

No. 25-5930

IN THE
Supreme Court of the United States

WILLIAM MAXWELL,
Petitioner,

v.

SANDRA DINIS, ACTING WARDEN,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

BRIEF OF SENATORS RICHARD J. DURBIN
AND CORY A. BOOKER AS AMICI CURIAE IN
SUPPORT OF PETITIONER

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STATEMENT OF INTEREST¹

Amici curiae Senators Richard J. Durbin and Cory A. Booker are Members of the United States Senate who were lead sponsors of the First Step Act of 2018. The Act includes provisions that reformed the system for earned time credits so that an offender who has taken advantage of the statutory incentives to participate in evidence-based recidivism reduction programming is entitled to transfer to a less restrictive form of custody, including community-based options such as a halfway house or home confinement.

¹ No counsel for a party authored this brief in whole or in part. Only amici and counsel for amici funded its preparation and submission.

Passage of the First Step Act was a historic step forward for our Nation’s criminal justice system, which was made possible with broad across-the-aisle support.

Amici are uniquely positioned to speak to the history of the First Step Act and have a strong interest in ensuring that the Act is interpreted in a manner consistent with Congress’s chosen language. As reflected in the text of the statute and overall statutory scheme, offenders who participate in recidivism reduction programming may accrue credits for time earned. They can then benefit from the Act’s incentive structure for accelerating transfer to supervised release or prerelease custody, defined as custody served outside prison under “conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry,” including home confinement and community correctional facilities. 18 U.S.C. § 3624(c)(1). Amici urge the Court to hold that claims seeking transfer to prerelease custody are cognizable in habeas, which would give full effect to the First Step Act’s reforms in line with the Act’s text, purpose, and underlying Congressional intent. The Fifth Circuit’s contrary judgment should be reversed.

INTRODUCTION AND SUMMARY OF ARGUMENT

In December 2018, a bipartisan majority of both chambers of Congress passed, and President Donald J. Trump signed into law, the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (the “First Step Act” or the “Act”). The Act is a historic and bipartisan piece of legislation, ushering in momentous correctional, sentencing, and criminal justice reforms.

At the heart of the Act is a carefully designed system that incentivizes prisoner participation in rehabilitative and recidivism reduction activities. By participating in this productive, socially beneficial programming, offenders accumulate earned time credits that, under the statute, *must* be applied to accelerate offenders' access to community-based, alternative means of custody such as halfway houses and home confinement. After eight years, the myriad benefits of this incentive system—to offenders and to the Nation—are evident: Participants in First Step Act programming reoffend at markedly lower rates, and offenders are able to more easily transition back into productive, community-facing roles upon release. This system also results in meaningful cost savings for the federal government because the community-based forms of confinement encouraged under the Act are less expensive than full custody.

The Fifth Circuit's judgment in this case threatens to undermine Congress's groundbreaking approach to prison reform. First, the decision fails to consider that the Act imposes a *mandatory* obligation on the Bureau of Prisons to apply earned time credits to prerelease custody or supervised release and to place offenders into community-based alternative confinement arrangements as soon as the statutory criteria are met. And second, the decision erects an artificial barrier to relief for offenders like Mr. Maxwell, who seek to enforce the Bureau of Prisons' nondiscretionary obligation. Nothing in the statutory text, congressional intent, or this Court's precedent supports that result.

ARGUMENT**I. CONGRESS DESIGNED AND ENACTED THE FIRST STEP ACT TO EXPAND ACCESS TO PRERELEASE CUSTODY.****A. Congress Designed The First Step Act To Enact Comprehensive, Bipartisan Criminal Justice Reform.**

The First Step Act marked a watershed legislative response to the extensive body of evidence showing that rehabilitative programming is central to improving outcomes for people in federal custody. Enacted by “a supermajority of Congress,” the Act is “a landmark piece of legislation” marking the culmination of a yearslong bipartisan effort. *Hewitt v. United States*, 606 U.S. 419, 424 (2025). The supporters who formed the “extraordinary political coalition” backing the First Step Act reflected the broad constituency in favor of correctional sentencing and criminal justice reform. 164 Cong. Rec. S7639, S7645 (daily ed. Dec. 17, 2018) (statement of Sen. Durbin).

Support for the First Step Act was “not just bipartisan; it [was] nearly nonpartisan.” 164 Cong. Rec. S7740, S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Leahy). Senate Judiciary Committee Chairman Grassley echoed this sentiment, observing that he did not know “whether we have had legislation like this before * * * whereby we have put together such diverse groups of people and organizations that support the bill.” *Id.* at S7778 (statement of Sen. Grassley). The broad collection of supporters counted among its ranks are groups ranging from the Fraternal Order of Police to the American Civil Liberties Union, as well

as others like the American Correctional Association and the Association of Prosecuting Attorneys. The fruit of this coalition’s work was “the most significant criminal justice reform bill in a generation.” 164 Cong. Rec. S7649 (statement of Sen. Grassley); *see also id.* at S7646 (statement of Sen. Durbin) (describing the Act as “one of the most historic changes in criminal justice legislation in our history”).

Considering the significant bipartisan coalition supporting the First Step Act, it is no surprise that it was enacted by overwhelming bipartisan margins. The bill was filed in the Senate in nearly its final form on December 13, 2018. After invoking cloture on December 17 by a vote of 82 to 12, *see* 164 Cong. Rec. S7650, the Senate passed the First Step Act the following day by a vote of 87 to 12, *see id.* at S7781. Two days later, the House passed the measure by a vote of 358 to 36. *See* 164 Cong. Rec. H10430, H10430 (daily ed. Dec. 20, 2018). Then, on December 21, President Trump signed the First Step Act into law, describing it as “an incredible moment” for “criminal justice reform.” Remarks by President Trump at Signing Ceremony for S. 756, the “First Step Act of 2018” and H.R. 6964, the “Juvenile Justice Reform Act of 2018,” 2018 WL 6715859, at *16 (Dec. 21, 2018).

B. Congress Made An Earned Time Framework Incentivizing Transfers To Prerelease Custody A Cornerstone Of The First Step Act.

Part of the First Step Act’s broader criminal justice reforms were provisions that deliberately expanded access to supervised release and other forms of prerelease custody. 18 U.S.C. § 3624(g)(1)(D)(i)-(ii). When

enacting the First Step Act, Congress acted against the backdrop of sentencing laws and federal correctional practices that made it impossible to implement the sort of evidence-based reforms that Congress embraced in the legislation. *See* 164 Cong. Rec. S7745 (statement of Sen. Blumenthal explaining that the pre-enactment regime “provide[d] few incentives for prisoners to prepare for reentry, and that is the gap the First Step Act seeks to address”).²

When Congress surveyed the federal criminal justice landscape in 2018, it found staggering correctional expenses that showed no signs of slowing. Fiscal prudence accordingly figured into the legislative calculus. Congress “want[ed] to focus tax dollars on programs that have proven results” and applied that budgetary restraint principle to the First Step Act, which “spell[s] out exactly what [Congress was] looking for: the most effective and efficient, evidence-based recidivism-reduction programs.” 164 Cong. Rec. S7744 (statement of Sen. Durbin). Congress legislated to “make our communities safer, save taxpayer money, and start addressing the revolving door of incarceration and crime.” *See* 164 Cong. Rec. H10362 (Dec. 20, 2018) (statement of Rep. Collins). These reforms were implemented when the “cost of housing Federal offenders” had grown so much that it “consume[d] nearly one-third of the Justice Department’s budget”: Congress understood that “[b]ecause public safety dollars are finite,” this extraordinary budgetary burden “strips critical resources away from law

² The Court looks to statutory history and context for guidance in interpreting a statute’s terms, *see United States v. Hansen*, 599 U.S. 762, 775 (2023).

enforcement strategies that have been proven to make our communities safer,” thus imposing both financial and human costs. 164 Cong. Rec. S7749 (Statement of Sen. Leahy).

Senator Cornyn explained how the First Step Act was one effort to break the “perpetua[l] cycle of crime that continues to plague communities across the country and to drain taxpayer dollars in the process.” *See* 164 Cong. Rec. S7642 (Dec. 17, 2018) (statement of Sen. Cornyn); *see also id.* at S7644 (Dec. 17, 2018) (statement of Sen. Durbin explaining that the First Step Act set out to reduce the Federal prison population).

Prerelease custody was a key component of Congress’s design in enacting the First Step Act. Critically, Congress tied access to prerelease custody to an incentive structure that is built into the statute: The drafters made participation in recidivism reduction programs the medium through which a person in custody may accrue earned time credit. *See* 18 U.S.C. § 3632(a)(6) (directing the Bureau of Prisons to “develop” a “risk and needs assessment system” that “provide[s] incentives and rewards for successful participation in evidence-based recidivism reduction programs or productive activities”). Credits earned for “completing evidence-based programming”—including “education, job training, drug treatment, life skills, [and] faith-based programs”—help to make a person eligible for prerelease custody. 164 Cong. Rec. S7746 (statement of Sen. Cornyn); *see also* 18 U.S.C. § 3632(d)(4)(A)(i), (d)(4)(C).

Congress understood that the availability of incentives was paramount to the success of the First Step

Act’s new paradigm. As one Senator explained, because “we, as human beings, all operate based on incentives,” “the incentives in this program are really important.” 164 Cong. Rec. S7746 (statement of Sen. Cornyn). Congress thus deliberately created “incentive[s] for prisoners * * * to go through the program”—namely, the promise that those who “gain the earned credit * * * can be released” to community-based placements that operate under “less confining conditions, for example, a halfway house.” *Id.* The statute’s drafters understood that recidivism reduction programming would give people a direct stake in their own correctional futures. Successful participation would “reduce the time they serve” by allowing offenders to “be released to a halfway house or something similar to that.” 164 Cong. Rec. S7744 (statement of Sen. Durbin). Consistent with that end, Congress provided that federal prisoners may earn up to 54 days of good time credit per year toward service of the overall imposed sentence. 18 U.S.C. § 3624(b)(1).

The authors of the First Step Act paired this inducement with a set of mandatory directives to the Bureau of Prisons. Congress directed that a “prisoner *shall* earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” 18 U.S.C. § 3632(d)(4)(A)(i) (emphasis added). A prisoner categorized as medium- or low-risk is eligible to earn additional time credits for participation. *Id.* § 3632(d)(4)(A)(ii). These earned time credits “*shall* be applied toward time in prerelease custody or supervised release,” and the Bureau “*shall* transfer eligible prisoners * * * into prerelease custody or supervised

release” when they meet the eligibility requirements set out in the statute. *Id.* § 3632(d)(4)(C) (emphases added).

In the years since the First Step Act’s enactment, evidence shows the incentive system that Congress designed, including prerelease custody, is working. Recidivism among those released under the First Step Act is down markedly, and the system’s rehabilitative aims are bearing fruit. The most recently available annual report detailing outcomes under the First Step Act showed that 90.3% of the 44,673 former prisoners released under the Act had successfully reintegrated into the communities to which they returned. Dep’t of Just., First Step Act Annual Report 40-44 (June 2024), <https://perma.cc/9N8Z-JBG6>. The 9.7% of former prisoners who recidivated after being released under the First Step Act paled in comparison to the 44.8% overall recidivism rate of all prisoners released from Bureau of Prisons custody during that same year. Avinash Bhati, *First Step Act: An Early Analysis of Recidivism*, Council on Crim. Just. (Dec. 2024), <https://perma.cc/PL4E-T4B4>.³ Even after adjusting for differences between federal prisoners generally and those eligible for release under the First Step Act,

³ This divergence between the recidivism rates of former prisoners released under the First Step Act and the broader universe of prisoners released from Bureau of Prisons custody continues a years-long trend. *See, e.g.*, Dep’t of Just., First Step Act Annual Report 40-43 (Apr. 2023), <https://perma.cc/2RJF-7RUH>; Avinash Bhati, *First Step Act: An Early Analysis of Recidivism*, Council on Crim. Just. (Aug. 2023), <https://perma.cc/C22N-HV8C> (12.4% recidivism rate among individuals released under the First Step Act in 2023, compared to 46.2% recidivism rate of all prisoners released from Bureau of Prisons custody that year).

the recidivism rate among First Step Act-released individuals is 55% lower than prisoners with similar profiles released prior to the First Step Act's enactment. *Id.* And the majority of those released under the First Step Act had completed at least one recidivism reduction program. Avinash Bhati, *Time Sentenced and Time Served: Exploring the Impact of the First Step Act*, Council on Crim. Just. (Dec. 2023), available at FSA.counciloncj.org/fsa.

The potential fiscal benefits that animated wide bipartisan interest in the First Step Act have also started coming to fruition since the law's enactment. The community-based forms of prerelease custody that the First Step Act make possible are far more cost-effective. The Bureau of Prisons reported that in 2024, the federal government spent \$129.21 each day to house a prisoner in a Bureau of Prisons facility, compared to \$119.73 in a residential reentry center (halfway house). *See* Annual Determination of Average Cost of Incarceration Fee (COIF), 90 Fed. Reg. 58,059 (Dec. 15, 2025). The daily cost of home confinement is less than half of the federal outlay for housing a prisoner in a Bureau of Prisons facility. *See* Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 88 Fed. Reg. 19,830, 19,833, 19,839 (Apr. 4, 2023).

The taxpayer savings that helped drive support for the First Step Act on both sides of the political aisle will be realized only if prisoners like Mr. Maxwell are, in fact, transferred to prerelease custody once they become eligible. If the promise of transfer to less-restrictive, community-based forms of prerelease custody goes unfulfilled, savings will not be fully realized. By

reversing the decision below, the Court can uphold the judgment of Congress that the First Step Act will “make the system work better for the taxpayers, help law enforcement fight crime, and put a stopper in the revolving prison door.” 164 Cong. Rec. S7838 (daily ed. Dec. 19, 2018) (statement of Sen. Grassley).

II. CONGRESS INTENDED FOR THE FIRST STEP ACT’S INCENTIVE SYSTEM TO BE ENFORCEABLE AND REVIEWABLE.

A. The First Step Act Imposes A Mandatory Obligation On The Bureau Of Prisons To Apply Earned Time Credits To Prerelease Custody Or Supervised Release.

“Congress clearly knows how to use mandatory language when it so desires.” *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 524 n.11 (1994). The First Step Act’s system of earned time credits for federal prisoners is a perfect example. Congress eliminated the Bureau’s discretion about awarding earned time credits when statutory prerequisites have been met. The text and structure of the statute make this abundantly clear.

First, the statute’s incentive provision speaks in mandatory terms. It instructs that a prisoner “shall” earn time credits for participating in qualifying activities. The Bureau of Prisons “shall” apply those credits toward prerelease custody or supervised release. And once the statutory requirements (including a sufficient number of earned time credits) have been met, the Bureau “shall” transfer eligible prisoners to prerelease custody or supervised release. *See supra*, p. 8 (describing statutory language); 18 U.S.C. § 3632(d).

“It is undisputed that the word ‘shall’ imposes a mandatory command.” *Bufkin v. Collins*, 604 U.S. 369, 379 (2025).

Second, § 3632’s “adjacent provisions * * * underscore its mandatory nature.” *Me. Cmty. Health Options v. United States*, 590 U.S. 296, 310 (2020). Contrast the language in the incentive system provision with, for instance, § 3622, which provides that the Bureau of Prisons “*may* release a prisoner * * * for a limited period” for certain enumerated purposes; or § 3621(b), under which the Bureau “*may* designate any available penal or correctional facility * * * that the Bureau determines to be appropriate and suitable.”⁴ These provisions—which also concern prisoner housing and relocation—authorize, but do not obligate, the Bureau of Prisons to act. *Cf. Murphy v.*

⁴ 18 U.S.C. §§ 3621(b), 3622 (emphases added). The First Step Act’s structure also does not support treating prerelease custody eligibility as a decision regarding a mere “place of imprisonment.” *Contra Osorio-Calderon v. Warden, FCI Sandstone*, 179 F.4th 1158, 1164 (8th Cir. 2026). The First Step Act has a separate provision outlining the Bureau’s authority to determine a person’s “place of imprisonment”; that section grants the Bureau discretion to make certain housing designations. *See* 18 U.S.C. § 3621. But the statutory criteria governing whether someone has become eligible for prerelease custody in the first place is different. Consequently, the Bureau of Prisons has not been vested with the same level of discretion when it comes to that initial eligibility inquiry—to conclude otherwise would read the incentive system’s critical, mandatory language out of the statute. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (it is the court’s duty “to give effect, if possible, to every clause and word of a statute,” particularly “when the term occupies so pivotal a place in the statutory scheme” (citation omitted)).

Smith, 583 U.S. 220, 226-227 (2018) (“If Congress had wished to confer the same discretion in [one section of a statute] that it conferred in [another section], we very much doubt it would have bothered to * * * replace those old discretionary words with new mandatory ones.”); *Russello v. United States*, 464 U.S. 16, 23 (1983) (rejecting argument that “differing language” in two separate provisions of the same statute could nevertheless be read to reveal “the same meaning in each”). Accordingly, “[w]hen, as is the case here, Congress distinguishes between ‘may’ and ‘shall,’ it is generally clear that ‘shall’ imposes a mandatory duty.” *Me. Cmty. Health*, 590 U.S. at 311 (cleaned up).

Third, outside of the specifically enumerated, limited exceptions to the earned time credit system, no other qualifying language appears in that statutory provision. See 18 U.S.C. § 3632(d)(4)(B), (D), (E). Again, that absence is telling. And again, it stands in contrast to other portions of the statute, such as the provisions governing housing decisions or the use of less restrictive conditions, which qualify the Bureau of Prisons’ obligation to act only “to the extent practicable.” *Id.* §§ 3632(c), 3624(g)(4).

The First Step Act thus plainly provides that the Bureau of Prisons *must* apply earned time credits toward prerelease custody or supervised release. That obligation lies at the heart of the statutory incentive scheme. Indeed, the Bureau itself understands its statutory mandate to be essential to the First Step Act’s purpose. As recently as May 2025, it issued a directive to “[e]xpand [h]ome [c]onfinement[] [and] [a]dvance [the] First Step Act,” emphasizing its “responsibility to * * * ensure that eligible incarcerated

individuals * * * are transferred to home confinement as soon as statutorily possible.” Press Release, Federal Bureau of Prisons, Federal Bureau of Prisons Issues Directive to Expand Home Confinement, Advance First Step Act (May 28, 2025). The agency explained that this directive “honors the bipartisan vision behind the FSA.” *Id.*

B. The First Step Act’s Prerelease Custody Incentives Are Enforceable Through Habeas Petitions.

Habeas petitions like Mr. Maxwell’s permit the courts to give effect to congressional intent and ensure that the First Step Act remains a meaningful tool for prison reform. Mr. Maxwell’s petition alleges that he was denied transfer to prerelease custody despite meeting all statutory eligibility requirements. Notably, he does not challenge the Bureau of Prisons’ choice of which type of community-based confinement to assign him—he challenges the denial of access to *any* prerelease custody arrangement. Pet. for Certiorari, at 1. By failing to transfer him, the Bureau of Prisons is unlawfully confining Mr. Maxwell using a meaningfully different—and more restrictive—form of custody in violation of its statutory obligations under the First Step Act. Accordingly, Mr. Maxwell’s petition is properly understood as a challenge to the lawfulness of his custodial arrangement—and is cognizable in habeas.

“[W]hen Congress enacts statutes, it is aware of relevant judicial precedent.” *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010). The First Step Act is no exception to this presumption; the text Congress chose in the Act should be interpreted against the relevant

backdrop. *See Hewitt*, 606 U.S. at 431 (explaining, in a case interpreting provisions of the First Step Act, that “we recognize that Congress legislates against the backdrop of certain unexpressed presumptions”) (cleaned up). Decades of this Court’s precedent establish that habeas relief encompasses situations, like the one here, that challenge the legality of a person’s level of confinement. Had Congress intended to close the door to habeas relief despite this precedent, it would have said so. There was no need to adopt a statute-specific enforcement mechanism to enforce the Act’s nondiscretionary duties.

In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the Court explained that “the writ of habeas corpus evolved as a remedy available to effect discharge from *any* confinement contrary to the Constitution or fundamental law.” *Id.* at 485 (emphasis added). The Court understood the scope of this remedy to include both unlawful “confine[ment] in the wrong institution” and unlawful revocation of parole. *Id.* at 486. And it applied that historical understanding to the respondents’ claim that “the deprivation of their good-conduct-time credits was causing or would cause them to be in illegal physical confinement,” concluding it was “beyond doubt” that such a claim sounded in habeas. *Id.* at 487-488. Likewise, in *Edwards v. Balisok*, 520 U.S. 641 (1997), the Court held that habeas was the proper vehicle for challenging a “procedural defect” that would “necessarily imply the invalidity of the deprivation of [petitioner’s] good-time credits.” *Id.* at 646. And in *Wilkinson v. Dotson*, 544 U.S. 74 (2005), Justice Scalia recognized that “permissible habeas relief * * * includes ordering a ‘quantum change

in the level of custody,’ such as release from incarceration to parole.” *Id.* at 86 (Scalia, J., concurring) (citation omitted).

The majority of the courts of appeals to have considered the issue have correctly understood this Court’s precedent to permit challenges to the level of custody via a habeas petition.

In keeping with *Preiser* and *Wilkinson*, the First Circuit applied the “quantum change in the level of custody” framework to analyze whether a challenge was cognizable in habeas. *González-Fuentes v. Molina*, 607 F.3d 864, 873 (1st Cir. 2010). In *Molina*, the court considered the practical effects of the electronic supervision program at issue, in which participants “were able to live with family members, work daily jobs, attend church, and reside in their own homes.” *Id.* This constituted a “difference in the level of custody” from institutional confinement “of sufficient magnitude to justify the use of habeas corpus.” *Id.* at 873 n.7.

Similarly, in *Levine v. Apker*, 455 F.3d 71 (2d Cir. 2006), the Second Circuit concluded that habeas petitions were proper vehicles to challenge “the degree of physical restriction.” *Id.* at 78. And in *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235 (3d Cir. 2005), the Third Circuit applied the Court’s reasoning to a petitioner’s challenge to the Bureau’s regulations limiting prisoner placements in Community Corrections Centers (CCCs). As the court explained, “[c]arrying out a sentence through detention in a CCC is very different from carrying out a sentence in an ordinary penal institution.” *Id.* at 243. CCCs “satisfy different goals from other types of confinement,” meaning “placement in a CCC represents more than a simple

transfer.” *Id.* Accordingly, the prisoner’s challenge to the “execution” of the sentence was cognizable in habeas. *See id.* at 241.

Precedent regarding challenges to parole revocation should also guide the Court’s treatment of challenges to community-based placement eligibility denials. There are critical similarities between parole, supervised release, and prerelease custody. Indeed, “Congress established the system of supervised release” “[i]n parole’s place.” *United States v. Haymond*, 588 U.S. 634, 652 (2019) (plurality op.). And the former federal parole system, like the alternative forms of confinement found in § 3632, was designed “to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed.” *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972).

This Court long understood challenges to parole decisions to be cognizable in habeas. *E.g., id.*; *Gagnon v. Scarpelli*, 411 U.S. 778, 791 (1973) (permitting petitioner to challenge parole revocation through writ of habeas corpus). And courts of appeals, including the Fifth Circuit, have recognized that the same is true for challenges to a term of supervised release. *See, e.g., Johnson v. Pettiford*, 442 F.3d 917 (5th Cir. 2006) (per curiam) (permitting prisoner to challenge duration of term of supervised release via habeas petition); *Mujahid v. Daniels*, 413 F.3d 991 (9th Cir. 2005) (recognizing that petitioner could bring habeas petition challenging the Bureau of Prisons’ calculation of earned time credits as applied to his term of supervised release). In other words, each time someone seeks to move a rung up the ladder toward full

release—from full custodial confinement to parole or supervised release, or from supervised release to full release—habeas is the proper vehicle.

The First Step Act’s structure supports treating parole, supervised release, and prerelease custody similarly for purposes of judicial review. The statute clearly identifies prerelease custody and supervised release as related forms of community-based confinement that are distinct in form and purpose from full custodial confinement. *See* 18 U.S.C. § 3632. And they are the only two alternative confinement methods to which the Bureau of Prisons *must* apply earned time credits. Thus, prerelease custody should be considered through the same lens. *See Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”).

* * *

The First Step Act’s text and this Court’s precedent establish that Mr. Maxwell may challenge the Bureau of Prisons’ refusal to transfer him to prerelease custody through a habeas petition. Any other result would undermine congressional intent: It would make little sense to insulate from judicial review the Bureau’s noncompliance with the carefully designed, nondiscretionary system outlined in § 3632. Determining that a claim like Mr. Maxwell’s must be brought in an action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), would create artificial barriers to reviewability, *see* Petitioner Br. 30, thus “produc[ing] a

result demonstrably at odds with the intentions of [the First Step Act’s] drafters.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

CONCLUSION

The Fifth Circuit’s judgment should be reversed.

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