No. 25-5930

In the Supreme Court of the United States

WILLIAM MAXWELL, PETITIONER

v.

SANDRA DINIS, ACTING WARDEN

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

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether a claim regarding application of time credits under the First Step Act of 2018, 132 Stat. 5195-5208 (codified in relevant part at 18 U.S.C. 3631-3635), seeking accelerated transfer to a halfway house or home confinement, can be brought in a habeas petition under 28 U.S.C. 2241.

PARTIES TO THE PROCEEDING

Petitioner is William Maxwell. Respondent is Sandra Dinis, Acting Warden of FCI Beaumont Low. Albert Thomas, III, the former Warden of FCI Beaumont Low, was a respondent at the certiorari stage and in the proceedings below.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 34-36) is reported at 133 F.4th 453. The opinion of the district court (J.A. 28-33) is unreported but is available at 2023 WL 6578464. The report and recommendation of the magistrate judge (J.A. 18-27) is unreported but is available at 2023 WL 6635074.

JURISDICTION

The judgment of the court of appeals was entered on April 3, 2025. A petition for rehearing was denied on June 23, 2025 (J.A. 37). The petition for a writ of certiorari was filed on August 20, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 2241 of Title 28 of the United States Code provides in relevant part:

> (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.
>
> * * *
>
> (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[.]

Section 2243 of Title 28 of the United States Code provides in relevant part:

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.
>
> * * *

> The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

Section 2255 of Title 28 of the United States Code provides in relevant part:

> (e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

STATEMENT

The writ of habeas corpus is the time-honored vehicle for a prisoner to challenge his unlawful confinement. That is so whether the relief the prisoner seeks is complete release (*e.g.*, from prison to liberty), or release to a lower level of custody (*e.g.*, from prison to parole or from prison to home confinement). That straightforward conclusion follows from the text of the habeas statute, the history of habeas, and from this Court's precedents. Indeed, this Court has repeatedly recognized that habeas is an available remedy for claims seeking to "reduce the prisoner's level of custody." *Skinner* v. *Switzer*, 562 U.S. 521, 534 (2011) (alteration omitted) (quoting *Wilkinson* v. *Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)). In the decision below, however, the court of appeals dismissed petitioner's level-of-custody claim based on the court's bright-line rule that a claim cannot be brought in habeas unless the prisoner seeks complete release. As the government itself recognizes, that holding is erroneous. The decision below should be reversed.

Petitioner William Maxwell is a federal prisoner currently incarcerated in Beaumont, Texas. During his time in prison, Mr. Maxwell has been participating in recidivism-reduction programs and other productive activities that, under federal law, allow him to earn credits towards transfer from prison to prerelease custody in either a halfway house or home confinement. After Mr. Maxwell was denied transfer to prerelease custody, he filed a petition for a writ of habeas corpus in federal court. As is relevant here, the district court rejected Mr. Maxwell's claim for failure to exhaust his administrative remedies and Mr. Maxwell appealed. The court of appeals affirmed on the ground—neither pressed by the government nor adopted by the district court—that Mr. Maxwell's claim was not cognizable in habeas in the first place, because he did not seek outright release.

The decision below is irreconcilable with text, history, and precedent. Congress has authorized federal courts to grant a writ of habeas corpus to a prisoner who "is in custody in violation of [federal law]," and to "dispose of the matter as law and justice require." 28 U.S.C. 2241(a), (c); 28 U.S.C. 2243. That broad language does not confine habeas to a single form of relief. On the contrary, both by its terms and as long construed by courts, that text readily encompasses claims challenging a prisoner's current imprisonment as unlawful and seeking release to a lower level of custody.

The history of habeas reinforces that conclusion. From its common-law origins, the writ has never been an all-or-nothing remedy. While common-law courts could discharge a prisoner outright, they also had the authority to release him into a less restrictive form of confinement in the form of bail. That practice continued through the twentieth century as courts heard habeas claims seeking release from prison to an alternative form of custody, such as parole.

If any doubt remains, this Court's modern precedents settle the issue. In *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), this Court held that a level-of-custody claim—there, a request for release from imprisonment to parole—could not proceed under 42 U.S.C. 1983 precisely because it fell at the core of habeas. And the Court's subsequent cases have recognized that permissible habeas relief includes ordering a change in the level of custody. There is no basis for this Court to depart from those precedents, especially where doing so would raise a host of practical problems for courts and litigants alike.

That rule resolves Mr. Maxwell's case: by seeking accelerated transfer from prison to distinct and materially less restrictive custody served outside of prison walls, he challenges his level of custody. The court of appeals erred by dismissing Mr. Maxwell's habeas petition, and its judgment should be reversed.

A. Background

1. The writ of habeas corpus traces back to the Magna Carta's decree that "no man would be imprisoned contrary to the law of the land." *Boumediene* v. *Bush*, 553 U.S. 723, 740 (2008) (citing Art. 39, in *Sources of Our Liberties* 17 (R. Perry & J. Cooper eds. 1959)). In early English constitutional history, the writ was used "to enforce the King's prerogative to inquire into the authority of a jailer to hold a prisoner." *Id.* at 740-741. By the time of Blackstone, it was considered "the most celebrated writ in the English law" and a "great and efficacious writ in all manner of illegal confinement." 3 William Blackstone, *Commentaries on the Laws of England* 129-131 (1768). The Framers likewise "viewed freedom from unlawful re-

straint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene*, 553 U.S. at 739. Accordingly, the writ of habeas corpus is "the only common-law writ to be explicitly mentioned" in the Constitution. *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 558 (2004) (Scalia, J., dissenting). Expressly preserving the writ, the Constitution provides that "[t]he 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. I, § 9, cl. 2.

Since the Founding, Congress has repeatedly amended and gradually expanded the scope of the federal habeas corpus statute. The First Judiciary Act of 1789 authorized federal courts to issue writs of habeas corpus "for the purpose of an inquiry into the cause of commitment" to persons in federal custody. Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 73, 81-82; see *Ex parte Dorr*, 44 U.S. (3 How.) 103, 105 (1845). The First Congress did not otherwise define the scope of the habeas remedy, leaving courts to "resort to the common law." *United States* v. *Hayman*, 342 U.S. 205, 210 (1952); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 93-94 (1807).

After the Civil War, Congress extended the writ to any person, whether in state or federal custody, "restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 385, 385. As first enacted, that statute authorized federal habeas courts to "discharge[]" a prisoner and set him "at liberty." *Id.* at 386. Congress promptly amended the statute further to broaden the available relief, authorizing federal habeas courts to "dispose of the party as law and justice require." Act of June 28, 1874, ch. 13, § 761, 18 Stat. 142; see *Wilkinson*, 544 U.S. at 86 (Scalia, J., concurring).

In 1948, Congress amended the habeas statute as part of its revision of the Judicial Code. See Act of June 25, 1948, ch. 646, 62 Stat. 964-968 (1948). It enacted 28 U.S.C. 2241 and 2243, which recodified the general habeas authority. 62 Stat. 964-965; see 28 U.S.C. 2241 (1994); 28 U.S.C. 2243 (1994). In language that remains unchanged, Section 2243 provided that the habeas court "shall * * * dispose of the matter as law and justice require." 28 U.S.C. 2243. Congress also enacted Section 2255, which created an alternative postconviction remedy for federal prisoners, requiring a federal prisoner bringing certain types of challenges to proceed by motion in the sentencing court. 62 Stat. 967-968; see 28 U.S.C. 2255 (1994); *Jones* v. *Hendrix*, 599 U.S. 465, 473 (2023). And it enacted Section 2254, which addressed federal habeas for state prisoners. 62 Stat. 967; see 28 U.S.C. 2254 (1994).

Congress again revised the habeas framework in 1996 in the Antiterrorism and Effective Death Penalty Act (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214. Those revisions substantially tightened the standards for granting federal habeas relief to prisoners convicted in state court. *Klein* v. *Martin*, 607 U.S. 213, 214 (2026) (per curiam); see 28 U.S.C. 2254(d). And they imposed further requirements on the consideration of second or successive petitions by both state and federal prisoners. *Bowe* v. *United States*, 607 U.S. 13, 22 (2026); see 28 U.S.C. 2244. But the Act left untouched the scope of the habeas remedy codified in Sections 2241 and 2243. See 28 U.S.C. 2241, 2243; see also *Brown* v. *Davenport*, 596 U.S. 118, 134 (2022).

2. American practices of sentencing and punishment have likewise evolved over time. At common law and in early American history, criminal sentences were generally fixed by the offense and not subject to later alteration. See *United States* v. *Haymond*, 588 U.S. 634, 642-643

(2019) (plurality opinion); *Alleyne* v. *United States*, 570 U.S. 99, 108 (2013).

Beginning in the latter half of the nineteenth century, however, States and eventually the federal government began adopting systems of conditional release—known as probation and parole—that allowed an individual to serve all or part of his sentence under supervision in the community rather than behind bars. See Fiona Doherty, *Indeterminate Sentencing Returns: The Invention of Supervised Release*, 88 N.Y.U. L. Rev. 958, 961, 976-980 (2013); Neil P. Cohen, *The Law of Probation and Parole* §§ 1:2 to 1:4, 1:12 (2d ed. 1999) (Cohen). Probation and parole became fixtures of federal and state sentencing: a judge set a sentencing range, and either the court (through probation) or a parole board (through parole) determined what period of that sentence the person would serve in prison. See Cohen, *supra*, §§ 1:1 to 1:4, 1:12; see also *Mistretta* v. *United States*, 488 U.S. 361, 363-365 (1989).

In the Sentencing Reform Act of 1984, Pub. L. No. 98-473, tit. II, ch. II, §§ 211, 218, 235(a)(1), 98 Stat. 1987, 2009, 2027, 2031, Congress revised the federal sentencing system, including by abolishing federal parole for future prisoners in favor of two forms of custody served outside prison: supervised release and prerelease custody. See 18 U.S.C. 3583 (supervised release); 18 U.S.C. 3624(c) (prerelease custody). Supervised release is a form of post-confinement monitoring that an individual serves after his term of imprisonment, and it is set by the judge at sentencing. See 18 U.S.C. 3583(a), (d); *Mont* v. *United States*, 587 U.S. 514, 523 (2019). Prerelease custody is another way for an individual to serve part of his sentence outside prison, but it is served during what would have been the end of the scheduled term of imprisonment, and it is administered by the Bureau of Prisons. See 18 U.S.C.

3624(c). For either supervised release or prerelease custody, the individual may be confined at home subject to constant electronic monitoring or in a residential reentry center (commonly known as a halfway house). See 18 U.S.C. 3624(c), 3563(b), 3583(d); United States Sentencing Guidelines §§ 5D1.3(b)(3)(K)-(L); see also Paul J. Hofer & Barbara S. Meierhoefer, *Home Confinement: An Evolving Sanction in the Federal Criminal Justice System* 10 (Fed. Jud. Ctr. 1987) (discussing rise of the federal home confinement program in the latter half of the twentieth century); Cory T. Way, *Innovative Incarceration: Community Corrections in the Federal Bureau of Prisons*, 2 Fed. Prisons J. 21, 23 (1992) (discussing the rise of halfway houses).

More recently, in the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, Congress gave federal inmates a second, expanded avenue to prerelease custody. See, *e.g.*, 18 U.S.C. 3624(g), 3632(d). The Act provides that prisoners who successfully participate in various recidivism-reduction programs and productive activities "shall earn time credits." 18 U.S.C. 3632(d)(4)(A), (C). And the Bureau "shall transfer eligible prisoners" who have earned sufficient credits "into prerelease custody or supervised release." 18 U.S.C. 3632(d)(4)(C); see 18 U.S.C. 3624(g) (describing conditions of prerelease custody); see also, *e.g.*, *Valladares* v. *Ray*, 130 F.4th 74, 79 (4th Cir. 2025).

B. Facts And Procedural History

1. In 2014, petitioner William Maxwell was convicted on multiple counts relating to a scheme to take over a mortgage-loan company and put its assets to personal use. See *United States* v. *Scarfo*, 41 F.4th 136, 158-166 (3d Cir. 2022). He was sentenced to 20 years in prison followed by three years of supervised release. See *United*

States v. *Maxwell*, Crim. No. 11-740, Dkt. 1307 (D.N.J. Aug. 8, 2015). Mr. Maxwell is currently serving that sentence at FCI Beaumont Low, a low-security federal prison in Beaumont, Texas, see J.A. 1; Mr. Maxwell is in the custody of respondent, acting warden Sandra Dinis.

During his time in prison, Mr. Maxwell has not incurred any disciplinary infractions; he has received the lowest possible rating for risk of recidivism and violence; and he has been continuously employed as either a cook or a law clerk in the prison law library—activities for which a prisoner is entitled to earn time credits under the First Step Act. D. Ct. Dkt. 1-1, at 44; see 18 U.S.C. 3632(d)(4)(A); 18 U.S.C. 3635(3), (5). Beginning in March 2020, Mr. Maxwell sought accelerated release to home confinement or to a halfway house. See, *e.g.*, D. Ct. Dkt. 1-1, at 113-114; D. Ct. Dkt. 8-1, at 42. Respondent and the Bureau of Prisons repeatedly denied his requests. See, *e.g.*, D. Ct. Dkt. 8-1, at 24-27, 69, 83; see also *id.* at 31, 42, 89.

2. In February 2022, Mr. Maxwell filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the United States District Court for the Eastern District of Texas. J.A. 1. Mr. Maxwell requested accelerated release to a halfway house or to home confinement under several statutory authorities, including the First Step Act. J.A. 11. As is relevant here, Mr. Maxwell alleged that respondent was failing to count some of Mr. Maxwell's participation in productive activities. See D. Ct. Dkt. 1-1, at 43-44. Based on that error, Mr. Maxwell argued, he was entitled to "between 42 and 48 months [of] time credits" that respondent "ha[d] not properly applied." *Id.* at 47.

The magistrate judge recommended dismissing the habeas petition. J.A. 26. As is relevant here, the magistrate judge found that Mr. Maxwell had failed to exhaust his administrative remedies with respect to the First Step

Act claim. J.A. 23-25. The district court subsequently adopted that report and recommendation. J.A. 28-33.

3. The court of appeals affirmed, but for different reasons.

Although the government defended the dismissal based only on exhaustion, see Gov't C.A. Br. 2-5, the court of appeals held that Mr. Maxwell's petition should be dismissed because it was not cognizable in habeas in the first place. J.A. 34-36. The court explained that the Fifth Circuit had adopted a "bright-line rule" barring claims from proceeding in habeas unless they would "automatically entitle [the prisoner] to accelerated release." J.A. 35 (citing *Melot* v. *Bergami*, 970 F.3d 596, 599 (5th Cir. 2020)). Because Mr. Maxwell sought only "transfer to a halfway house or home confinement" rather than outright release from custody, the court concluded that habeas was "not the proper vehicle" for his suit and his claim must be brought in a civil-rights suit under *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). J.A. 35. The court accordingly did "not address" whether Mr. Maxwell "sufficiently exhausted his administrative remedies." *Ibid.*

The court of appeals subsequently denied a petition for rehearing and for rehearing en banc. J.A. 37.

SUMMARY OF ARGUMENT

A claim seeking accelerated transfer to a halfway house or to home confinement can be brought in a habeas petition under 28 U.S.C. 2241. That conclusion follows from the text of the habeas statute, the history of habeas, and this Court's precedents. And interpreting the habeas statute to exclude such claims would raise a host of problems and make little practical sense. Because a claim seeking accelerated transfer to a halfway house or to home confinement challenges the prisoner's level of custody, it can be brought in habeas. The court of appeals offered no persuasive justification for its contrary bright-line rule, and its judgment should be reversed.

A. Text, history, and precedent each establish that a claim seeking to challenge a person's level of custody is cognizable in habeas.

1. The text of the habeas statute encompasses level-of-custody claims, as shown by several related provisions. Section 2241 authorizes federal courts to grant writs of habeas corpus to prisoners "in custody" in violation of federal law. That text and the longstanding understanding of "habeas corpus" captures a prisoner's claim alleging that his present custody is unlawful, regardless of whether he might be held in some other, lesser form of custody outside of prison. Section 2243 likewise authorizes federal courts to "dispose of the matter as law and justice require." That expansive language has long been construed to authorize various forms of habeas relief short of outright release from all custody. Finally, Section 2255(e) preserves a prisoner's ability to challenge his "detention" (as opposed to his "sentence") in a habeas claim under Section 2241. As this Court recently explained, Section 2241 therefore continues to encompass claims that a prisoner is unlawfully being denied good-time credits or parole—a classic level-of-custody claim. See *Jones* v. *Hendrix*, 599 U.S. 465, 475 (2023).

2. History confirms both that the writ is not limited to claims seeking outright release and that it has long been used for claims seeking a lower level of custody. At common law and in early American practice, courts granted habeas relief not only by discharging the prisoner outright but also by releasing him on bail, a distinct but less restrictive form of restraint. In the nineteenth century, this Court held that the writ extended to a prisoner

confined in a penitentiary the law did not authorize, even if the remedy would be correction of the place of confinement rather than outright release. See *In re Bonner*, 151 U.S. 242 (1894). And since the early twentieth century, courts have repeatedly recognized that a habeas claim could proceed even when success would not free the prisoner from all custody, such as when a prisoner sought release on parole. That remained true even as this Court squarely held that the relevant forms of restraint, such as parole, probation, and bail, qualify as "custody" for purposes of habeas.

3. This Court's modern precedents are of a piece. In *Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), this Court held that habeas was the appropriate vehicle for claims brought by prisoners seeking restoration of good-time credits that would entitle them to be released on parole. The Court reached that conclusion even though prisoners on parole are still "in custody." And since *Preiser*, this Court has continued to acknowledge that claims seeking to reduce the level of custody fall within the scope of habeas. Those precedents should resolve this case.

4. Interpreting the habeas statute to exclude level-of-custody claims would also raise a host of problems. For one thing, it is unclear how a federal prisoner could challenge his level of confinement without habeas. Although the decision below indicated that the proper vehicle was an implied suit under *Bivens*, such a suit would, for multiple reasons, be unavailable for the statutory claim here. And alternative vehicles, such as a suit under the Administrative Procedure Act or in equity, may be barred by federal law and would, at a minimum, require the resolution of doctrinally complex questions. In any event, the orderly habeas scheme is superior to any potentially available alternatives. It channels federal claims to a sensible

venue and contains procedural and substantive restrictions that protect both officials and courts from unwarranted claims. As to state prisoners, for example, a holding that level-of-custody claims are not cognizable in habeas would imply that such claims can be brought under Section 1983, without the limitations AEDPA would otherwise impose to protect States.

B. Mr. Maxwell's claim seeking accelerated transfer from prison to a halfway house or to home confinement challenges his level of custody and thus may be brought in habeas. Custody in prison is different in kind from custody in a halfway house or home confinement. Federal law treats them as distinct, characterizing the latter as forms of "prerelease custody" that are separate from time spent in prison. 18 U.S.C. 3624(g); 18 U.S.C. 3632(d)(4)(A). Reinforcing the point, transfer from prison either to a halfway house or to home confinement entails release from the custody of the prison warden into the custody of a different custodian. As a practical matter, moreover, living in a halfway house or home confinement differs in innumerable ways from life in prison, not least of which are the ability to engage with the community, spend time with family, and attend religious services of the individual's choosing.

C. The court of appeals' contrary rule—that a claim is cognizable in habeas only if the prisoner seeks outright release from custody—lacks merit. The government does not defend it, and for good reason: the rule appears nowhere in the text of Section 2241, finds no footing in the history of the writ, and cannot be squared with this Court's precedents. The decisions adopting the rule mistakenly recast a challenge to the level of custody as a mere conditions-of-confinement claim, and they provide no persuasive justification for doing so.

ARGUMENT

A CLAIM SEEKING ACCELERATED TRANSFER TO A HALFWAY HOUSE OR TO HOME CONFINEMENT CAN BE BROUGHT IN A HABEAS PETITION UNDER 28 U.S.C. 2241

A challenge to imprisonment that violates federal law is a classic habeas claim. That is so regardless of whether the relief a prisoner seeks is release to outright freedom or release to a lower level of custody. The decision below took the view that outright release is required. That rule has no basis in the text of the habeas statute, the history of habeas, or this Court's precedent. The judgment of the court of appeals should be reversed.

A. A Claim Seeking To Change The Level Of Custody Is Cognizable In Habeas

Text, history, and precedent each establish that a claim seeking to reduce a prisoner's level of custody is cognizable in a habeas petition under Section 2241. As to text, level-of-custody claims fit neatly within the key statutory language allowing a petitioner to challenge custody that violates federal law, the remedial authority of habeas courts to dispose of the matter "as law and justice require," and the channeling of "detention" challenges into habeas. As to history, the writ was never confined to claims seeking outright release; from the Founding onward, courts used habeas to move a prisoner from a greater to a lesser restraint and to police the place and form of his confinement. And as to precedent, the Court in *Preiser* v. *Rodriguez*, 411 U.S. 475, 484 (1973), treated a level-of-custody claim as cognizable in habeas, a holding that the Court has repeatedly reaffirmed. A contrary rule would raise a host of problems for courts and litigants and makes little practical sense.

1. The Text Of The Habeas Statute Encompasses Level-Of-Custody Claims

The text of the habeas statute does not support the carveout adopted by the court of appeals for situations where the unlawfully imprisoned petitioner would be subject to further custody. To the contrary, the key language in Sections 2241 and 2243 makes clear that a challenge to unlawful custody is cognizable regardless of the remedy. And the safe harbor of Section 2255, which channels certain claims by federal prisoners, offers further confirmation.

a. Section 2241 authorizes federal courts to grant "[w]rits of habeas corpus" within their respective jurisdictions, including to a prisoner who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2241(a), (c)(3). A prisoner who contends that his incarceration is unlawful because federal law requires his transfer to a lower level of custody easily falls within that language. That prisoner still asserts that he "is in custody in violation of * * * laws * * * of the United States"—because federal law does not authorize his existing custody, even if a different form of custody is authorized. Habeas allows the court to remedy the wrong caused by the unlawful imprisonment.

The fact that a different, materially lower form of custody would be consistent with federal law is of no moment because the text only requires that the prisoner "is" presently in unlawful custody. See, *e.g.*, 8 *Oxford English Dictionary* 104 (2d ed. 1989) (describing "is" as signifying "[t]hat which exists"). Accordingly, the "great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention," even if "another prison term might still await" the prisoner. *Walker* v. *Wain-*

wright, 390 U.S. 335, 336-337 (1968). That principle applies with particular force when what awaits the prisoner is further custody *outside* of prison.

Indeed, challenges to "present physical confinement" have long been understood to be the "core" subject of habeas. *Rumsfeld* v. *Padilla*, 542 U.S. 426, 435 (2004). As the Court has explained, the "essence of habeas corpus is an attack by a person in custody upon the legality of that custody," and the "traditional function of the writ is to secure release from illegal custody." *Preiser*, 411 U.S. at 484; see, *e.g.*, *Department of Homeland Security* v. *Thuraissigiam*, 591 U.S. 103, 117 (2020); *Munaf* v. *Geren*, 553 U.S. 674, 693 (2008). So long as the Court has jurisdiction over the custodian and the prisoner alleges that his custody is unlawful, "Section 2241, by its terms, requires nothing more." *Rasul* v. *Bush*, 542 U.S. 466, 483-484 (2004).

b. Section 2243 reinforces that straightforward reading by authorizing habeas courts to "dispose of the matter as law and justice require." 28 U.S.C. 2243. That language is "broad with respect to the relief that may be granted," and it "does not limit the relief * * * to discharge of the applicant from physical custody." *Carafas* v. *LaVallee*, 391 U.S. 234, 239 (1968). For example, under Section 2243, courts have "discretion in conditioning a judgment granting habeas relief," such as by "delay[ing] the release of a successful habeas petitioner in order to provide the State an opportunity to correct the constitutional violation found by the court." *Hilton* v. *Braunskill*, 481 U.S. 770, 775 (1987) (collecting cases).

The statutory history of the habeas remedial authority confirms its current breadth. The first statutory authorization for habeas relief did not address the available remedies, generally leaving the question to the common law. See Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 73, 81-82;

Wayman v. *Southard*, 23 U.S. (10 Wheat.) 1, 6-7 (1825). In 1867, Congress enacted a remedial provision that narrowly authorized federal courts to "discharge[] and set at liberty" the prisoner. Act of Feb. 5, 1867, ch. 28, § 1, 14 Stat. 386. Just a few years later, Congress broadened the habeas remedy by authorizing habeas courts to "dispose of the party as law and justice require." Act of June 28, 1874, ch. 13, § 761, 18 Stat. 142. That language—like the virtually identical language in the current Section 2243—"permit[s] relief short of release." *Wilkinson* v. *Dotson*, 544 U.S. 74, 85 (2005) (Scalia, J., concurring); see *Trump* v. *J.G.G.*, 604 U.S. 670, 672 (2025).

Section 2243 accordingly confirms that level-of-custody claims fall within the scope of the habeas statute. Pursuant to the court's authority to dispose of the case "as law and justice require," 28 U.S.C. 2243, a federal habeas court may order the custodian to release the petitioner from prison and transfer him to a lower level of custody, even though that relief is short of immediate release from all custody.

c. Section 2255 further confirms that level-of-custody claims are cognizable in habeas because it reflects Congress's understanding that challenges to a prisoner's "detention"—and not just those seeking outright release—can proceed under Section 2241.

Pursuant to Section 2255, a federal prisoner contending that his sentence is unlawful must bring that challenge in a motion with his sentencing court, rather than in a habeas petition filed in the district of confinement. See 28 U.S.C. 2255(a). In that way, Section 2255 partially displaces Section 2241 for federal prisoners by providing a "separate remedial vehicle specifically designed for federal prisoners' collateral attacks on their sentences." *Jones* v. *Hendrix*, 599 U.S. 465, 473 (2023). Section 2255 also contains a saving clause, which allows the prisoner to seek traditional habeas relief when it "appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." 28 U.S.C. 2255(e). Congress first enacted that language in 1948, in the same Act that codified the federal habeas authority in Section 2241 and enacted Section 2243. See Act of June 25, 1948, ch. 646, 62 Stat. 964-965, 967-968.

The saving clause establishes that Section 2255(e) does not displace Section 2241 when a prisoner challenges "'the legality of his *detention*' without attacking the validity of his *sentence*." *Hendrix*, 599 U.S. at 475 (quoting 28 U.S.C. 2255(e)). As this Court recently explained, such challenges encompass a prisoner who argues "that he is being detained in a place or manner not authorized by the sentence" or "that he has unlawfully been denied parole or good-time credits." *Hendrix*, 599 U.S. at 475. Those claims do not necessarily seek outright release; indeed, a challenge to the denial of parole is a classic level-of-custody claim. See pp. 26-27, *infra*. The saving clause therefore reflects Congress's understanding that a prisoner may challenge his level of custody under Section 2241.

2. *History Confirms That Level-Of-Custody Claims Are Cognizable In Habeas*

The history of the habeas power further confirms that understanding of the statutory authority to grant "[w]rits of habeas corpus." 28 U.S.C. 2241(a). At common law, habeas allowed a court to admit the prisoner to bail—a lesser form of restraint short of outright release. Beginning in the late nineteenth century, this Court repeatedly recognized that habeas is available for claims that the prisoner's present custody is unlawful, regardless of whether the prisoner sought complete release or release to a lower level of custody (such as parole or probation).

And in the decades after Congress reorganized the habeas statute in 1948, the courts of appeals continued to entertain claims seeking release from prison to a lower level of custody.

a. Early habeas practice establishes that the writ was not an all-or-nothing remedy, and that a court could order a prisoner released to a less restrictive form of restraint—namely, in the form of bail.

Modern forms of conditional release did not exist at common law or in early American history. But habeas courts would "determine whether the cause of [a prisoner's] commitment be just, and thereupon do as to justice shall appertain"—discharging the prisoner or admitting him to bail, as justice required. 1 William Blackstone, *Commentaries on the Laws of England* 135 (1768) (Blackstone); see *Ex parte Clarke*, 100 U.S. 399, 403 (1879) (collecting common-law authorities); 3 Blackstone 133-136 (discussing authority to "discharge" or "bail"); 2 Matthew Hale, *Historia Placitorum Coronae* 143 (1736) (explaining that parties "wrongfully committed * * * are to be discharged" or "bail[e]d"). The power to bail ran broadly. The Court of King's Bench could "bail for any crime whatsoever, be it treason, murder, or any other offence." 4 Blackstone 295-297.

Bail was less restrictive than imprisonment, but it was not the same as outright release. Blackstone explained that bail served the same "intention" as imprisonment—the "safe custody" of the accused before trial—and he described it as a form of "friendly custody." 4 Blackstone 293-294. Other authorities likewise noted that the sureties for the person bailed were "the Gaolers of his own choosing," such that the person was "in the Eye of the Law for many Purposes, esteemed to be as much in the Prison of the Court by which he is bailed, as if he were in the actual custody of the proper Gaoler." 2 William Hawkins, *A Treatise of the Pleas of the Crown* 88 (3d ed. 1739); see William F. Duker, *The Right to Bail: A Historical Inquiry*, 42 Alb. L. Rev. 33, 70 (1977) (collecting similar statements). Bail was thus a familiar, lesser form of confinement that a habeas court could order: not the end of all restraint, but release into a milder one.

Those principles crossed the Atlantic intact. The First Judiciary Act of 1789 empowered courts to issue the writ "for the purpose of an inquiry into the cause of commitment" and provided that "upon all arrests in criminal cases, bail shall be admitted" outside the capital context. Act of Sept. 24, 1789, ch. 20, §§ 14, 33, 1 Stat. 73, 81-82, 91. In *Ex parte Bollman*, 8 U.S. (4 Cranch) 75 (1807), this Court confirmed that federal habeas courts had the authority both "totally to discharge" a prisoner and to "give bail." *Id.* at 125; see *id.* at 99-100. This Court would also recognize the common-law principle that a bailee "is regarded as delivered to the custody of his sureties," whose "dominion is a continuance of the original imprisonment." *Taylor* v. *Taintor*, 83 U.S. (16 Wall.) 366, 371-372 (1872). Common-law and early American practice thus recognized that a habeas court could grant relief short of outright release in the form of release into a different and less restrictive form of confinement.

b. After Congress expanded federal habeas in 1867 and 1874, courts continued to hear habeas cases challenging the form or level of a prisoner's custody and continued to grant relief short of outright release.

i. This Court's decision in *In re Bonner*, 151 U.S. 242 (1894), is a leading example. There, the prisoner contended that, under the governing statute, he could not be imprisoned in a "state penitentiary," because the statute authorized penitentiary confinement only where the sentence exceeded one year, and his sentence was shorter.

Id. at 254. The Court rejected the government's argument that habeas could not reach confinement in a place forbidden by statute. Carried to its logical end, the Court observed, that argument would let a court "order the imprisonment to be in the guard house of a fort, or the hulks of a prison ship, or in any other place not specified in the law." *Id.* at 256. "[I]n all cases where life or liberty is affected by its proceedings," the Court reasoned, "the court must keep strictly within the limits of the law," and "[i]f the law prescribes a place of imprisonment, the court cannot direct a different place." *Id.* at 256, 258. The Court therefore emphasized that habeas relief is appropriate "where the punishment imposed, in the mode, extent, or place of its execution, has exceeded the law." *Id.* at 260. A habeas claim is cognizable, the Court held, to remedy "the wrong caused by the imprisonment," even where "the conviction is correct." *Ibid.*

Bonner also confirms that a successful habeas petitioner need not be freed from all custody. The Court observed that, in light of the statutory authorization to "dispose of the party as law and justice require," habeas courts are "invested with the largest power to control and direct the form of judgment to be entered." *Bonner*, 151 U.S. at 261. That broad authority includes delaying discharge long enough to obtain lawful custody. As an example, *Bonner* cited *Coleman* v. *Tennessee*, 97 U.S. 509 (1878), where the Court directed that the prisoner be discharged from state custody but specified that he "may be delivered up" to federal military authorities. *Id*. at 519-520. In *Bonner*, the Court ultimately ordered the prisoner "discharged from the custody of the warden of the penitentiary," but it did so "without prejudice to the right of the United States to take any lawful measures to have the petitioner sentenced in accordance with law." 151 U.S. at 262; see also *Mahler* v. *Eby*, 264 U.S. 32, 46 (1924) (citing *Bonner* and *Coleman* as examples of "delay[ing] the discharge of [a habeas petitioner] for such reasonable time as may be necessary" to establish lawful custody). In short, release from custody in general is not required, so long as the prisoner seeks relief from the specific, unlawful custody he is then serving.

ii. Later cases took a similar approach in allowing claims to proceed in habeas even if they might not result in outright release.

In *Ex parte Hull*, 312 U.S. 546 (1941), for example, the Court entertained a habeas challenge even though success would not free the prisoner outright but would only return him to parole. In *Hull*, the prisoner's parole had been revoked based on a new conviction and he sought to challenge that conviction in order to be returned from imprisonment back to parole. *Id.* at 547-549. The Court held that the petition could proceed, explaining that although the prisoner's parole "obligated him to stay within [a designated] County," that restraint was not the same as "imprisonment." *Id.* at 549-550. As the Court subsequently explained, *Hull* stands for the proposition that a prisoner can use habeas to challenge his conviction "though he would not be released if he prevailed," *Peyton* v. *Rowe*, 391 U.S. 54, 67 (1968) (citing *Hull*, 312 U.S. 546), because success on the claim would move the prisoner from prison to a different and less restrictive form of restraint.

Likewise, in *Escoe* v. *Zerbst*, 295 U.S. 490 (1935), the Court entertained a challenge brought by a prisoner whose sentence had initially been "suspended" under "conditions of probation" but whose probation was subsequently revoked. *Id.* at 491. The prisoner filed a federal habeas petition challenging the revocation and seeking the reinstatement of his probation. *Ibid.* The Court agreed that the revocation was unlawful and that the prisoner could seek habeas relief. *Id.* at 492-494. The "prisoner confined," the Court reasoned, was entitled to "have recourse to habeas corpus to put an end to the restraint" of his imprisonment, even though the probation would be "continuing." *Id.* at 494.

As Judge Friendly explained, this Court's decisions establish that "habeas corpus will lie to test the legality of a change from probation or parole to imprisonment"—as distinct from testing the "conditions of admittedly lawful custody." *Schonbrun* v. *Commanding Officer, Armed Forces*, 403 F.2d 371, 374 (2d Cir. 1968). In short, the Court's early twentieth century cases illustrate that habeas can be used to "free [a petitioner] from prison custody, as distinguished from releasing him from all custody." *Arketa* v. *Wilson*, 373 F.2d 582, 584 (9th Cir. 1967).

c. That practice carried forward into the latter half of the twentieth century even as Congress further revised the habeas statute. As noted, Congress reorganized the habeas statute in 1948, codifying the general habeas provisions in Section 2241 and channeling federal prisoners' challenges to their sentences into a new Section 2255 procedure, while retaining the broad remedial language "as law and justice require" in Section 2243. See p. 7, *supra*. Following those revisions, courts continued to use habeas to review requests for release from prison to a lower level of custody, such as parole, probation, or bail. See, *e.g.*, *Thomas* v. *Brennan*, 961 F.2d 612, 614 (7th Cir. 1992); *Martin* v. *Solem*, 801 F.2d 324, 329 (8th Cir. 1986); *Joost* v. *United States Parole Commission*, 698 F.2d 418, 419 (10th Cir. 1983); *Finetti* v. *Harris*, 609 F.2d 594, 595 (2d Cir. 1979); *Seymore* v. *Beto*, 383 F.2d 384, 384 (5th Cir. 1967).

That remained true even as this Court squarely held that parole, probation, and bail are all forms of "custody" for purposes of the habeas statute. See, *e.g.*, *Justices of*

Boston Municipal Court v. *Lydon*, 466 U.S. 294, 300-302 (1984); *Minnesota* v. *Murphy*, 465 U.S. 420, 430 (1984); *Hensley* v. *Municipal Court*, 411 U.S. 345, 349-351 (1973); *Jones* v. *Cunningham*, 371 U.S. 236, 242-243 (1963). Those decisions eliminated any doubt that this Court has long blessed the use of habeas for claims seeking to challenge a prisoner's level of custody that do not seek release from all custody.

3. This Court's Modern Precedents Have Recognized That Level-Of-Custody Claims Are Cognizable In Habeas

This Court's more recent decisions have likewise repeatedly recognized that claims that do not seek outright release from custody are cognizable in habeas.

a. This Court's decision in *Preiser*, *supra*, all but answers the question presented. In *Preiser*, prisoners challenged the withdrawal of good-time credits as a result of a disciplinary proceeding. If restored, the credits would entitle the prisoners to "conditional[] release" from prison to parole. *Id.* at 477-480; see *Rodriguez* v. *McGinnis*, 307 F. Supp. 627, 632 (N.D.N.Y. 1969). The prisoners each sued under Section 1983, alleging that the state department of corrections violated their federal right to due process in making the revocation decision. 411 U.S. at 476.

The Court determined that the prisoners' claims regarding good-time credits "fell squarely within th[e] traditional scope of habeas corpus." *Preiser*, 411 U.S. at 487. As the Court explained, the "deprivation of [the prisoners'] good-conduct-time credits was causing or would cause them to be in illegal physical confinement"—that is, "further detention * * * in prison." *Ibid.* That meant that the claims were "attacks on physical custody," and resolving them was "the long-established function of habeas corpus." *Id.* at 488 n.8. Indeed, the Court reasoned that "[s]uch a challenge is just as close to the core of habeas corpus as an attack on the prisoner's conviction, for it goes directly to the [legality] of his physical confinement itself and seeks either immediate release from that confinement or the shortening of its duration." *Id.* at 489. In reaching that conclusion, the Court recognized that a "prisoner released on parole from immediate physical confinement was nonetheless sufficiently restrained in his freedom as to be in custody for purposes of federal habeas corpus." *Id.* at 486 n.7 (citing *Cunningham*, 371 U.S. 236). Based on its view that the prisoners' claims lay at the habeas core, the Court held that the claims could proceed only under the "more specific" habeas statute and were not cognizable under 42 U.S.C. 1983. *Id.* at 489-490.

Preiser effectively resolves the level-of-custody question presented here: the Court held that a claim is cognizable in habeas where it seeks release from one form of unlawful custody (such as imprisonment) into a distinct, and less restrictive, form of custody (such as parole). That is a level-of-custody claim.

b. Since *Preiser*, individual Justices and the Court have repeatedly acknowledged that level-of-custody claims are cognizable in habeas and that habeas claimants need not seek outright release.

In *Wilkinson* v. *Dotson*, *supra*, for example, the Court held that a claim challenging Ohio's procedure for granting prisoners parole was actionable under Section 1983 because the prisoners' suit, which sought only additional process, did not necessarily challenge the duration of their confinement and so did not lie at the core of habeas. *Id.* at 83. Justice Scalia, joined by Justice Thomas, concurred to explain the scope of the federal habeas remedy. The Court in *Preiser*, Justice Scalia observed, had held that "restoration of good-time credits, which would shorten the prisoners' incarceration and hasten the date on which they would be transferred to supervised release * * * was available in habeas." *Wilkinson*, 544 U.S. at 86 (Scalia, J., concurring). Justice Scalia had no quarrel with the Court's cases interpreting the habeas statute "to say that permissible habeas relief * * * includes ordering a quantum change in the level of custody, such as release from incarceration to parole." *Ibid.* (internal quotation marks and citation omitted). But the habeas statute did not, in his view, authorize the relief the prisoner sought in *Wilkinson* itself because that relief would "neither terminate[] custody, accelerate[] the future date of release from custody, nor reduce[] the level of custody." *Ibid.*

The full Court endorsed Justice Scalia's view a few years later in *Skinner* v. *Switzer*, 562 U.S. 521 (2011). There, the Court held that a convicted state prisoner's suit seeking DNA testing of crime-scene evidence was actionable under Section 1983. *Id.* at 525. Writing for the Court, Justice Ginsburg reasoned that a claim seeking DNA testing did not rank within the traditional core of habeas because "the relief sought would 'neither terminate custody, accelerate the future date of release from custody, nor reduce the level of custody.'" *Id.* at 534 (alterations omitted) (quoting *Wilkinson*, 544 U.S. at 86 (Scalia, J., concurring)). The premise underlying that reasoning is that a claim that does fall into one of those three categories—including a claim that seeks to "reduce the level of custody," *ibid.*—is cognizable in habeas.

The Court reiterated the role of level-of-custody claims more recently in *Jones* v. *Hendrix*, *supra*. There, as discussed, pp. 18-19, *supra*, the Court addressed the scope of Section 2255(e)'s saving clause, which authorizes federal prisoners to file a habeas petition in certain circumstances. *Id.* at 469, 477. In holding that the particular challenge brought by the prisoner in that case was not cognizable, the Court gave examples of habeas challenges that Congress did preserve: a prisoner arguing that "he is being detained in a place or manner not authorized by the sentence, [or] that he has unlawfully been denied parole or good-time credits." *Id.* at 475 (citing *Samak* v. *Warden, FCC Coleman-Medium*, 766 F.3d 1271, 1280 (11th Cir. 2014) (Pryor, J., concurring)). The Court thus again recognized that level-of-custody claims—such as claims that a prisoner was unlawfully denied parole—are cognizable in habeas.

The Court's treatment of habeas relief in the death-penalty context also presumes the availability of level-of-custody challenges. Prisoners seeking to invalidate their death sentence must bring their claims in habeas. See *Hill* v. *McDonough*, 547 U.S. 573, 583 (2006). As the Court has recently explained, habeas lies when "an inmate seeks to overturn his death sentence, thus preventing the State from executing him." *Nance* v. *Ward*, 597 U.S. 159, 167 (2022). That interpretation rests on the " 'analogy' to seeking release" from that heightened form of custody (death) to the lower quantum (mere imprisonment). *J.G.G.*, 604 U.S. at 672 (alteration omitted) (quoting *Nance*, 597 U.S. at 167).

Most recently, in a case involving immigration transfers, the Court again reaffirmed that habeas is proper even if "the detainees [do not] formally request release from [all] confinement," so long as "their claims for relief 'necessarily imply the invalidity' " of a particular form of detention. *J.G.G.*, 604 U.S. at 672 (quoting *Nance*, 597 U.S. at 167). In particular, the Court held that claims challenging a detainee's transfer to confinement in another jurisdiction had to be brought in habeas, even though success on the claims would not result in "immediate physical release" from all custody. *Ibid.*; see *id.* at 674

(Kavanaugh, J., concurring). The Court has thus confirmed, in case after case across a range of contexts, that level-of-custody claims are cognizable in habeas.

4. Interpreting The Habeas Statute To Exclude Level-Of-Custody Claims Would Raise A Host Of Problems

Reading the habeas statute to cover level-of-custody claims is the only plausible reading of the text, history, and precedent. Even if a contrary reading were permissible, however, considering how the habeas statute "fit[s] with other pertinent law" strongly supports the level-of-custody reading. *Pulsifer* v. *United States*, 601 U.S. 124, 141 (2024).

a. If federal prisoners cannot bring level-of-custody claims in habeas, it is unclear what other avenues would be available. Under the court of appeals' interpretation of the scope of habeas, either federal prisoners will be required to remain in prison in violation of federal law with no avenue of relief, or courts will be required to grapple with a slew of doctrinal complexities to create an appropriate alternative vehicle for review. The level-of-custody reading urged by Mr. Maxwell, by contrast, offers the straightforward answer that habeas is available to test the legality of that confinement. The contrary reading should be rejected because it would "make[] a hash of" that longstanding framework. *Pulsifer*, 601 U.S. at 149; see *McDonough* v. *Smith*, 588 U.S. 109, 120 (2019) (looking to the "practical problems" created by a contrary rule to "reinforce[]" the soundness of the Court's interpretation); *RJR Nabisco* v. *European Community*, 579 U.S. 325, 344 (2016) (similar).

The courts of appeals that have held that level-of-custody claims are not cognizable in habeas have indicated that the claims should instead proceed under Section 1983 or as an implied cause of action under *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). See *Melot* v. *Bergami*, 970 F.3d 596, 599 (5th Cir. 2020); *Fortner* v. *Eischen*, 170 F.4th 655, 657 (8th Cir. 2026) (citing *Spencer* v. *Haynes*, 774 F.3d 467, 471 (8th Cir. 2014)).

Neither avenue offers a viable alternative for federal prisoners. Section 1983 does not apply to suits against federal officials. See *Ziglar* v. *Abbasi*, 582 U.S. 120, 130 (2017). And a *Bivens* suit would fail for a host of reasons: For one thing, *Bivens* allows a plaintiff to seek only money damages—not injunctive or declaratory relief—and therefore a court could not order a transfer to a lower level of custody under *Bivens*. See, e.g., *Correctional Services Corp.* v. *Malesko*, 534 U.S. 61, 74 (2001); *Solida* v. *McKelvey*, 820 F.3d 1090, 1093-1094 (9th Cir. 2016) (collecting cases). For another, *Bivens* is a doctrine for implying causes of action under the Constitution; it has no application where a prisoner challenges his confinement based on a statutory violation—like the one brought in this case. See *Egbert* v. *Boule*, 596 U.S. 482, 491-492 (2022). Nor would *Bivens* be a viable vehicle even for federal prisoners challenging their level of custody on constitutional grounds because doing so would require recognizing a *Bivens* claim in a new context, something the Court has declined to do for over 45 years, see *id.* at 490-491, and is unlikely to do in the future, see *id.* at 491, 493; see also *Cisco Systems, Inc.* v. *Doe I*, 146 S. Ct. 1882, 1890-1891 (2026).

It is unclear what other remedy might be available. In other contexts, a prisoner raising a claim that is not cognizable in habeas might bring a suit against the federal government under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* See 5 U.S.C. 704; *In re Federal Bureau of Prisons' Execution Protocol Cases*, 980 F.3d

123, 136-137 (D.C. Cir. 2020) (addressing method-of-execution claims). But federal law precludes APA challenges to some placement decisions by the Bureau of Prisons. See 18 U.S.C. 3625. It is therefore unclear whether the APA is always available for level-of-custody claims and whether it is available for claims concerning transfers to prerelease custody under the First Step Act at issue in this case. See, *e.g.*, *McMiller* v. *Carter*, Civ. No. 24-1181, 2025 WL 3022385, at *4 (D. Md. Oct. 29, 2025) (holding an APA suit raising a First Step Act claim barred by Section 3625). Because habeas is the traditional vehicle for curing unlawful confinement, courts should not need to grapple with the availability of APA review.

Alternatively, a federal prisoner might try to bring a suit in equity. See *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 327 (2015); see also *Trump* v. *Cook*, 146 S. Ct. 2234, 2251 n.2 (2026). But such challenges remain an "ill-defined" and "murky" area of the law. *Federal Defenders of New York, Inc.* v. *Federal Bureau of Prisons*, 954 F.3d 118, 133 (2d Cir. 2020); see *Trump* v. *CASA, Inc.*, 606 U.S. 831, 846 n.9 (2025). And the "power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations." *Armstrong*, 575 U.S. at 327. Accordingly, an equitable cause of action might not be available, including for claims under the First Step Act, if Congress has barred similar review under the APA. See *id.* at 327-328.

Finally, a federal prisoner might seek mandamus relief. See 28 U.S.C. 1361. But mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney* v. *United States District Court for District of Columbia*, 542 U.S. 367, 380 (2004) (internal quotation marks and citation omitted). There is little reason to think that Congress intended every level-of-custody case to proceed through that "extraordinary remedy" or that the remedy would be sufficient to vindicate all cases of illegal confinement.

b. Even if another vehicle could be identified, habeas is the more sensible avenue for level-of-custody claims. Habeas claims are filed in the district of confinement, see *J.G.G.*, 604 U.S. at 672, where the respondent maintains custody over the prisoner. That requirement "serves the important purpose of preventing forum shopping by habeas petitioners," *Padilla*, 542 U.S. at 447, and ensures that the respondent is the party who is most familiar with the facts of confinement and most able to produce the prisoner to the court, see, *e.g.*, *ibid.*; *Khalil* v. *President*, 164 F.4th 259, 271 (3d Cir. 2026). A level-of-custody claim is exactly the kind of challenge to a prisoner's detention that does not challenge the underlying sentence and that Congress has chosen to channel to the district of confinement rather than the district of conviction. See *Hendrix*, 599 U.S. at 475.

Habeas also contains various procedural and substantive restrictions that shield government officials and courts from unwarranted claims. For example, AEDPA requires state prisoners to exhaust alternative remedies before filing a habeas petition, see, *e.g.*, 28 U.S.C. 2254(b), and courts have required federal prisoners to exhaust alternative remedies as a prudential matter before seeking habeas relief, see, *e.g.*, *Carmona* v. *United States Bureau of Prisons*, 243 F.3d 629, 634 (2d Cir. 2001); *Fuller* v. *Rich*, 11 F.3d 61, 62 (5th Cir. 1994). Second-or-successive habeas petitions are generally prohibited by statute for state prisoners, see *Bowe* v. *United States*, 607 U.S. 13, 22-23 (2026); 28 U.S.C. 2244(b), and the common-law abuse-of-the-writ doctrine limits habeas petitions from federal prisoners, see, *e.g.*, *McCleskey* v. *Zant*, 499 U.S. 467, 494-495 (1991); *Beras* v. *Johnson*, 978 F.3d 246, 251 (5th Cir.

2020). Habeas petitions from state prisoners are governed by a strict, one-year statute of limitations, see 28 U.S.C. 2244(d)(1), and courts have applied equitable time-limits to habeas petitions from federal prisoners, see, *e.g.*, *Mandacina* v. *Entzel*, 991 F.3d 758, 762 (7th Cir. 2021). For state prisoners, AEDPA also imposes a particularly deferential standard of review, which gives due consideration to the comity interests of state courts. See 28 U.S.C. 2254(d); *Preiser*, 411 U.S. at 491.

By contrast, claims under the APA or suits in equity would not be subject to those same restrictions. And proceeding under the APA would allow claims by federal prisoners from across the country to be filed in the United States District Court for the District of Columbia, a court that does not ordinarily handle a large number of prisoner cases. See 28 U.S.C. 1391(e)(1); *United States District Court — Judicial Caseload Profile: District of Columbia*, <tinyurl.com/DDCCaseLoad> (reporting that in 2026 approximately 6% of civil cases in that court were brought by prisoners). That would be a peculiar way for Congress to structure the review of individualized level-of-custody claims, particularly given that Congress has sought to distribute federal prisoner cases more evenly across the country. See *United States* v. *Hayman*, 342 U.S. 205, 213-214 (1952).

As to state prisoners, moreover, excluding level-of-custody challenges from federal habeas would imply that those claims could proceed under Section 1983. See *Skinner*, 562 U.S. at 525; *Preiser*, 411 U.S. at 489. That outcome would be inconsistent with the "strong considerations of comity" that have informed this Court's decision to channel certain claims involving the "internal administration of [State] prisons" into habeas. *Preiser*, 411 U.S. at 492. Indeed, such matters are "peculiarly within

[S]tate authority and expertise," and it is "difficult to imagine an activity in which a State has a stronger interest." *Id.* at 491-492. On a practical level, then, just as on the doctrinal one, treating level-of-custody claims as falling within habeas simply makes good sense.

B. Mr. Maxwell's Claim Seeking Accelerated Transfer To A Halfway House Or To Home Confinement Challenges His Level Of Custody

As applied here, those principles lead to a straightforward conclusion: Mr. Maxwell's claim is cognizable in habeas because it seeks accelerated release from prison custody into legally distinct and materially less restrictive custody. Specifically, Mr. Maxwell's claim is that respondent has unlawfully refused to apply the earned-time credits he accrued under the First Step Act toward his transfer to a halfway house or to home confinement, thereby holding him in prison longer than legally authorized. That transfer from prison to a halfway house or to home confinement plainly qualifies as a change in the level of custody.

To begin with, federal law shows that halfway houses and home confinement are distinct forms of custody from prison. Section 3624 identifies halfway houses and home confinement as forms of "prerelease custody" with distinct features and procedures. 18 U.S.C. 3624(g); see also 18 U.S.C. 3624(c). For example, a prisoner on home confinement remains in his own home under electronic monitoring, and he may be allowed to leave for various activities. 18 U.S.C. 3624(g)(2)(A)(i)(II); see 18 U.S.C. 3624(g)(2)(B) (authorizing conditions of confinement in a halfway house as the Bureau of Prisons "determines appropriate"). Prerelease custody also serves the distinct purpose of allowing a prisoner to serve part of his sentence outside of prison to "prepare" "for reentry" into the broader community. 18 U.S.C. 3624(g)(4); see 18 U.S.C.

3624(c)(1). Indeed, if a prisoner violates the conditions of prerelease custody, then he may be required to return to "prison" for the remainder of his sentence—a sanction that further reflects that prison is a separate and more restrictive form of custody. 18 U.S.C. 3624(g)(5).

Confirming the point, a prisoner seeking transfer to a halfway house or to home confinement is seeking to be released from the custody of a particular custodian (the prison warden at the prison where he is confined) and transferred to the custody of another custodian (typically a residential reentry management field officer). See, *e.g.*, *Nekvasil* v. *United States*, Civ. No. 22-617, 2022 WL 4115428, at *2 (W.D. Mich. Sept. 9, 2022); *Andreozzi* v. *Manager, Residential Reentry Management Seattle*, Civ. No. 23-01106, 2023 WL 7156173 (W.D. Wash. Oct. 31, 2023), objections overruled, 2024 WL 689509 (Feb. 20, 2024). Deeming a challenge like petitioner's cognizable therefore accords with the traditional conception of habeas corpus, which seeks release from a particular person's custody. See *Padilla*, 542 U.S. at 434-435; p. 17, *supra*.

The same holds true if one considers the on-the-ground reality of halfway houses and home confinement, which involve many fewer restrictions on a person's liberty than imprisonment. Individuals supervised at a halfway house usually reside in their community, near friends and family. Individuals can generally leave for a job, to have dinner with their family, for social time in their community, and to attend religious services; they also can more readily invite visitors to the halfway house itself. See, *e.g.*, Department of Justice, *Statement of Work: Residential Reentry Center* 54-55 (Oct. 2016) <tinyurl.com/RRCStatementofWork>. Likewise, a person on home confinement has the benefit of living in his own residence; and subject to approval and monitoring he may leave that residence to go to work, perform community service, go to religious activities, and attend family-related reentry activities. See 18 U.S.C. 3624(g)(2)(A)(i).

Based on those differences, courts have repeatedly recognized that halfway houses and home confinement are "markedly different from custodial incarceration." *United States* v. *Jones*, 752 F.3d 1039, 1042 n.25 (5th Cir. 2014) (citation omitted) (collecting cases); see, *e.g.*, *Woodall* v. *Federal Bureau of Prisons*, 432 F.3d 235, 243 (3d Cir. 2005); *Alqsous* v. *Emmerich*, Civ. No. 25-722, 2026 WL 125691, at *3 (W.D. Wis. Jan. 16, 2026). After all, "[a] prison cot is not the same as a bed, a cell not the same as a home," and that is so "from every vantage point: privacy, companionship, comfort." *Ortega* v. *United States Immigration & Customs Enforcement*, 737 F.3d 435, 439 (6th Cir. 2013) (Sutton, J.). The forms of confinement represent "significant differences in kind, not degree." *Ibid.*

Finally, it is clear that this case concerns a level-of-custody claim because a transfer from prison to parole or to probation involves a cognizable change in the prisoner's level of custody, see *Preiser*, 411 U.S. at 476-477; pp. 25-26, *supra*, and the Parole Commission and courts have long had the authority to require prisoners to reside in a halfway house or on home confinement as a condition of their parole or probation. See, *e.g.*, 18 U.S.C. 3563(b)(11), (19); *Storm* v. *United States Parole Commission*, 667 Fed. Appx. 156, 156-157 (7th Cir. 2016); *Brown-El* v. *Hall*, 8 F.3d 20, 1993 WL 455561, at *4 (5th Cir. 1993); *Cofer* v. *Fleming*, Civ. No. 01-54, 2001 WL 1297687, at *1 (N.D. Tex. Oct. 11, 2001); *Butler* v. *United States Parole Commission*, 570 F. Supp. 67, 70 (M.D. Pa. 1983); Neil P. Cohen, *The Law of Probation & Parole* §§ 8:23 to 8:24 (2d ed. 1999) (collecting authorities); see also p. 9, *supra* (noting same about supervised release). There is no persuasive reason that transferring from prison to parole or probation (which might require living in a halfway house or on home confinement) would be a change in the level of custody cognizable in habeas, while transferring from imprisonment specifically to a halfway house or to home confinement would not.

C. The Contrary Rule Adopted By The Fifth And Eighth Circuits Lacks Merit

In the decision below, the Fifth Circuit rejected Mr. Maxwell's habeas claim based on the circuit's "bright-line rule" that a claim is cognizable in habeas only "if a favorable determination of the prisoner's claim" would "automatically entitle [the prisoner] to accelerated release." J.A. 35 (quoting *Melot*, 970 F.3d at 599). Under that rule, the court of appeals determined that a claim seeking accelerated transfer to a halfway house or to home confinement is not cognizable. *Ibid.* The Eighth Circuit has taken the same view. See *Fortner*, 170 F.4th at 658. Notably, the government does not defend that rule, and for good reason: it appears nowhere in the text of the habeas statute, it has no basis in the history of the writ, and it is irreconcilable with this Court's precedents. See pp. 15-34, *supra*. Neither of the courts of appeals to have adopted the rule has offered any persuasive arguments in its defense.

1. The decision below dismissed Mr. Maxwell's habeas claim based solely on the Fifth Circuit's prior decision in *Melot*, 970 F.3d 596. See J.A. 35. There, the prisoner sought entry into a pilot program that would transfer him from prison to home confinement. *Melot*, 970 F.3d at 599. The court acknowledged that "an argument can be made that the Program allows for 'release' from institutional custody." *Ibid.* But it rejected that argument in an unreasoned paragraph, taking the view that a move "from

a prison facility to home detention" is no "release" at all. *Id.* at 599-600. The court then recharacterized the prisoner's claim as a "conditions of confinement" challenge and determined—again with virtually no reasoning—that it was "more properly brought as a *Bivens* action." *Id.* at 599.

That analysis is badly flawed. A *Bivens* action is plainly not available for a statutory claim seeking transfer to a congressionally created program. See p. 30, *supra*. Nor was the court correct to recharacterize the prisoner's claim as a challenge to conditions of confinement. A conditions-of-confinement claim challenges a prisoner's treatment within his existing custody—such as access to medical care or the safety of his physical conditions—and can be remedied by altering those conditions without releasing the prisoner. See, *e.g.*, *Nance*, 597 U.S. at 171-172. A level-of-custody claim, by contrast, challenges the custodian's authority to hold the prisoner, asserting that release from one form of custody to a materially less restrictive one is required. See, *e.g.*, *Wilkinson*, 544 U.S. at 86 (Scalia, J., concurring). A claim seeking release from prison to a halfway house or to home confinement is a classic level-of-custody challenge, not a conditions-of-confinement claim.

In *Melot*, the Fifth Circuit also invoked a decision from the Tenth Circuit, which concerned a prisoner's challenge to his transfer between federal prisons. See *Boyce* v. *Ashcroft*, 251 F.3d 911, judgment vacated on rehearing, 268 F.3d 953 (2001). But, whatever its views about a transfer between two prisons, the Tenth Circuit has itself more recently recognized that a claim may proceed in habeas where it seeks "immediate release from, or a shortened period of, physical imprisonment, *i.e.*, placement on parole or in a parole-like custodial setting." *Palma-Salazar* v. *Davis*, 677 F.3d 1031, 1037 n.2 (10th Cir. 2012). And other courts of appeals have likewise distinguished between cases involving transfers within the prison system and transfers to a different level of custody, reasoning that the former retain the prisoner's level of custody while changing only their place of imprisonment. See, *e.g.*, *Falcon* v. *United States Bureau of Prisons*, 52 F.3d 137, 139 (7th Cir. 1995); *Ganim* v. *Federal Bureau of Prisons*, 235 Fed. Appx. 882, 883-884 (3d Cir. 2007).

2. The Eighth Circuit has provided no more persuasive reasoning for dismissing habeas claims seeking accelerated release to a halfway house or to home confinement. Like the Fifth Circuit, the Eighth Circuit mistakenly treated such claims as merely involving the prisoner's conditions of confinement and therefore viewed itself bound by prior circuit precedent (which had addressed only the latter issue). See *Fortner*, 170 F.4th at 658-659 (citing *Kruger* v. *Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996), and *Spencer*, 774 F.3d at 469-471).

In particular, the Eighth Circuit reasoned that prerelease custody is a form of "detention" equivalent to imprisonment, which it deemed significant because the habeas claim at issue would not shorten the "length of time" that the prisoner would serve in detention overall, instead resulting in the prisoner serving his "detention in a different location with better conditions." *Fortner*, 170 F.4th at 658. The court further reasoned that whether a claim is cognizable in habeas "turns on whether the habeas petitioner is challenging the length of his detention," regardless of whether he challenges the lawfulness of his "custody." *Ibid.* From there, the court explained that a claim seeking transfer to "supervised release is cognizable in habeas though it is still a form of custody," because "[s]upervised release is not detention." *Ibid.* And it contrasted a claim seeking supervised release with one seeking transfer to prerelease custody because prerelease custody does constitute "detention." *Ibid.*

As an initial matter, any distinction between a claim for restoration of supervised release and for transfer to a halfway house or to home confinement founders because residence at a halfway house or home confinement can be imposed by the district court as a condition of supervised release. See p. 36, *supra*. Nor is the Eighth Circuit correct that prerelease custody is a form of detention equivalent to imprisonment. As explained above (pp. 34-37), residing in a halfway house or on home confinement is fundamentally different from being incarcerated in prison, as both Congress and courts have recognized.

In any event, the Eighth Circuit's supposed distinction between challenges to "detention" and challenges to "custody" finds no support in text, history, or precedent. On the contrary, habeas corpus has long been available to challenge unlawful "custody," as the plain language of Section 2241 makes clear. See pp. 16-17, *supra*. And the suggestion that habeas is unavailable to challenge "custody" that is not also "detention" (as the Eighth Circuit would categorize it) flouts this Court's precedents, which have repeatedly recognized that a person may challenge unlawful "custody" through habeas even if that custody is less restrictive than "physical imprisonment." *Cunningham*, 371 U.S. at 240, 243 (parole); see, *e.g.*, *Olivier* v. *City of Brandon*, 607 U.S. 552, 558 n.2 (2026) (probation); *Hensley*, 411 U.S. at 349, 352 (bail); see also *Cossio* v. *Air Force Court of Criminal Appeals*, 129 F.4th 1013, 1018 (7th Cir.) (supervised release), cert. denied, 146 S. Ct. 240 (2025). In short, the Eighth Circuit has provided no persuasive justification for its novel position.

* * * * *

The convoluted interpretations offered by the Fifth and Eighth Circuits lack any basis. The straightforward answer is the right one here: habeas is the appropriate vehicle to challenge unlawful imprisonment, even when the remedy requested is a less restrictive form of custody rather than complete release. The Court should reaffirm that longstanding rule and hold that Mr. Maxwell's claim seeking accelerated transfer to a halfway house or to home confinement is cognizable in habeas.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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