claims under habeas. For example, in McIntosh v. U.S. Parole Commission, 115 F.3d 809 (10th Cir. 1997), the Tenth Circuit wrote that habeas "attacks the fact or duration of a prisoner's confinement and seeks the remedy of immediate release or a shortened period of confinement," whereas a civil rights action "attacks the conditions of the prisoner's confinement and requests monetary compensation for such conditions." Id. at 812 (quoting Rhodes v. Hannigan, 12 F.3d 989, 991 (10th Cir. 1993)). Because the distinction courts have drawn between "civil actions" and habeas turns on conditions-of-confinement claims being excluded from habeas, it is circular for courts to use that distinction to support the assertion that such claims must be excluded from habeas. It is tantamount to asserting that "conditions-of-confinement claims are not cognizable in habeas because they are not cognizable in habeas."

An alternative to the Ninth Circuit's approach that would avoid both the concerns that court expressed and this circular reasoning would be to simply apply the PLRA's hurdles to any conditions-of-confinement claims, even if brought under habeas. The D.C. Circuit, for example, noted the possibility of this approach in Blair-Bey v. Quick, 151 F.3d 1036 (D.C. Cir.), reh'g granted, 159 F.3d 591 (D.C. Cir. 1998), writing that if conditions-of-confinement claims can be brought under habeas, they "would have to be subject to the PLRA's filing fee rules, as they are precisely the sort of actions that the PLRA sought to address." Id. at 1042.

Turning to the text of the PLRA, there is strong support for the argument that Congress understood habeas to potentially cover conditions-of-confinement claims. The prospective relief sections of the PLRA apply to "any civil action with respect to prison conditions," defined as: "[A]ny 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, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison." Title 18 U.S.C.S. Section 3626(g)(2). Applying the textualist canon that calls for avoiding rendering language superfluous, see Staudt et al., supra, at 1933, a clear interpretation of this definition is that Congress thought habeas could encompass something broader than challenges to the fact or duration of confinement. The last nine words of this definition - "challenging the fact or duration of confinement in prison" - would be wholly unnecessary if Congress believed that habeas corpus proceedings could only apply to challenges to the fact or duration of confinement, as some courts, like the Ninth Circuit, have now ruled. Nettles v. Grounds, 830 F.3d 922, 933 (9th Cir. 2016).

Some might argue this text merely shows the fact that Congress was aware that some courts had interpreted habeas as applying to conditions-of-confinement claims and wanted to ensure habeas could not be used as a judicial runaround for the PLRA. Even if true, this view does not show that Congress intended to foreclose habeas as an option for conditions-of-confinement claims. At most, it shows that Congress intended the PLRA to apply to all conditions-of-confinement claims, whatever the vehicle. Indeed, Congress enacted changes to the habeas statutes in the same year as the PLRA, erecting greater hurdles to habeas relief via AEDPA. Had that Congress wanted to foreclose conditions-of-confinement relief under habeas, it could have done so at the same time.

If the PLRA does indeed apply to all conditions-of-confinement claims, including those brought under habeas, this case's argument may not have much immediate impact on claims of those in state custody, given that Section 1983 may provide an easier path to relief. However, individuals in federal custody still stand to benefit if the present case is granted review, even if such claims are subject to the PLRA, because there is no Section 1983 alternative available for individuals in federal custody.

G. SUSPENSION OF THE WRIT OF HABEAS CORPUS.

The present day writ of habeas corpus has been called the "common law world's 'freedom writ'" and the "highest safeguard of liberty," Smith v. Bennett, 365 U.S. 708, 712 (1961). The purpose of the writ of habeas corpus, which can be traced in English law to as early as 1166, has been described as follows: "From its earliest days, the Supreme Court has emphasized the central role of the writ of habeas corpus in Anglo-American jurisprudence in protecting individual liberty." Mojica v. Reno, 970 F. Supp. 130, 158-159 (E.D.N.Y. 1997). The "great object of [the writ of habeas corpus] is the liberation of those who may be imprisoned without sufficient cause. It is in the nature of a writ of error, to examine the legality of the commitment." Ex Parte Watkins, 28 U.S. (3 Pet.) 193, 202, 7 L. Ed. 650 (1830). The writ, along with the right to trial by jury, is among the most fundamental features distinguishing a free society from one in which unbridled and arbitrary imprisonment is used as an instrument of tyranny. See Johnson v. United States, 333 U.S. 10, 17 n.8 (1948).

Habeas corpus is a collateral process that exists, in Justice Holmes' words, to "cu[t] through all forms and g[o] to the very tissue of the structure." Frank v. Mangum, 237 U.S. 309, 346 (1915) (dissenting opinion). That the Framers considered the writ such a vital instrument for the protection of individual liberty is evident from the care taken to specify the limited ground for its suspension: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Art. 1, Sect. 9, cl. 2; see Amar, Of Sovereignty and Federalism, 96 Yale L. J. 1425, 1509, n. 329 (1987) ("[T]he non-suspension clause is the original Constitution's most explicit reference to remedies").

This Court is now presented with a situation in which potential petitioners are effectively banned

from seeking habeas relief because any constitutional rights or claims are made unavailable. The indeterminate interplay between the constitutional and statutory guarantees of habeas corpus under this Court's precedents and the current state of circuit law operate in a manner in which Section 2241 proceedings implicate the Suspension Clause. To divorce the writ from the law is to destroy the writ.

Boumediene invalidated MCA Section 7's attempt to strip federal courts of habeas jurisdiction over claims by a specified class of non-citizen detainees ("unlawful enemy combatants"), but did not determine the "content of the law that govern petitioners' detention," 128 S. Ct. 2229, 171 L. Ed. 2d 41, or the extent to which Section 2241's substantive provisions affect the constitutional "procedural protections of habeas corpus." Id. Section 2241 broadly confers jurisdiction over a habeas corpus action by any person who claims to be held "in custody in violation of the Constitution or laws or treaties of the United States." See Rasul v. Bush, 542 U.S. 446, 473 (2004). Petitioner's confinement conditions violate Federal law, yet he has been precluded from invoking the "Great Writ" in the manner provided by Congress. In failing to extend the privilege of habeas for conditions-of-confinement claims, most courts in this country have suspended the "Privilege of the Writ of Habeas Corpus" in violation of the Constitution.

REASONS FOR GRANTING THE PETITION

1. THERE IS A PRONOUNCED CONFLICT AMONG THE CIRCUITS AS TO WHETHER CONFINEMENT CONDITION CLAIMS CAN BE ATTACKED THROUGH THE USE OF A WRIT OF HABEAS CORPUS THAT CAN ONLY BE EFFECTIVELY RESOLVED BY THIS COURT TO GAIN A UNIFORM INTERPRETATION OF FEDERAL HABEAS LAW.

This Court has "left open the question whether [petitioners] might be able to challenge their confinement conditions via a petition for a writ of habeas corpus." Ziglar v. Abbasi, 137 S. Ct. 1843, 1862-63, 198 L. Ed. 2d 290 (2017) (leaving open the possibility that, instead, detainees may seek injunctive relief to challenge large-scale policy decisions concerning conditions imposed on hundreds of prisoners); see also Bell v. Wolfish, 441 U.S. 520, 526 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.").

However, the landmark precedent for determining whether inmate suits challenging particular aspects of prison conditions may be brought under the federal habeas statute is Preiser v. Rodriguez, 411 U.S. 475 (1973). Preiser held that inmates challenging the deprivation of good-conduct time credits must sue under the federal habeas statute, 28 U.S.C. Section 2254, and not under 42 U.S.C. Section 1983, because such a suit necessarily challenges the duration of the inmates' confinement. See id. at 487-88; see also id. at 490 ("Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of Section 1983."). Even when prisoners only sought to shorten their sentences, the Preiser Court held, such a challenge falls within the "core" of habeas corpus by "attacking the very duration of their physical confinement itself." Id. at 487-88; see also id. at 498 (defining suits "challenging the fact or duration of... physical confinement" and seeking "immediate release or a speedier release from that confinement" and the "heart of habeas corpus").

Preiser did not stop there. In response to the prisoners' argument that numerous challenges to prison conditions had been sustained under Section 1983, the Court concluded that "a Section 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the condition of his prison life, but not to the fact or length of his custody." Id. (emphasis added). Instead, the Court reiterated that its holding spoke only to the limits of Section 1983 as a remedy: "We need not in this case explore the appropriate limits of habeas corpus as an alternative remedy to a proper action under Section 1983. That question is not before us. What is involved here is the extent to which Section 1983 is a permissible alternative to the traditional remedy of habeas corpus." Id. at 500.

Dissenting, Justice Brennan expanded on the reserved question: "Even under the [Preiser majority's] approach, there are undoubtedly some instances where a prisoner has the option of proceeding either by petition for habeas corpus or by suit under Section 1983." Id. at 504 (Brennan, J., dissenting); see also id. at 506 ("Some instances remain...where an action may properly be brought in habeas corpus even though it is somehow sufficiently distant from the 'core of habeas corpus' to avoid displacing concurrent jurisdiction under [Section 1983]."); id. at 503-04 ("The two statutes necessarily overlap."). Thus, both the majority and the dissent in Preiser suggested that there are some circumstances concerning prison conditions in which both habeas corpus and Section 1983 suits may lie -- that is, that the two remedies are not always mutually exclusive so long as the "core" or "heart" of habeas corpus is not implicated.

Like Preiser, Heck v. Humphrey, 512 U.S. 477 (1994), was a Section 1983 suit brought by an inmate. Unlike Preiser, however, in Heck the inmate sought only damages as a remedy for alleged constitutional violations committed during his initial arrest and confinement, not injunctive relief or release from custody. See id. at 479. Heck concluded that a damages action is not cognizable under Section 1983 if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence... unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." Id. at 487. Enunciating what has since become known as the "favorable termination" rule, Heck held that, when a Section 1983 claim would necessarily implicate the validity of the plaintiff's conviction or sentence, "a Section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Id. at 486-87; see also Muhammad v. Close, 540 U.S. 749 (2004) (per curiam) (summarizing the relationship between Preiser and Heck.).

Also, like Preiser, Heck addressed only the limited reach of Section 1983 with regard to prisoner suits. It did not set out any concomitant limitation on habeas jurisdiction or hold that the habeas and Section 1983 causes of action are mutually exclusive. See also Nelson v. Campbell, 541 U.S. 637 (2004) ("Constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of [Preiser's] core and may be brought pursuant to Section 1983 in the first instance." (emphasis added)).

Thus, although this Court's case law makes clear that Section 1983 is not available where a prisoner's claim "necessarily" implicates the validity or duration of confinement, it does not set out any mirror-image limitation on habeas jurisdiction. The Court's central concern, in all of the cases cited above, has been with how far the general remedy provided by Section 1983 may go before it intrudes into the more specific realm of habeas, not the other way around. At the same time, though the Court has so suggested, it has never squarely held that there is an area of overlap between state habeas and Section 1983 prisoner suits. Instead, it has policed the distinction between the two remedies solely by defining the limits of Section 1983, as in Heck, and by defining those classes of claims that must be brought through habeas, as in Preiser. Put simply, when this Court has concerned itself with the interaction between Section 1983 and habeas, it has looked in only one direction.

Since Preiser, a circuit split has deepened on this question. Seven of the ten circuits that have addressed the issue in a published decision have concluded that claims challenging the conditions of confinement cannot be brought in a habeas petition. Compare Nettles v. Grounds, 830 F.3d 922, 933-34 (9th Cir. 2016) (adopting the view post-Preiser that conditions-of-confinement claims, which fall outside "the core of habeas corpus," must be brought in a civil rights claim rather than in a habeas petition), Spencer v. Haynes, 774 F.3d 467, 469-70 (8th Cir. 2014) (same), Cardona v. Bledsoe, 681 F.3d 533 537 (3d Cir 2012) (same), Davis v. Fechtel, 150 F.3d 486, 490 (5th Cir. 1998) (same), McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811-12 (10th Cir. 1997) (same), Graham v. Broglin, 922 F.2d 379, 381 (7th Cir. 1991) (same), and Martin v. Overton, 391 F.3d 710, 714 (6th Cir. 2004) (same), with Aamer v. Obama, 742 F.3d 1023, 1036 (D.C. Cir. 2014) (prisoners can challenge the form of detention under habeas), Jiminian v. Nash, 245 F.3d 144, 146-47 (2d Cir. 2001) (allowing prisoners to challenge "prison disciplinary actions, prison transfers, type of detention and prison conditions" as "challenges [to] the execution of a federal prisoner's sentence" under Section 2241), and Miller v. United States, 564 F. 2d 103, 105 (1st Cir. 1977) (holding conditions-of-confinement claims are cognizable under Section 2241).

Federal prisoners should not be given different access to federal courts based upon their location. Regardless of what standard of review is applied, it should be the same across jurisdictions, otherwise courts will continue to treat people differently, with some prisoners receiving more justice than others. Why should an inmate raising a habeas petition in the D.C. circuit have a better chance at challenging his confinement conditions than a prisoner raising a petition in the Sixth Circuit? For this reason and the fact that it is solely the prerogative of this Court to say what the law of the land is, the instant petition for certiorari should be granted.

2. THIS CASE RAISES A GENUINE AND SUBSTANTIAL QUESTION OF CONSTITUTIONAL LAW THAT HAS MATURED BUT THAT HAS NOT YET BEEN CONSIDERED BY THIS COURT AND IS NECESSARY AND PROPER FOR THE REASON THAT FEW AVENUES OF RELIEF EXIST FOR FEDERAL PRISONERS SEEKING TO CHALLENGE UNLAWFUL CONDITIONS OF CONFINEMENT.

"[I]n our tripartite system of government," it is the duty of this Court to "say 'what the law is.'" Boumediene v. Bush, 553 U.S. 723, 765 (2008) (quoting Marbury v. Madison, 1 Cranch 137, 177, 2 L. Ed. 60 (1803)). This duty is particularly compelling in cases that present an opportunity to decide the constitutionality or enforceability of federal statutes in a manner "insulated from the pressures of the moment," and in time to guide courts and the political branches in resolving difficult questions concerning the proper "exercise of governmental power." Hamdan v. Rumsfeld, 548 U.S. 557, 637 (2006) (Kennedy, J., concurring in part); see generally Sanchez-Llamas v. Oregon, 548 U.S. 331, 353-354 (2006); Hamdan, supra, at 588 (quoting Ex parte Quirin, 317 U.S. 1, 19 (1942)). This is such a case.

The writ of habeas corpus occupies a position unique in American jurisprudence. Moreover, the Suspension Clause, U.S. Const. art. 1, sect. 9, cl. 2, protects the rights of the detained by a means consistent with the essential design of the United States Constitution. It ensures that, except during periods of formal suspension, the judiciary will have a time-tested device, the writ, to maintain the delicate balance of government that is itself the surest safeguard of liberty. The Clause protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailor to account.

In Preiser, this Court left open the possibility that litigants could use writs of habeas corpus to challenge their confinement conditions. See 411 U.S. at 499 ("This is not to say that habeas corpus may not also be available to challenge such prison conditions. When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal."). Later, the Court expressly left "to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement." Bell v. Wolfish, 441 U.S. 520 (1979). After 46 years, that day has yet to arrive. More recently, in Nelson v. Campbell, 541 U.S. 637 (2004), the Court held that some "civil rights damages actions... fall at the margins of habeas," implying that in some circumstances civil rights actions and writs of habeas corpus

may be coextensive.

While this Court has left the door open a crack for habeas corpus claims challenging prison conditions, it has never found anything that qualified. Without further guidance from the Court, lower courts will be left to continue to shape habeas law as they see fit. See, e.g., Bradley v. Evans, 2000 U.S. App. LEXIS 22403, at *12-*13 (6th Cir. Aug. 23. 2000), cert denied, 531 U.S. 1023 (2000) ("This area of the law remains in flux... . A guiding hand from the Supreme Court...seems very much in order to prevent future courts from losing their way in this forest of uncertainty."); Jenkins v. Haubert, 179 F.3d 19, 25 (2d Cir. 1999) (Preiser, Heck, and Edwards "have generated confusion in the lower courts").

In sum, turning to the habeas statutes themselves, there is nothing in the text that excludes unlawful conditions-of-confinement claims. The statutory term "writ of habeas corpus" merely means an order to produce the body, and the federal courts are afforded wide latitude to deal with the matter "as law and justice require." Given this latitude, the federal courts perhaps may decline to provide relief on conditions-of-confinement claims, but that abstention would be discretionary and cannot be based on the assertion that such claims are not cognizable under habeas corpus.

There are far better solutions for remedying unlawful and unconstitutional conditions than by simply allowing challenges to them to proceed under habeas. First and foremost of these would be ceasing to subject individuals to inhumane and unlawful conditions. Another would be providing a better avenue for incarcerated individuals to challenge such conditions. But while people continue to be incarcerated in such conditions, the courts should not take it upon themselves to cut off one of the only forms of relief available and providing guidance in this case would allow the Court to say what the law is while ensuring the lower courts discharge their responsibilities over habeas cases, and will spare prisoners and the Government years of unnecessary litigation. These considerations alone justify review and are reason enough to grant certiorari in this case.

CONCLUSION

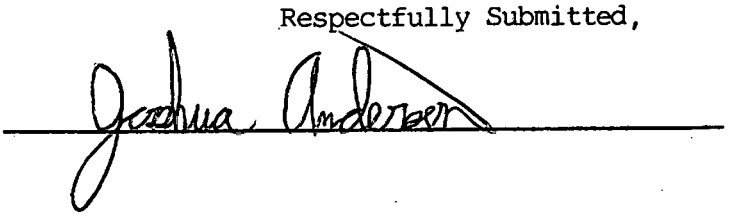
The confusion in the circuit courts leading to this unconstitutional suspension of the writ of habeas corpus in violation of Article I calls for this Court to intervene and provide clarity on the proper standard of review in conditions-of-confinement habeas cases. Allowing confinement condition claims to survive

habeas scrutiny would ease anxieties related to the perceived lack of sufficient judicial protections afforded to this country's prisoners.

This petition for a writ of certiorari should, therefore, be granted.

Dated: February 28, 2025.

Respectfully Submitted,



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