

No. 17-6853

IN THE SUPREME COURT OF THE UNITED STATES

SAIFULLAH PARACHA, PETITIONER

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

CHAD A. READLER
Acting Assistant Attorney General

MATTHEW M. COLLETTE
MICHAEL SHIH
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether federal statutory provisions that address the release or movement of alien enemy combatants detained at the United States Naval Station in Guantanamo Bay, Cuba, are invalid because they constitute bills of attainder.

2. Whether the district court erred in holding that petitioner lacked Article III standing to bring bill-of-attainder claims in this habeas action.

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-6853

SAIFULLAH PARACHA, PETITIONER

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The judgment of the court of appeals (Pet. App. 11-12) is not published in the Federal Reporter but is reprinted at 697 Fed. Appx. 703. The opinion of the district court (Pet. App. 1-6) is reported at 194 F. Supp. 3d 7. A related opinion of the district court (Pet. App. 7-9) is not published in the Federal Supplement but is available at 2016 WL 4074124.

JURISDICTION

The judgment of the court of appeals was entered on April 25, 2017. A petition for rehearing was denied on July 7, 2017 (Pet. App. 13-14). The petition for a writ of certiorari was filed on

September 27, 2017. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a Pakistani national who the United States has determined is an enemy combatant. Pet. App. 12. Since 2004, the United States has detained petitioner at the United States Naval Station in Guantanamo Bay, Cuba, pursuant to the Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, as informed by the law of war. See Pet. 4. In November 2004, petitioner initiated this civil action by filing a petition for a writ of habeas corpus, seeking his release from military custody. Habeas Pet. (Nov. 17, 2004) (Doc. 1); see Am. Habeas Pet. (Dec. 10, 2004) (Doc. 11). In 2011, the district court granted petitioner's motion to stay the proceedings. Order (May 4, 2011) (Doc. 367). In 2016, the court lifted the stay at petitioner's request. Minute Order (Mar. 18, 2016).

The United States has repeatedly reviewed the propriety of petitioner's detention and determined that his continued detention remains necessary. In 2009, the Guantanamo Review Task Force reviewed petitioner's case, determined that he should not be transferred or released from military detention, and referred petitioner for potential prosecution. Notice 1-2 (July 8, 2013) (Doc. 389); id. Ex. 1, at 4; see Exec. Order No. 13,492, § 4(a), (c)(2) and (3), 3 C.F.R. 205-206 (2009 Comp.). In 2016, the Periodic Review Board reviewed petitioner's case and determined

that petitioner should remain in military detention as “a continuing significant threat” in light of, inter alia, his “past involvement in terrorist activities, including contacts and activities with Usama Bin Laden, Kahlid Shaykh Muhammad and other senior al-Qaeda members, facilitating financial transactions and travel, and developing media for al-Qaeda.” Periodic Review Board, Unclassified Summary of Final Determination (Apr. 7, 2016), <http://go.usa.gov/x9JKg>; see Exec. Order No. 13,567, §§ 2-3, 3 C.F.R. 227-229 (2011 Comp.). In 2017, the Board completed its second review of petitioner’s case and determined that petitioner’s continued detention “remains necessary” in light of, inter alia, his “continued refusal to take responsibility for his involvement with al-Qa’ida” and his “indifference to the impact of his prior actions.” Periodic Review Board, Unclassified Summary of Final Determination (Apr. 20, 2017), <https://go.usa.gov/xNN2F>.

2. a. In April 2015, petitioner filed a motion for summary judgment in his habeas case. Mot. for Summ. J. (Apr. 30, 2015) (Doc. 401). Although petitioner had not filed a pleading raising any bill-of-attainder-based claims, see Am. Habeas Pet. (Doc. 11); Pet. App. 1 n.1, petitioner’s summary-judgment motion, as supplemented, asked the district court to “declare[] invalid and void” 32 statutory provisions as unconstitutional bills of attainder. Mot. for Summ. J. 6; see Pet. App. 1 & n.1. Those provisions -- many of which have expired, have been repealed, or

are no longer effective -- fall into four categories. See Gov't C.A. Br. 4-7 & Addendum (Add.) A1-A4.

Ten of the challenged provisions prohibit, in nearly identical terms, the use of appropriated funds to "transfer" or "release" alien Guantanamo detainees "to or within the United States, its territories, or possessions." See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. B, Tit. V, § 527, 129 Stat. 2329; see also Gov't C.A. Br. 4 & Add. A1 (listing other provisions).

Eleven provisions place restrictions on preparing facilities for Guantanamo detainees. Of those, ten prohibit, in substantively identical terms, the use of appropriated funds "to construct, acquire, or modify any facility in the United States, its territories, or possessions" (other than to modify facilities at Guantanamo Bay) "to house [alien Guantanamo detainees] for the purposes of detention or imprisonment in the custody or under the effective control of the Department of Defense." E.g., Consolidated Appropriations Act, 2016, Div. B, Tit. V, § 528(a) and (b), 129 Stat. 2329; see Gov't C.A. Br. 5 & Add. A2 (listing other provisions). The eleventh provision, which has expired, prohibited the use of FY2015 appropriated funds "to construct new facilities at Guantanamo Bay, Cuba," until the Secretary of Defense certified that any new construction would have "enduring military value independent of a high value detention mission." Carl Levin and

Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 2808, 128 Stat. 3699.

Six provisions concern the transfer or release of Guantanamo detainees to foreign countries. Two prohibit the use of appropriated funds to "transfer" or "release" Guantanamo detainees to four countries (Libya, Somalia, Syria, and Yemen). See Consolidated Appropriations Act, 2016, Div. M, Tit. VI, § 603, 129 Stat. 2929; National Defense Authorization Act for Fiscal Year 2016 (NDAA FY2016), Pub. L. No. 114-92, § 1033, 129 Stat. 968-969. Four others require the Secretary of Defense to provide certain notifications or certifications before appropriated funds may be used to transfer or release Guantanamo detainees to any other country. E.g., NDAA FY2016 § 1034(a) and (b), 129 Stat. 969 (requiring certification that, inter alia, a transfer is in "the national security interests of the United States" and that the receiving government has agreed to "substantially mitigate any risk the [detainee] could attempt to reengage in terrorist activity"); see Gov't C.A. Br. 6; id. Add. A4 (listing other provisions).

The five remaining provisions impose reporting requirements on the Executive Branch to facilitate congressional oversight of operations at the Guantanamo detention facility. See Gov't C.A. Br. 7. Two provisions require the Secretary of State to notify Congress "[n]ot later than 5 days after the conclusion of an agreement with a country * * * to receive by transfer or release individuals detained at United States Naval Station, Guantanamo

Bay, Cuba.”¹ The three other provisions required that the Executive Branch provide one-time reports to Congress containing (1) a “plan for the disposition” of Guantanamo detainees, NDAA FY2016 § 1035(b)(4), 129 Stat. 972; (2) a list of, and information about, detainees whom the Executive Branch deemed high- or medium-risk threats to the United States, its interests, or its allies, id. § 1037(a) and (b), 129 Stat. 973; and (3) information about prior agreements between the United States and foreign countries regarding the transfer or release of detainees to those countries, id. § 1040, 129 Stat. 975. The Executive Branch provided those reports to Congress.²

b. The district court denied petitioner’s motion for summary judgment and dismissed his purported bill-of-attainder claims. Pet. App. 1-6. The court noted that petitioner had “conceded” both that his bill-of-attainder claims challenging 32 statutory provisions are “separate claim[s]” from the claim in his

¹ See Consolidated Appropriations Act, 2016, Div. K, Tit. VII, § 7064, 129 Stat. 2810; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. J, Tit. VII, § 7082, 128 Stat. 2683-2684.

² See Dep’t of Defense, Plan for Closing the Guantanamo Bay Detention Facility (Feb. 2016), available at <https://www.defense.gov/News/News-Releases/News-Release-View/Article/671225/statement-by-pentagon-press-secretary-peter-cook-on-submission-of-guantanamo-cl/> (providing link to Section 1035(b)(4) report); Dep’t of Defense, Fiscal Year 2016 National Defense Authorization Act Section 1037(a) (Feb. 12, 2016) (report classified in part); Dep’t of Defense, Report to Congress on Terms of Written Agreements with Foreign Governments Regarding Transfer of Detainees at United States Naval Station, Guantanamo Bay, Cuba (June 1, 2016).

habeas petition challenging the “lawfulness of his detention,” id. at 2, and that the court’s resolution of his bill-of-attainder claims would not affect “his continued detention” or “his ability to be transferred,” id. at 4. The court then determined that it lacked jurisdiction over the bill-of-attainder claims on two grounds. Id. at 2-6.

First, the district court concluded that petitioner lacked Article III standing to challenge the 32 provisions, because petitioner failed to show that any of those provisions had caused him an injury-in-fact that would likely be redressed by the requested relief. Pet. App. 2-4.

Second, the district court concluded that it lacked statutory subject-matter jurisdiction over petitioner’s bill-of-attainder claims. Pet. App. 5-6. Section 2241(e)(1) of Title 28 provides that no court, justice, or judge shall have jurisdiction to hear “an application for a writ of habeas corpus” filed by an alien detainee who the United States has determined is an enemy combatant or who is awaiting such determination. 28 U.S.C. 2241(e)(1).³ Section 2241(e)(2) -- the provision at issue in this case --

³ This Court has held that Section 2241(e)(1) “operates as an unconstitutional suspension of the writ” of habeas corpus with respect to Guantanamo Bay detainees like petitioner. Boumediene v. Bush, 553 U.S. 723, 733, 792 (2008). The government does not contend that the district court lacks jurisdiction over petitioner’s pending habeas petition. But the present certiorari petition concerns only petitioner’s non-habeas bill-of-attainder claims.

further provides that, with an exception not relevant here, 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.

28 U.S.C. 2241(e)(2). The district court concluded that Section 2241(e)(2) deprived it of jurisdiction over petitioner's bill-of-attainder claims, which "obviously 'relate[]' to his confinement." Pet. App. 5-6 & n.3. The court added that the bill-of-attainder claims were non-habeas claims within the scope of Section 2241(e)(2), because they do "not actually challenge the legality of [petitioner's] confinement" or "any aspect of the place or conditions of his confinement" and thus do "'not sound in habeas.'" Id. at 5-6 (quoting Aamer v. Obama, 742 F.3d 1023, 1030 (D.C. Cir. 2014)).

c. The district court subsequently entered a Rule 54(b) partial final judgment dismissing the bill-of-attainder claims. Pet. App. 10; see id. at 7-9.

3. The court of appeals affirmed in a short, unpublished per curiam judgment. Pet. App. 11-12. The court stated that Section 2241(e)(2) "withdraws jurisdiction over any action other than habeas raised by a detained alien who 'has been determined by the United States to have been properly detained as an enemy

combatant.'" Id. at 12 (citation omitted). The court also stated that it had "repeatedly upheld the constitutionality of this provision insofar as it withdraws jurisdiction over 'any detention-related claims, whether statutory or constitutional,' that do not sound in habeas." Ibid. (quoting Janko v. Gates, 741 F.3d 136, 146 (D.C. Cir. 2014), cert. denied, 135 S. Ct. 1530 (2015), and citing Jawad v. Gates, 832 F.3d 364, 370-371 (D.C. Cir. 2016), cert. denied, 137 S. Ct. 2115 (2017)). The court concluded that Section 2241(e)(2) deprived the district court of jurisdiction to hear petitioner's bill-of-attainder claims, because "the Government has determined that [petitioner] is an enemy combatant" and petitioner's bill-of-attainder claims -- which "would not alter the fact, duration, or conditions of his confinement" even if they were successful -- "do not 'sound in habeas.'" Ibid.

ARGUMENT

The court of appeals correctly affirmed the dismissal of petitioner's bill-of-attainder claims on the ground that Section 2241(e)(2) deprived the district court of subject-matter jurisdiction over those claims. Pet. App. 11-12. Petitioner asks this Court to review that judgment by presenting two questions: whether certain federal statutory provisions are unconstitutional bills of attainder, Pet. ii, 13-16; and whether petitioner has Article III standing to bring his bill-of-attainder claims in this habeas action, Pet. ii, 10-13. The court of appeals did not resolve either of those questions, and its jurisdictional judgment would

be unaffected by this Court's resolution of them. Certiorari is therefore unwarranted on the two questions that petitioner presents.

In the body of his petition, petitioner also argues that Congress could not have constitutionally prohibited federal courts from exercising jurisdiction over his bill-of-attainder claims, Pet. 5-9, and that Section 2241(e)(2)'s jurisdiction-stripping provision should not be construed to apply to such claims, Pet. 9-10. Even if petitioner had properly presented those questions, petitioner's contentions would lack merit and would not warrant certiorari.

1. The two questions that petitioner presents (Pet. ii) are issues that the court of appeals did not resolve and that would not affect the court of appeals' judgment.

a. Petitioner's first question presented is whether certain statutory "restrictions on release, movement, or exchange of the prisoners held at Guantanamo Bay, Cuba, [are] invalid as bills of attainder." Pet. ii.⁴ Although petitioner does not address the text of any of the numerous statutes that he purports to challenge, he argues (Pet. 13-16) it is "clear" that those provisions "are bills of attainder," Pet. 13. The court of appeals -- like the district court, Pet. App. 1-6 -- did not address the merits of

⁴ Petitioner has not discussed any statutory provision that addresses the "exchange" of detainees.

petitioner's purported bill-of-attainder claims because that court affirmed the dismissal of such claims under Section 2241(e)(2) for want of statutory subject-matter jurisdiction. Id. at 11-12. Certiorari is thus unwarranted on petitioner's first question not only because the court of appeals did not resolve the issue, see Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."), but also because this Court's resolution of that merits question would not affect the lower courts' jurisdictional dismissal of petitioner's bill-of-attainder claims.

Moreover, petitioner never filed any pleading below asserting claims that the challenged statutes are unconstitutional bills-of-attainder, cf. Fed. R. Civ. P. 8, before moving for summary judgment on those (unpleaded) claims. See p. 3, supra. Petitioner has thus not properly presented any such claims in this case. If petitioner had initiated a civil action against the United States as the proper defendant on such claims, the district court would have determined whether to consolidate that separate civil action with this habeas proceeding against federal habeas respondents, notwithstanding petitioner's concession that his "separate" bill-of-attainder claims "will have no impact whatsoever upon his continued detention" or "his ability to be transferred," Pet. App. 2, 4.

Finally, even if petitioner's purported bill-of-attainder claims had been properly raised in this case, his arguments would

lack merit. See Jawad v. Gates, 832 F.3d 364, 371 (D.C. Cir. 2016), cert. denied, 137 S. Ct. 2115 (2017) (explaining that a “law is an unconstitutional bill of attainder if it ‘applies with specificity’ to a person or class and ‘imposes punishment’”) (citation omitted); Ali v. Obama, 736 F.3d 542, 545 (D.C. Cir. 2013) (explaining that “[m]ilitary detention of enemy combatants is a traditional, lawful, and essential aspect of successfully waging war” and “‘is devoid of all penal character’”) (citation omitted), cert. denied, 135 S. Ct. 118 (2014). The statutory provisions petitioner purports to challenge -- which he concedes “will have no impact whatsoever upon his continued detention” or “his ability to be transferred,” Pet. App. 4 -- are not bills of attainder because they do not apply with specificity to impose punishment on a class of persons.

b. Petitioner’s second question presented is whether he has Article III “standing to raise [the bill-of-attainder] question.” Pet. ii. Petitioner argues (Pet. 10-13) that his Article III “[s]tanding is self-evident” because “the government is taking action” against him, Pet. 11. But the court of appeals also did not address Article III standing. It instead affirmed on the ground that the district court lacked statutory subject-matter jurisdiction over petitioner’s purported bill-of-attainder claims. Pet. App. 11-12. Because the D.C. Circuit’s statutory jurisdictional ruling was itself sufficient to dispose of petitioner’s appeal, the court had no need to address whether Article III

jurisdiction was also lacking. See Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 578, 584-585 (1999) (explaining that “there is no unyielding jurisdictional hierarchy” that limits the ability of a “federal court to choose among threshold [jurisdictional] grounds” to dismiss a case, even when the existence of an Article III “case or controversy” is in doubt). And like the first question presented, this Court’s resolution of petitioner’s Article III standing would not alter the court of appeals’ judgment.

In any event, petitioner failed to carry his burden of establishing Article III standing on his purported bill-of-attainder claims. A “plaintiff must demonstrate [Article III] standing for each claim he seeks to press,” Davis v. FEC, 554 U.S. 724, 734 (2008) (citation omitted), and “each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation,” Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). Petitioner never submitted any pleading to assert his bill-of-attainder claims or to allege the components of Article III standing. Petitioner thus never alleged, inter alia, that the respondents in this habeas corpus action -- petitioner’s military custodian and the custodian’s civilian superiors -- caused any Article III injury through their enforcement of the Acts of Congress in question. Petitioner’s freestanding challenge to 32 statutory provisions could have been brought (if at all) only

against the United States, which petitioner has not named as a defendant. Cf. Pet. App. 2, 4 (noting petitioner's concession that his bill-of-attainder claims are "separate" claims that "will have no impact whatsoever on his continued detention").

Petitioner similarly failed to proffer evidence at summary judgment to support his Article III standing. Petitioner proffered no evidence that, inter alia, the statutory provisions that he seeks to challenge caused any portion of his continued detention or any cognizable injury distinct from that resulting from petitioner's independent "designation * * * as an enemy combatant" by the Executive Branch. See Pet. App. 3-4 (district court's Article III analysis). Nor has petitioner shown that any asserted "harm to his reputation" or any other injury-in-fact (id. at 4) is fairly traceable to the habeas respondents.⁵ Indeed, petitioner does not meaningfully contest the district court's Article III reasoning, and the three decisions on which petitioner relies (Pet. 11-13 & n.8) lend no support to his assertion of standing.⁶

⁵ Petitioner appears to assert facial bill-of-attainder challenges to the statutes in question, rather than challenge any particular actions by the habeas respondents. And because petitioner has not named the United States as a defendant, he cannot show that any defendant has caused any asserted Article III injury flowing from the enactment of the statutory provisions.

⁶ Petitioner's reliance (Pet. 11-12) on Bond v. United States, 564 U.S. 211 (2011), is misplaced. Bond provides that a criminal defendant has Article III standing to appeal her "conviction and sentence," because the resulting "'incarceration . . . constitutes a concrete injury, caused by the conviction and redressable by invalidation of the conviction.'" Id. at 217 (citation omitted).

2. Petitioner contends (Pet. 5-10) in the body of his certiorari petition that Section 2241(e)(2) “would itself be unconstitutional” if it were to deprive the district court of jurisdiction to consider his claim that the statutes he views as “legislative findings of guilt” are unconstitutional bills of attainder, Pet. 9, and that Section 2241(e)(2) should not be interpreted to apply to such claims, Pet. 9-10. Neither of the two questions that petitioner presents (Pet. ii), addresses the question of statutory jurisdiction under Section 2241(e)(2), see Sup. Ct. R. 14.1(a), and no such question concerning Section 2241(e)(2) would warrant certiorari in this case. Petitioner’s statutory contentions lack merit, and this case would be a poor vehicle for this Court’s discretionary review.

a. i. Petitioner is incorrect (Pet. 5-9) that Section 2241(e)(2) may not constitutionally preclude federal jurisdiction over his bill-of-attainder claims. Congress’s broad constitutional power to “ordain and establish” inferior federal courts, U.S. Const. Art. III, § 1, includes the “lesser power to ‘limit the jurisdiction of those Courts,’” Patchak v. Zinke, 138 S. Ct.

That does not apply here, where petitioner (as plaintiff) has sought to invoke federal jurisdiction to seek relief and must thus establish his Article III standing to assert his bill-of-attainder claims. Justice Powell’s concurring opinion in INS v. Chadha, 462 U.S. 919, 959-967 (1983), and the Court’s decision in Zivotofsky ex rel. Zivotofsky v. Kerry, 135 S. Ct. 2076, 2081-2096 (2015), are further afield. Cf. Pet. 12, 13 n.8. Neither even addresses Article III standing.

897, 906 (2018) (citation omitted). As such, Congress's "'control over the jurisdiction of the federal courts' is 'plenary,'" so long as it "does not violate other constitutional provisions." Ibid. (citation omitted). Congress could not completely preclude jurisdiction over habeas claims in this context, see Boumediene v. Bush, 553 U.S. 723, 733, 792 (2008) (holding Section 2241(e)(1) unconstitutional on this ground with respect to detainees at Guantanamo Bay), but Section 2241(e)(2) by its terms applies only to actions "other" than actions that sound in habeas, 28 U.S.C. 2241(e)(2). The D.C. Circuit has therefore "repeatedly upheld the constitutionality of [Section 2241(e)(2)] insofar as it withdraws jurisdiction over 'any detention-related claims, whether statutory or constitutional,' that do not sound in habeas." Pet. App. 12 (quoting Janko v. Gates, 741 F.3d 136, 146 (D.C. Cir. 2014) (emphasis omitted), cert. denied, 135 S. Ct. 1530 (2015), and citing Jawad, 832 F.3d at 370-371).

The D.C. Circuit has explained that Section 2241(e)(2)'s application to non-habeas actions "constitutionally applies" to "any detention-related claims, whether statutory or constitutional, brought by an alien detained by the United States and determined to have been properly detained as an enemy combatant." Janko, 741 F.3d at 146 (citing Al-Zahrani v. Rodriguez, 669 F.3d 315, 319-320 (D.C. Cir. 2012)); see Jawad, 832 F.3d at 370-371. The D.C. Circuit has also explained why petitioner's reliance on United States v. Klein, 80 U.S. (13 Wall.) 128 (1872), is

misplaced. See Janko, 741 F.3d at 146 (explaining that Klein only “applies where the Congress prescribes the outcome of pending litigation by means other than amending the applicable law”) (citations omitted). Petitioner failed to “acknowledge the substance of these precedents” in the court of appeals, Pet. App. 12, and petitioner again fails to address the D.C. Circuit’s precedents before this Court. Indeed, petitioner proffers (Pet. 6-9) no authority that casts doubt on the judgment below.

ii. Petitioner asserts (Pet. 10-11) that Section 2241(e)(2) should not apply to his bill-of-attainder claims because those claims are “unrelated to [his] confinement” and do not complain about “any ‘aspect of [his] detention, transfer, treatment, trial, or conditions of confinement,’” Pet. 10 (quoting 28 U.S.C. 2241(e)(2)). But beyond that bare assertion, petitioner does not explain why his bill-of-attainder claims fall outside Section 2241(e)(2)’s text, which extends to any non-habeas claim “relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement” of an alien enemy-combatant detainee, 28 U.S.C. 2241(e)(2) (emphasis added).

The ordinary meaning of the phrase “relating to” is a “broad one”: it means “‘to stand in some relation; to have bearing or concern; to pertain; refer; [or] to bring into association with or connection with.’” Morales v. Trans World Airlines, Inc., 504 U.S. 374, 383 (1992) (citation omitted). All of petitioner’s purported bill-of-attainder claims “relate” to the “detention” and

“transfer” of detainees like petitioner, because they challenge provisions that address the transfer and release from detention of those detainees. See pp. 3-6, supra. Even petitioner’s own question presented reflects that his bill-of-attainder claims address whether such statutory “restrictions on release” or “movement” of those detainees are invalid. Pet. ii.

b. In any event, this case would be a poor vehicle to address the scope of Section 2241(e)(2)’s jurisdictional bar, because petitioner also failed to establish Article III jurisdiction and because his purported bill-of-attainder claims are without merit. See pp. 11-14, supra.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

CHAD A. READLER
Acting Assistant Attorney General

MATTHEW M. COLLETTE
MICHAEL SHIH
Attorneys

JUNE 2018