No. 25-5930

In the Supreme Court of the United States

WILLIAM MAXWELL, PETITIONER

v.

ALBERT THOMAS, III, WARDEN

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

REPLY BRIEF FOR THE PETITIONER

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The court of appeals dismissed Mr. Maxwell's habeas petition challenging the wrongful denial of a transfer to a halfway house or home confinement on the ground—neither pressed by the government nor adopted by the district court—that a claim seeking to change the level of custody without accelerating release is never cognizable in habeas. The government does not dispute that the decision implicates an entrenched circuit conflict on the first question presented, namely whether a habeas petition is the proper procedural vehicle for a prisoner's claim challenging the level of custody. And the government concedes that Mr. Maxwell's claim was properly cognizable in habeas, meaning that the decision below falls on the wrong side of that conflict.

Having conceded the circuit conflict and the merits, the government tepidly suggests that the Court should nonetheless deny review because of two purported vehicle problems: that, in the government's view, Mr. Maxwell failed to exhaust administrative remedies, and that the decision below "reflects intracircuit tension." Br. in Opp. 8-10. But neither argument offers the slightest reason for the Court to stay its hand. As to the first, the court of appeals did not address the distinct exhaustion question, and this Court's ordinary practice would be to leave that question for the court of appeals to consider in the event of remand. As to the second, the purported tension the government identifies is the existence of an unpublished decision that, as the decision below explains, deviated from binding, published precedent. The rule in the Fifth Circuit is clear—and wrong.

This case is an obvious candidate for review. It implicates a well-developed 3-to-2 conflict on an important question about the dividing line between habeas and civil rights suits. This Court often grants review to resolve disagreements about that dividing line. And the specific issue here arises frequently and has great practical significance both to Mr. Maxwell and to the large number of federal prisoners relegated to a *Bivens* suit for level-of-custody challenges as long as the admittedly mistaken rule adopted by some courts stands uncorrected. This Court should grant review on the first question presented and appoint an amicus to defend the judgment below.*

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* Mr. Maxwell agrees with the government (Br. in Opp. 10-11) that because exhaustion was not addressed by the court of appeals, the second question presented does not warrant this Court's review. To the extent that it is not clear from Mr. Maxwell's pro se petition itself, Mr. Maxwell now confirms that he is only seeking to preserve the *Perttu* v. *Richards*, 605 U.S. 460 (2025), issue in the event that

A. The Decision Below Implicates An Entrenched Conflict Among The Courts Of Appeals

The First, Second, and Third Circuits hold that a prisoner who seeks to reduce his level of custody without accelerating his release—for instance by seeking a transfer to a halfway house or home confinement—can properly bring that challenge in a habeas petition under 28 U.S.C. 2241. The Fifth Circuit and the Eighth Circuit hold the opposite. In those two circuits, a claim is cognizable under Section 2241 only if a favorable ruling would "automatically entitle [the prisoner] to accelerated release," so a request for a reduction in the level of custody does not qualify. Pet. App. 1.2. That conflict is entrenched and well recognized, and the government does not dispute its existence. See Br. in Opp. 6-10. This Court should grant review to resolve the disagreement.

1. On one side of the conflict, the First, Second, and Third Circuits have held that a habeas petition is the appropriate vehicle for prisoners seeking to reduce their level of custody.

In *Gonzalez-Fuentes* v. *Molina*, 607 F.3d 864 (2010), the First Circuit held that where the "inmate is seeking neither a change in conditions nor an earlier release, but rather a less restrictive form of custody," then "habeas remains the appropriate vehicle." *Id.* at 873 & n.7. Applying that rule, it held that habeas petitions were the proper vehicle for claims by prisoners seeking to complete their sentence under electronic surveillance, rather than in prison. See *id.* at 873-874; see also *Muniz* v. *Sabol*, 517 F.3d 29, 33-34 (1st Cir. 2008); *United States* v. *Barrett*, 178 F.3d 34, 50 n.10 (1st Cir. 1999); Pet. 10, 13.

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this Court grants review on the first question presented and remands the case. See Pet. 21 (recognizing that the issue "need not be addressed here, in the first instance, by this Court").

The Second Circuit has likewise held that a habeas petition is "the proper vehicle to challenge confinement in a federal correctional center rather than a [halfway house]." *Levine* v. *Apker*, 455 F.3d 71, 77-78 (2006). The court reasoned that, based on the "plain language" of the statute, Section 2241 encompassed "matters such as 'the administration of parole, * * * *prison transfers*, type of detention and prison conditions.'" *Id.* at 78 (quoting *Jiminian* v. *Nash*, 245 F.3d 144, 146 (2d Cir. 2001) (Sotomayor, J.)); see Pet. 10, 13.

The Third Circuit also deemed cognizable a prisoner's Section 2241 petition challenging a regulation restricting his placement in a halfway house. See *Woodall* v. *Federal Bureau of Prisons*, 432 F.3d 235, 243-244 (2005). The court observed that carrying out a sentence at a halfway house was "very different from carrying out a sentence in an ordinary penal institution," and held that challenging limits on that transfer constituted a challenge to the "execution of the sentence." *Id.* at 242-243. The government recognizes that the Third Circuit's decision in *Woodall* is "inconsistent" with the Fifth Circuit's decision below, and it endorses *Woodall* as setting out the correct rule. Br. in Opp. 8.

2. The Fifth and Eighth Circuits have adopted the opposite rule, holding that a claim is cognizable in habeas only if it would automatically entitle the prisoner to accelerated release. According to those two courts, a level-of-custody claim must proceed under Section 1983 for state prisoners or under a (potentially nonexistent) *Bivens* cause of action for federal prisoners.

In *Melot* v. *Bergami*, 970 F.3d 596 (2020), the Fifth Circuit explained that it had long followed a "bright-line rule": "if a favorable determination of the prisoner's claim would not automatically entitle him to accelerated release, then the proper vehicle is a civil rights suit." *Id.* at 599

(quoting *Carson* v. *Johnson*, 112 F.3d 818, 820-821 (5th Cir. 1997)). Applying that rule, the court held that a challenge seeking "a change in confinement from a prison facility to home detention" did not involve a "release" from custody and must be brought as a "*Bivens* civil rights claim" rather than in habeas. *Ibid.*

In the decision below, the Fifth Circuit reaffirmed the circuit's "bright-line rule," Pet. App. 1.2 (quoting *Melot*, 970 F.3d at 599), holding that Mr. Maxwell's requested relief of transfer to a halfway house or home confinement was not cognizable under Section 2241 because "neither form of relief would entitle him to accelerated release." *Ibid.*

The Eighth Circuit also follows the accelerated-release test. That court has long held that "[i]f the prisoner is not challenging the validity of his conviction or the length of his detention, * * * then a writ of habeas corpus is not the proper remedy." *Kruger* v. *Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996); see *Spencer* v. *Haynes*, 774 F.3d 467, 469 (8th Cir. 2014). After the petition in this case was filed, the Eighth Circuit expounded on those precedents in considering a habeas petition challenging the denial of an expedited transfer to home confinement. *Fortner* v. *Eischen*, 170 F.4th 655, 657-658 (2026). The court emphasized that its decisions in *Kruger* and *Spencer* "appear to dispose of th[e] case" before it, and that the prisoner's arguments rely on cases "on the other side of the split." *Id.* at 658. And, citing the decision below, the court observed that the Fifth Circuit had come "to the same conclusion" that habeas was the proper vehicle. *Ibid.* (citing *Maxwell* v. *Thomas*, 133 F.4th 453, 454 (5th Cir. 2025) (per curiam)). Although the Eighth Circuit did not ultimately resolve the question because post-argument events mooted the case, see *id.* at 659, its analysis

leaves no doubt that the Eighth Circuit stands with the Fifth on the question presented.

3. Further illustrating the need for this Court's intervention, district courts outside the five circuits that have resolved this issue have repeatedly acknowledged the circuit conflict and are also split. Compare, *e.g.*, *Popoola* v. *Scales*, Civ. No. 25-390, 2025 WL 3473370, at *6-*7 (E.D. Va. Dec. 3, 2025); *Woolsey* v. *Washington*, Civ. No. 25-137, 2025 WL 2598794, at *8-*9 (M.D. Ala. Sept. 8, 2025); and *Mohammed* v. *Engleman*, Civ. No. 25-1011, 2025 WL 1909836, at *7 (C.D. Cal. July 9, 2025), with *Balsam* v. *Warden*, Civ. No. 24-360, 2025 WL 2687234, at *3-*4 (M.D. Fla. Sept. 19, 2025); and *Lustig* v. *Warden*, Civ. No. 20-3708, 2021 WL 1164493, at *2-*3 (C.D. Cal. Jan. 4, 2021).

B. The Decision Below Is Incorrect

The court of appeals affirmed the dismissal of Mr. Maxwell's habeas petition because the relief he requested was "transfer to a halfway house or home confinement" rather than "accelerated release." Pet. App. 1.2. Pursuant to the circuit's "bright-line rule," that claim is not cognizable in habeas but can be brought only in "a civil rights suit under *Bivens*." *Id.* at 1.1-1.2. As the government recognizes, this Court's precedents direct the opposite: habeas relief is generally available where the prisoner's claim would reduce the level of custody. See Br. in Opp. 7-8.

1. Section 2241 authorizes courts to grant "[w]rits of habeas corpus," including to prisoners who establish that they are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2241(a), (c)(3). This Court has recognized that habeas relief under Section 2241 is generally available where the relief sought would "terminate custody, accelerate the future date of

release from custody, [or] reduce the level of custody." *Skinner* v. *Switzer*, 562 U.S. 521, 534 (2011) (quoting *Wilkinson* v. *Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)) (alterations omitted); see Br. in Opp. 7. And as this Court recently noted, a challenge to a prisoner's "detention" may include arguments that a prisoner is "being detained in a place or manner not authorized by the sentence" or "has unlawfully been denied parole or good-time credits." *Jones* v. *Hendrix*, 599 U.S. 465, 475 (2023); see Br. in Opp. 8. Indeed, across administrations, the government has acknowledged the "settled principle" that claims challenging the "level of confinement" are cognizable in habeas. Br. in Opp. at 11, *Sands* v. *Bradley*, No. 23-488 (Mar. 8, 2024).

2. Mr. Maxwell brought a level-of-custody challenge in this case. His petition asserted that prison officials incorrectly calculated his good-time credits, and thus wrongfully denied his transfer out of a federal prison into a halfway house or home confinement. See Pet. 1-6, 16-17. The government acknowledges that the decision below is "inconsistent" with this Court's precedents "[t]o the extent" that it held Mr. Maxwell could not seek habeas relief "solely because application of [time] credits would not accelerate his release from custody." Br. in Opp. 8. And that is exactly what the court of appeals did in the decision below: the court held that "[Section] 2241 is not the proper vehicle" for Mr. Maxwell's claim because his requested relief "would [not] entitle him to accelerated release," dismissing on that basis without reaching the exhaustion argument actually pressed by the government. Pet. App. 1.2. This Court, the government, and Mr. Maxwell are thus in vigorous agreement that a claim such as Mr. Maxwell's can properly be brought in habeas.

C. The Question Presented Warrants Review In This Case

The government's muted opposition to further review turns on two purported vehicle arguments. Br. in Opp. 8-10. Neither poses an obstacle to review.

a. The government's lead argument is that certiorari is unwarranted because, in its view, Mr. Maxwell failed to exhaust administrative remedies. That argument is insubstantial.

As the government acknowledges (Br. in Opp. 8), the court of appeals "did not address exhaustion" because it rejected Mr. Maxwell's petition on the threshold ground that the loss of an opportunity to transfer to a halfway house or home confinement is not cognizable in habeas. See Pet. App. 1.2. And as the government has recently explained, "[t]his Court often grants review to address barriers to suit, regardless of whether other issues remain in the case." U.S. Br. at 23, *Havana Docks Corp.* v. *Royal Caribbean Cruises, Ltd.*, No. 24-983 (Aug. 27, 2025) (collecting cases); see also, *e.g.*, *Whitman* v. *Department of Transportation*, 547 U.S. 512, 514-515 (2006) (leaving for remand "whether the petitioner has exhausted his administrative remedies"). The government does not explain how the possibility that it would ultimately prevail on exhaustion could hamper this Court's review of the logically antecedent and entirely distinct question whether this type of claim is cognizable in habeas in the first instance.

Nor, in any event, is the government correct to assert that Mr. Maxwell will ultimately lose because of a failure to exhaust. As Mr. Maxwell explained in his pro se filings below, his interactions with prison staff exhausted his administrative remedies as to his First Step Act claim. See Pet. 1-4 (citing filings). The district court recognized that some claims were exhausted, but determined that Mr.

Maxwell's grievances were not sufficiently specific in invoking the First Step Act to exhaust those particular claims. See Pet. App. 2.4. On remand, the Fifth Circuit might well conclude that those pro se grievances sufficed to exhaust all of Mr. Maxwell's claims; that obstruction of the process excused exhaustion; that *Perttu*, *supra* , supports further factfinding on those issues; or that Mr. Maxwell is otherwise entitled to relief. See p. 2 n.*, *supra*.

b. Next, the government contends that, because an unpublished Fifth Circuit decision allowed a prisoner to raise the denial of a transfer to home confinement in a habeas petition, "the decision below reflects intracircuit tension" that "is best left for resolution in the first instance by the court of appeals." Br. in Opp. 9-10. To the contrary, the rule in the Fifth Circuit is clear. The decision below acknowledged that "an unpublished opinion" issued "[s]hortly after [the Fifth Circuit] decided *Melot*" allowed a level-of-custody claim to proceed in habeas. Pet. App. 1.2 n.1 (citing *Cheek* v. *Warden of Federal Medical Center*, 835 Fed. Appx. 737, 739 (5th Cir. 2020)). But the court emphasized that "[u]npublished cases are nonprecedential," and determined that it must "follow *Melot* under the rule of orderliness." *Ibid.*; see *Poole* v. *City of Shreveport*, 13 F.4th 420, 426 (5th Cir. 2021); 5th Cir. R. 47.5.4. District courts within the Fifth Circuit have reached the same conclusion. See, *e.g.*, *Acha* v. *Wolf*, Civ. No. 20-1696, 2021 WL 537101, at *3-*4 & n.4 (W.D. La. Jan. 28, 2021) (collecting cases), report and recommendation adopted, Civ. No. 20-1696, 2021 WL 536243 (W.D. La. Feb. 12, 2021). Therefore, as the decision below itself makes clear, the governing rule in the Fifth Circuit is unambiguous: a level-of-custody claim cannot proceed in habeas under *Melot*.

The government next attempts to draw a distinction between *Melot*, the published decision, and *Cheek*, the

contrary unpublished decision, by explaining that *Melot* addressed "a home-confinement request under [the] First Step Act," whereas *Cheek* dealt with "a home-confinement request under the CARES Act." Br. in Opp. 9-10. But that is trying to squeeze blood from a stone. In *Melot*, the Fifth Circuit took the view that a change in confinement from a prison facility to home detention does not qualify as "release," 970 F.3d at 599; nothing about that reasoning turns on which statute creates the right to transfer to a lower level of confinement.

To the extent the government seeks to suggest that the unpublished decision in *Cheek* reflects a divergence of views among Fifth Circuit judges that could make a resolution en banc possible, that is reading a lot into an unpublished decision issued "[s]hortly" after *Melot*, Pet. App. 1.2, particularly when neither *Melot* nor the decision below resulted in any separate writings. In any event, if the Fifth Circuit were to convene en banc and reverse its longstanding position, that would not avert the need for this Court's review because the Eighth Circuit also follows the *Melot* rule. See p. 5, *supra*.

D. The Question Presented Is Exceptionally Important

This Court "often" grants certiorari to address "the dividing line" between civil rights suits and federal habeas suits. *Nance* v. *Ward*, 597 U.S. 159, 167 (2022). For good reason. Section 2241 is one of the only avenues for federal prisoners to challenge an unlawful level of confinement. Under the rule articulated by the Fifth and Eighth Circuits, those claims by federal prisoners must apparently proceed under *Bivens*, a notoriously disfavored avenue for relief. Barring federal prisoners from challenging their level of custody under Section 2241 could seriously hamper their ability to vindicate errors that improperly increase their level of custody. And continued uncertainty

and litigation about that threshold question undermines judicial efficiency.

The practical consequences of the persistent conflict are particularly significant because prisons within the Fifth Circuit hold roughly one out of every six of the Nation's federally incarcerated population, and that number rises to one out of every five when considering the prison population of the Fifth and Eighth Circuits combined. Population Statistics, Federal Bureau of Prisons <www.bop.gov/about/statistics/population_statistics.jsp> (last updated Apr. 30, 2026). This Court's intervention is needed to ensure that a large portion of the Nation's prison population is not subject to a rule that the government itself admits is wrong and irreconcilable with this Court's precedents.

* * * * *

This case easily satisfies every criterion for further review. It presents an entrenched and acknowledged circuit conflict on an important question of federal law, offers a clean vehicle in which to address that question, and, as the government concedes, reaches the wrong result. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

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