

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 COURT-APPOINTED *AMICUS CURIAE*
IN SUPPORT OF THE JUDGMENT BELOW**

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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.

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INTEREST OF AMICUS CURIAE

By order dated June 16, 2026, this Court invited Brian W. Barnes to brief and argue this case, as *amicus curiae*, in support of the judgment below.

INTRODUCTION

The parties in this case are proceeding from a shared but mistaken factual premise that threatens to lead the Court into legal error. Petitioner and Respondent both assume that distinguishing between who is “in” prison and who is “out” of it is a straightforward matter, but the reality is that many federal prisoners serve their time in facilities that are halfway in between. That is true not just for halfway houses and home confinement, but also minimum-security federal prison camps that can share key characteristics with halfway houses: dormitory-style housing, no outer walls or fencing, and job assignments that take prisoners off grounds to work under limited supervision. Federal prisoners are subject to many gradations of restrictions on their liberty, with the same facilities placing varied limits on different prisoners at different times according to Bureau of Prisons (BOP) policy. If the Court is to draw administrable lines to distinguish prisoner claims that sound in habeas from prisoner claims that merely concern the conditions of confinement, it must look for a standard that does not depend on precisely how much freedom someone who is serving a prison sentence enjoys.

Fortunately, the statutory regime that governs the incarceration and release of federal prisoners recognizes a distinction that this Court can use to draw a bright line between federal prisoner habeas claims and federal prisoner claims that must be brought via

some other cause of action. Individuals who are in Pre-release Custody—the status Petitioner seeks—remain “prisoners” subject to BOP custody serving their prison sentences. 18 U.S.C. § 3624(c)(1). Individuals on Supervised Release, in contrast, have been released from prison and are no longer serving “a term of imprisonment.” *Id.* § 3583(g). A federal prisoner who seeks a court order releasing him to Supervised Release must sue in habeas; a federal prisoner who wishes to serve more of his prison sentence in Prerelease Custody cannot.

Affirming the Fifth Circuit on this basis would be entirely consistent with this Court’s precedents. While this Court has observed that a prisoner’s suit for a change in the “level of custody” sounds in habeas, *Skinner v. Switzer*, 562 U.S. 521, 534 (2011), such a claim must imply that the prisoner is entitled to bail or parole to fit within these precedents, *see Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (describing such claims as those which seek “immediate release or a speedier release from [] imprisonment” (emphasis added)). Supervised Release is the federal analogue to parole, but Prerelease Custody is different. And whatever the import of the Court’s observation in *Jones v. Hendrix*, 599 U.S. 465, 475 (2023), that a habeas petitioner under Section 2241 “might wish to argue . . . that he is being detained in a place or manner not authorized by the sentence,” Petitioner’s sentence authorizes the current place and manner of his imprisonment.

The Fifth Circuit’s judgment is correct, and this Court should affirm.

STATEMENT

A. The Varied Locations Where Federal Prisoners Serve Their Sentences

Federal prisoners serve their terms of incarceration in a wide variety of different physical locations. The categorization and characteristics of these locations is not as clean and simple as Petitioner and Respondent suggest. *See* Pet'r Br. at 34–37; Resp't Br. at 29–32.

1. Under BOP policy, every federal prisoner “is assigned a level of supervision according to their criminal history and institutional behavior/adjustment,” known as a “custody classification.” BOP Change Notice 5100.08, CN-3: Inmate Security Designation and Custody Classification at ch. 6 p. 1 (May 6, 2026), <https://perma.cc/ZM2T-9LUB>. BOP has four custody classifications: “Community,” “Out,” “In,” and “Maximum.” *Id.* at ch. 2 p. 2 (emphasis omitted). The “Community” custody classification—the “lowest custody level”—means a prisoner “may be eligible” for housing “outside [of a BOP facility’s] perimeter” and “may work on outside details with minimal supervision.” *Id.* at ch. 2 p. 1 (emphasis omitted).

New federal prisoners receive an “initial classification,” which is reviewed “approximately 7 months after arrival at an institution” and then “at least every 12 months.” *Id.* at ch. 6 p. 1. Prisoners can be transferred to other facilities if their custody classification increases or decreases. *See id.* at ch. 7 pp. 3–4. Prisoners can also be transferred to different locations for a variety of other reasons, including “Witness Security,” “medical services,” and “training purposes.” *Id.* at ch. 7 pp. 4–8. With approval by the warden, prisoners

designated as “Community” or “Out” custody can be driven by a family member when transferring from one minimum security level institution to another. *Id.* at ch. 7 p. 8 (emphasis omitted).

2. A prisoner’s place of imprisonment is determined by BOP. *See* 18 U.S.C. § 3621(b). BOP facilities are classified into one of five security levels based on the level of security and staff supervision provided: “Minimum,” “Low,” “Medium,” “High,” and “Administrative.” BOP Change Notice 5100.08 at ch. 1 p.1 (emphasis omitted). Federal Prison Camps are one type of Minimum-security location. *About Our Facilities: Federal Prisons*, FED. BUREAU OF PRISONS, <https://perma.cc/5VAC-P3WD>. They have “limited or no perimeter fencing.” *Id.* Satellite Prison Camps are a similar type of Minimum-security location. *Id.* They are “small” camps “adjacent to” traditional BOP facilities. *Id.* The Department of Justice Office of Inspector General has expressed concern about “inmate accountability and security” at prison camps, exemplified by the escape of four prisoners from the Beaumont Satellite Prison Camp that is adjacent to the Low-security prison where Petitioner is currently housed. *Management Advisory Memorandum 21-080: Notification of Security Concerns at Federal Bureau of Prisons Camp Locations* at 1, DEP’T OF JUST. OFF. OF THE INSPECTOR GEN. (June 2021), <https://perma.cc/KM8P-FESE>. The escape “went undetected for more than 12 hours despite 3 overnight inmate counts during that period of time.” *Id.* Security weaknesses at federal prison camps identified by the Inspector General include “unsecured outer building doors,” “door locks and sensors that were susceptible to tampering,”

“limited or no outer perimeter fencing[,] and limited video surveillance.” *Id.* at 2.

The places of imprisonment at issue in this case—halfway houses and home confinement—are those available under what is known as “Prerelease Custody.” 18 U.S.C. § 3624(g)(2). Federal halfway houses, also sometimes called “Community Corrections Centers,” are officially referred to as “Residential Reentry Centers.” *About Our Facilities: Reentry Centers*, FED. BUREAU OF PRISONS, <https://perma.cc/2TBY-NBA4>. Prisoners placed at halfway houses have their “location and movements [] constantly monitored.” *Id.* They can only leave the facility “for approved activities” and must follow “sign-out procedures.” *Id.* They are also subjected to “random drug and alcohol test[ing].” *Id.*

Home confinement is generally considered the “least restrictive form of custody” and is sometimes managed by halfway house staff. *Bureau of Prisons: Actions Needed to Better Achieve Financial and Other Benefits of Moving Individuals to Halfway Houses on Time* at 7, 7 n.14, U.S. GOV’T ACCOUNTABILITY OFF. (Feb. 2026), <https://perma.cc/P76Y-6VXG>. Home confinement locations generally must be “approved” by “[halfway house] staff” after a “home visit” and checked “at least monthly.” *Id.* at 7–8, 7 n.13. Individuals on home confinement are subject to “electronic monitoring” and, like individuals at halfway houses, cannot leave except for “approved activities.” *Id.* at 7–8. They also “must return to the [halfway house] weekly to participate in routine activities and are generally tested for drug and alcohol use in the same

manner and frequency as [halfway house] residents.” *Id.* at 7.

3. Petitioner and Respondent suggest Prerelease Custody locations (halfway houses and home confinement) are materially different from BOP prisons (which include federal prison camps). *See* Pet’r Br. at 35 (“halfway houses and home confinement . . . involve many fewer restrictions on a person’s liberty than imprisonment”); Resp’t Br. at 32 (emphasizing the “difference between physical imprisonment and prerelease custody in a halfway house or home confinement”). But that is not always true and depends on the type of federal prison facility where a prisoner is housed.

Prisoners at prison camps have more freedom than one might expect, even though they are indisputably incarcerated in federal prisons. *See* PIPER KERMAN, *ORANGE IS THE NEW BLACK: MY YEAR IN A WOMEN’S PRISON* 175 (2010) (noting prisoners transferred to the “minimum-security” camp from a “high-security” facility “were often freaked out because they were unaccustomed to as much ‘freedom’”); *id.* at 231 (stating that “[i]t didn’t feel like I was in prison anymore” when at a lake on the grounds of a BOP facility as part of a camp work program). At these facilities, “[t]he front lobby gate is often unlocked, and prisoners routinely leave the facility for assigned jobs.” Walter Pavlo, *Contraband at Camps Costing Federal Bureau of Prisons Millions*, PRISONOLOGY (Feb. 10, 2025), <https://perma.cc/T6HU-56RE>. “Some camps even have a position known as the ‘Town Driver’—a prisoner assigned to transport other inmates to medical appointments, bus stations, or even hardware stores

for supplies.” *Id.* Given the lax security at federal prison camps, one former prisoner observed that “[a]ny inmate really could, if he wanted to, just walk out” of such a facility. BERNARD B. KERIK, FROM JAILER TO JAILED: MY JOURNEY FROM CORRECTION AND POLICE COMMISSIONER TO INMATE #84888-054 21 (2015). Such “walk aways” do in fact occur. *See, e.g.*, Scott Lawrence, *Inmate serving 20 year sentence walks away from Beaumont federal prison satellite camp*, KFDH (Sep. 13, 2024), <https://perma.cc/Q699-JACD>; Scott Eslinger, *U.S. Marshals searching for inmate who walked away from Federal prison camp in Beaumont*, 12 NEWS NOW (Sep. 30, 2019), <https://perma.cc/VYR9-46Y8>.

Conversely, people who serve their prison sentences at Prerelease Custody locations have more restrictions than one might imagine. A source cited by Respondent, *see* Resp’t Br. at 34, describes the “jail-like conditions” of halfway houses, calling the majority of them “an extension of the carceral experience, complete with surveillance, onerous restrictions, and intense scrutiny.” Roxanne Daniel & Wendy Sawyer, *What You Should Know About Halfway Houses*, PRISON POL’Y INITIATIVE (Sep. 3, 2020), <https://perma.cc/U86W-EBBY>. As that source notes, “[h]alfway houses are just as much a part of someone’s prison sentence as incarceration itself.” *Id.* That is why one commentator (and former federal prisoner) has suggested shutting federal prison camps in favor of halfway houses and home confinement, which “provide[] greater oversight of minimum-security prisoners.” Pavlo, *supra*. Restrictions on liberty also change over time for individuals at halfway houses, who “are generally subject to two stages of confinement.”

Daniel & Sawyer, *supra*. Initially, individuals at halfway houses “are restricted to the facility with the exception of work, religious activities, approved recreation, program requirements, or emergencies”; later, they may be approved “to move to the second, less restrictive component of [halfway house] residency.” *Id.* BOP is also required “to the extent practicable, [to] provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody.” 18 U.S.C. § 3624(g)(4). The restrictions on someone serving his prison sentence at a halfway house or home confinement thus can vary over time, even at the same location.

Being at a BOP facility rather than in Prerelease Custody, therefore, does not necessarily mean dramatically more restrictions and less freedom for a prisoner. Consider the former New York City Police Commissioner’s comparison of his time at Federal Prison Camp-Cumberland to his home confinement:

The housing in a camp consists of dormitory-style units similar to what you’d find on a military base or college campus. There’s minimal staffing. There are no fences around most camps, no locks on the doors, and in many ways, I was more restricted during the six months I spent on home confinement before surrendering at Cumberland than I was in the camp.

KERIK, *supra* at 285–86.

These descriptions help demonstrate the varied web of restrictions on liberty that federal prisoners who are incarcerated at lower security facilities

experience at different locations and at different times. There are no clear lines demarcating the levels of restrictions at various types of locations. There is not even one spectrum of restrictions along which locations may be placed. Instead, there are many dimensions by which they can be characterized—physical security, ability to travel, electronic monitoring, visitation, etc. But these locations all have one thing in common: they are all places of imprisonment.

B. Prerelease Custody and Supervised Release

1. Some federal prisoners nearing the ends of their prison sentences are eligible to be placed in “Prerelease Custody.” 18 U.S.C. § 3624(c). Prerelease Custody occurs before a prisoner’s “Date of Release,” or “the date of the expiration of the prisoner’s *term of imprisonment*.” *Id.* § 3624(a) (emphasis added). A prisoner in Prerelease Custody can be physically housed at a halfway house or home confinement. *See id.* § 3624(g)(2). The availability of Prerelease Custody does not “limit or restrict the authority of the Director of [BOP] under section 3621” to designate a prisoner’s place of imprisonment. *Id.* § 3624(c)(4); *see id.* § 3621. In fact, a court *cannot* require that imprisonment take place in a Prerelease Custody “community corrections facility” (a halfway house). *Id.* § 3621(b). So a prisoner in Prerelease Custody is still under BOP control and *imprisoned*—not *released*—under the statute.

Prerelease Custody is distinct from “Supervision After Release,” otherwise known as Supervised Release. *Id.* § 3624(e). Unlike an individual in Prerelease Custody, someone on Supervised Release is not serving “a term of imprisonment.” *Id.* § 3583. Supervised

Release “commences on the day the person is *released* from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole,” with limited exceptions. *Id.* § 3624(e) (emphasis added). *See also United States v. Johnson*, 529 U.S. 53, 53–54 (2000) (explaining differences between Supervised Release and “imprisonment”). An individual on Supervised Release is “released by [BOP] to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court.” 18 U.S.C. § 3624(e).

Prisoners can earn time credits under 18 U.S.C. § 3632 that can be applied toward Prerelease Custody or Supervised Release. *See id.* § 3632(d)(4)(C). A prisoner can be transferred to Prerelease Custody if he earns time credits “in an amount that is equal to the remainder of the prisoner’s imposed term of imprisonment,” along with other requirements under 18 U.S.C. § 3624(g)(1)(A). A prisoner can be transferred to Supervised Release based on time credits only up to 12 months early. *See id.* § 3624(g)(3).

2. Conditions of Prerelease Custody are set by BOP. *See id.* §§ 3624(g)(2)(A)(i)(III), 3624(g)(2)(A)(iii), 3624(g)(2)(B). For home confinement, these include 24-hour electronic monitoring and a requirement to remain in a prisoner’s home except for specified reasons, subject to BOP approval. *See id.* § 3624(g)(2)(A)(i).

Conditions of Supervised Release, by contrast, are set by a judge. *See id.* § 3583(a). A court may require an individual to “remain at his place of residence

during nonworking hours and . . . have compliance monitored by telephone or electronic signaling devices” “only as an alternative to incarceration” and after considering a number of statutory factors. *Id.* § 3583(e)(4).

3. Violations of the conditions of Prerelease Custody are addressed by BOP. *See id.* § 3624(g)(5). When a prisoner violates the requirements of Prerelease Custody, the Director of BOP can “impose such additional conditions” as he “determines appropriate, or revoke the prisoner’s prerelease custody and require the prisoner to serve the remainder of the term of imprisonment to which the prisoner was sentenced, or any portion thereof, in prison.” *Id.*

Supervised Release, by contrast, *cannot* be revoked or modified by BOP, and serious disciplinary matters instead must go through a court. *See id.* § 3583(a). Only a court may modify the conditions of Supervised Release. *See id.* § 3583(e). To revoke Supervised Release, generally a judge must “find[] by a preponderance of the evidence that the defendant violated a condition of supervised release.” *Id.* § 3583(e)(3). There are exceptions to this rule related to firearms and drugs, but those still require “the court” to “revoke the term of supervised release.” *Id.* § 3583(g).

C. The Present Controversy

1. Petitioner is a federal prisoner serving a 20-year sentence after being convicted by a jury on over 20 criminal charges. *See United States v. Scarfo*, 41 F.4th 136, 157 (3d Cir. 2022), *judgment entered sub nom. United States v. Maxwell*, No. 15-2925, 2023 WL 11282245 (3d Cir. July 17, 2023). Petitioner was an

attorney, and in 2007 conspired with members of La Costa Nostra, a “mob” organized crime group, to take over FirstPlus Financial Group, Inc., a Texas-based mortgage-loan company, and to drain FirstPlus of its assets. *See id.* at 157–62, 165. Petitioner was charged with numerous criminal violations: conspiracy to engage in racketeering activity, conspiracy to commit securities fraud, conspiracy to commit wire fraud, sixteen substantive counts of wire fraud, conspiracy to commit money laundering, conspiracy to commit bank fraud, conspiracy to make false statements in connection with a loan application, and conspiracy to transfer a firearm to prohibited persons, or to possess a firearm by a convicted felon. *See id.* at 163.

A jury found Petitioner guilty on all counts except conspiracy to commit bank fraud and to make false statements. *See id.* at 165 & n.13; Am. J. at *1, *United States v. Scarfo*, No. 1:11-cr-00740, 2015 WL 5059612 (D.N.J. Aug. 11, 2015). The district court sentenced Petitioner to 20 years of imprisonment, to be followed by three years of Supervised Release. *See* Am. J. at *1, *United States v. Scarfo*, No. 1:11-cr-00740, 2015 WL 5059613 (D.N.J. Aug. 11, 2015); Am. J. at *1, *United States v. Scarfo*, No. 1:11-cr-00740, 2015 WL 5059614 (D.N.J. Aug. 11, 2015). The court of appeals affirmed, *United States v. Scarfo*, 41 F.4th 136, and this Court denied a petition for a writ of certiorari, *Maxwell v. United States*, 145 S. Ct. 189 (2024) (Mem.).

2. In 2022, Petitioner filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the Eastern District of Texas, the district where he is imprisoned. JA 1–14. The petition alleged in relevant part that BOP had unlawfully failed to “consider”

transferring Petitioner to prerelease custody based on his First Step Act time credits and the “[18 U.S.C.] § 3621(b) factors.” JA 10.

A magistrate judge recommended that the habeas petition be dismissed. JA 18–27. The district court adopted the magistrate judge’s recommendation and dismissed the habeas petition. JA 28–33. It agreed that Petitioner had failed to exhaust his First Step Act claim, stating that Petitioner “was clearly challenging the BOP’s refusal to grant him his requested relief of home confinement,” yet “[n]one of [his administrative] grievances mention the entitlement to FSA earned time credits as authority for why Petitioner should now be placed in home confinement or a halfway house.” JA 31.

The court of appeals affirmed on other grounds. JA 34–36. It noted its previous holding that “a habeas petition ‘is the proper vehicle to seek release from custody,’ while a civil rights suit under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), is the ‘proper vehicle to attack unconstitutional conditions of confinement and prison procedures.’” JA 35 (quoting *Melot v. Bergami*, 970 F.3d 596, 599 (5th Cir. 2020)). Applying this standard, the court found that because “the nature of [Petitioner’s] requested relief is transfer to a halfway house or home confinement” it would not “entitle him to accelerated release, so the relief he seeks is properly brought in a civil rights suit” rather than a habeas petition. *Ibid.* It therefore affirmed dismissal of Petitioner’s petition. JA 36.

3. Petitioner filed a petition for a writ of certiorari and motion for leave to proceed *in forma pauperis* in

this Court on August 20, 2025. Respondent filed a waiver of the right to respond on October 30, 2025. This Court requested a response on November 12, 2025. After multiple extensions of the deadline to file a response, Respondent filed a brief in opposition on April 16, 2026, and Petitioner filed his reply on May 5, 2026. On June 1, 2026, this Court granted Petitioner’s petition and motion and on June 16, 2026, invited this amicus to brief and argue the case in support of the judgment below.

SUMMARY OF THE ARGUMENT

The court below was correct: the writ of habeas corpus can be used to challenge the *fact or duration* of a prisoner’s confinement; it cannot be used to challenge the *conditions* of that confinement. If a prisoner’s claim implies that his physical detention must be shortened or terminated, that he is entitled to earlier release on bail or parole, or that he is being held in a place that the sentencing court did not have jurisdiction to send him, the prisoner’s claim sounds in habeas; otherwise, it does not. This Court’s precedents, statutory text, practical realities, and administrability concerns all support the conclusion that the relief sought by Petitioner—transfer via Prerelease Custody to a halfway house or home confinement—falls outside of the core of habeas.

This Court’s precedents have recognized three different types of prisoner habeas claims: claims to end or shorten a prisoner’s physical detention, claims for earlier release on bail or parole, and claims that the sentencing court lacked jurisdiction to send a prisoner to the place where he is being held. A transfer to Prerelease Custody would not shorten Petitioner’s

physical detention, is materially different from parole, and does not challenge the authorization for Petitioner's current place of imprisonment under his sentence. It thus is not a valid habeas claim. None of the precedents cited by Petitioner or Respondent require this Court to hold otherwise.

An understanding of the differences between Pre-release Custody—the relief sought by Petitioner—and Supervised Release—the federal equivalent of parole—demonstrates why such a transfer is a continued physical detention and is materially different from parole. The first occurs *before* release from imprisonment and is controlled by BOP, while the second occurs *after* release and is controlled by the courts and probation officers.

Neither of the alternatives proposed by Petitioner or Respondent is a workable method of determining when a prisoner claim sounds in habeas. Petitioner's proposal to use a functional test to assess the "level of custody," Pet'r Br. at 38, conflicts with this Court's precedents and would require a very fact-intensive inquiry that would not be administrable in practice. Respondent's proposal to consider whether an individual seeks "an accelerated transfer out of prison (i.e., a transfer 'into the community')", Resp't Br. at 26, begs the answer to the very question this Court faces and is unworkable in practice. And despite concerns expressed by Petitioner and Respondent, there would be nothing anomalous about treating Petitioner's claims the same way courts treat all other claims brought by federal prisoners challenging the conditions of their confinement.

ARGUMENT**I. Prisoner claims that challenge the conditions, rather than the fact or duration, of confinement do not sound in habeas.**

This Court has repeatedly recognized that it is an open question under its precedents whether prisoners may use the federal habeas statutes to challenge the conditions of their confinement. *See Ziglar v. Abbasi*, 582 U.S. 120, 145 (2017); *Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979); *Preiser*, 411 U.S. at 499. That question is the subject of a longstanding and acknowledged circuit split. *See Wilborn v. Mansukhani*, 795 F. App'x 157, 163 (4th Cir. 2019) (per curiam) (collecting cases). Despite the disagreement in the lower courts, Petitioner does not argue that conditions of confinement claims are cognizable in habeas but instead focuses his argument exclusively on the analytically subsequent question of whether claims of entitlement to transfer to a halfway house or home confinement are conditions of confinement claims. Like Petitioner, the Court could bypass the threshold issue, assuming without deciding that conditions of confinement claims do not sound in habeas. But it would be odd for the Court to issue an opinion in this case that focuses on the line between claims that concern the conditions of confinement and claims that concern the fact or duration of confinement if, on a correct view of the law, claims on both sides of that line may be brought in habeas. Amicus therefore begins with the threshold issue and respectfully submits that conditions of confinement claims cannot be brought under 28 U.S.C. § 2241.

A. While this Court has not squarely decided the issue, it has repeatedly expressed skepticism that claims outside of what *Preiser* called the “core of habeas corpus” are cognizable in habeas. 411 U.S. at 487.

First, in *Muhammad v. Close*, 540 U.S. 749 (2004), the Court limited the applicability of *Heck v. Humphrey*, 512 U.S. 477 (1994), by holding that a state prisoner was entitled to challenge administrative determinations that did not “raise any implication about the validity of the underlying conviction” or “necessarily” affect “the duration of time to be served.” 540 U.S. at 754. In so ruling, the Court observed that challenges to such administrative determinations “raised no claim on which habeas relief could have been granted on any recognized theory.” *Id.* at 755. The Court also noted that it has “never followed the speculation in *Preiser* . . . that . . . a prisoner subject to ‘additional and unconstitutional restraints’ might have a habeas claim independent of § 1983,” *id.* at 751 n.1, further supporting the view that such claims are not cognizable in habeas. Instead, the Court characterized the distinction between habeas claims and Section 1983 claims in the following way: “Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983 action.” *Id.* at 750 (citing *Preiser*, 411 U.S. at 500).

The Court used similar language in *Wilkinson v. Dotson*, 544 U.S. 74 (2005), in which state prisoners brought a Section 1983 action to challenge a state’s practice of applying new parole procedures retroactively. The Court explained that a habeas petition is

the exclusive vehicle for state prisoner claims where “success in [the] action would necessarily demonstrate the invalidity of confinement or its duration.” *Id.* at 82. But a Section 1983 claim could proceed where success on the claim would mean only that a prisoner will be eligible for parole review, “which at most will speed consideration of a new parole application.” *Id.* (emphasis omitted). In so ruling, the Court suggested that habeas is available only for claims that seek “invalidation (in whole or in part) of the judgment authorizing the prisoner’s confinement.” *Id.* at 83.

Skinner, further confirms this understanding. There, the Court rejected the argument that a claim for DNA testing lay “at the core” of a criminal proceeding and had to be brought in habeas. *Skinner*, 562 U.S. at 535 n.13 (quotation marks omitted). The Court characterized its holding in *Dotson* as declaring “in no uncertain terms, that when a prisoner’s claim would not necessarily spell speedier release, that claim does not lie at ‘the core of habeas corpus,’ and may be brought, *if at all*, under § 1983.” *Id.* (quotation marks omitted) (emphasis added). This language suggests that there is no overlap between habeas claims and Section 1983 claims—prisoner claims that lie at “the core of habeas corpus” must be brought under the habeas statutes; claims that do not must be brought via some other cause of action.

B. Statutory text and history reinforce the conclusion that this Court’s cases point to: claims that concern a prisoner’s conditions of confinement fall outside the ambit of habeas corpus.

The text of 28 U.S.C. § 2241(a) authorizes the federal courts to grant “[w]rits of habeas corpus.” The

meaning of that phrase must be understood against the backdrop of centuries of English and American legal history. At common law, the courts could only dispose of a writ of habeas corpus in one of three ways: a court “according to the circumstances of the case may discharge, admit to bail, or remand the prisoner.” 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND at *131–33 (1768). What was true in 2011 when this Court decided *Skinner* remains true today: there is “no case . . . in which the Court . . . recognized habeas as the sole remedy, *or even an available one*, where the relief sought would ‘neither terminate custody, accelerate the future date of release from custody nor reduce the level of custody.’” 562 U.S. at 534 (cleaned up) (emphasis added). Justice Scalia made the same point in his concurrence in *Dotson*: permitting a habeas challenge to parole procedures (as opposed to a habeas challenge to the refusal to actually release the prisoner to parole) “would require us to broaden the scope of habeas relief beyond recognition.” 544 U.S. at 85 (Scalia, J., concurring). There is simply no English or American legal tradition of using the writ to order changes to a prisoner’s conditions of confinement or otherwise “extort from the respondent custodian forms of relief short of release.” *Id.* at 87 (Scalia, J., concurring).

To be sure, “Congress has broadened the scope of the writ of habeas corpus beyond the limits that obtained during the 17th and 18th centuries,” *Swain v. Pressley*, 430 U.S. 372, 380 n.13 (1977); *see Edwards v. Vannoy*, 593 U.S. 255, 285–86 (2021) (Gorsuch, J., concurring), and since 1874 federal courts that hear habeas petitions have been authorized to “dispose of the party as law and justice require,” *In re Bonner*,

151 U.S. 242, 261 (1894) (quoting U.S. REV. STAT. § 761 (1874)); *see* 28 U.S.C. § 2243 (“The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.”). But this statutory language only authorizes courts to issue conditional writs so that a prisoner to whom the writ is granted may be held pending resentencing or to correct some other error. *See Dotson*, 544 U.S. at 86–87 (Scalia, J. concurring); *see also, e.g., Bonner*, 151 U.S. at 262 (granting writ “without prejudice to the right of the United States to take any lawful measures to have the petitioner sentenced in accordance with law”). Habeas corpus has never been understood as a free-floating authorization to review a remanded prisoner’s conditions of confinement.

If the Court reaches the issue, it should hold that a prisoner may not challenge the conditions of his confinement under the federal habeas statutes.

II. Petitioner’s claim regarding application of time credits under the First Step Act is a challenge to the conditions rather than the fact or duration of his confinement.

If prisoner challenges to the fact or duration of confinement are cognizable in habeas but challenges to prison conditions are not, how should courts distinguish between the two? Amicus proposes the following bright-line rule: if a prisoner’s claim implies that his physical detention must be shortened or terminated, that he is entitled to earlier release on bail or parole, or that the sentencing court ordered him to serve his sentence in a place it did not have jurisdiction to send him, the prisoner’s claim sounds in habeas; otherwise, it does not. This rule accords with the longstanding

purpose and scope of habeas corpus, is consistent with this Court’s cases, and does not suffer from the administrability problems of the alternatives offered by Petitioner and Respondent. Under this rule, Petitioner loses; his claim to entitlement to transfer to a halfway house or home confinement is a challenge to the conditions of his confinement and does not sound in habeas.

A. Petitioner’s suit does not fall into any of the limited categories of prisoner claims that sound in habeas.

1. This Court’s precedents recognize three types of prisoner habeas claims.

The first are claims that would end or shorten the physical detention of a prisoner. Claims that would result in “immediate release from physical custody” or “discharge from any confinement contrary to the Constitution or fundamental law” are paradigmatic habeas claims. *Preiser*, 411 U.S. at 485–87 (collecting cases). Habeas petitions can also be used to “attack future confinement and obtain future releases.” *Id.* at 487. The Court has also held that “when an inmate seeks to overturn his death sentence, thus preventing the State from executing him” a prisoner “challenges the validity of a conviction or sentence,” *Nance v. Ward*, 597 U.S. 159, 167 (2022), not the “level of custody” as suggested by Petitioner, *see* Pet’r Br. at 28. Because of this, a habeas case “challenging a sentence seeks a prisoner’s ‘release’ in the only pertinent sense: It seeks invalidation (in whole or in part) of the judgment authorizing the prisoner’s confinement.” *Dotson*, 544 U.S. at 83.

By contrast, claims that would not “seek to invalidate the duration of [a prisoner’s] confinement—either *directly* through an injunction compelling speedier release or *indirectly* through a judicial determination that necessarily implies the unlawfulness of the State’s custody” cannot be brought as habeas claims. *Id.* at 81 (emphasis in original). That is why “[c]hallenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus” while “requests for relief turning on circumstances of confinement” are not. *Muhammad*, 540 U.S. at 750 (citing *Preiser*, 411 U.S. at 500). Or put another way, claims that do not attack “the validity of [a] conviction or sentence, but only a way of implementing the sentence,” “in other words, how the prescribed incarceration is being carried out,” are claims “challenging prison conditions.” *Nance*, 597 U.S. at 171–72.

Second, prisoner claims that would result in release on bail or parole also sound in habeas. Habeas was historically “utilized largely to secure the admission to bail and discharge of prisoners.” *Peyton v. Rowe*, 391 U.S. 54, 59 (1968). In *Preiser*, this Court recognized that a habeas petition can also be used by a prisoner to seek release on parole. *See* 411 U.S. 475. The prisoners in *Preiser* sought “injunctive relief to compel restoration of [good-conduct-time] credits, which in each case would result in their immediate release from confinement in prison,” specifically “immediate release from prison on parole.” *Id.* at 476–77, 479–81. This Court held that they must do so in a habeas action because it is “the specific instrument” for a prisoner who complains “that he is being unlawfully subjected to physical restraint” and seeks “to obtain

release from such confinement.” *Id.* at 486. By contrast, claims that would result in “at most new eligibility review, which at most will speed *consideration* of a new parole application” or “at most a new parole hearing at which . . . parole authorities may, in their discretion, decline to shorten [a prisoner’s] prison term” do not sound in habeas because they would not “necessarily spell speedier release.” *Dotson*, 544 U.S. at 82 (emphasis in original).

Third, claims that the sentencing court ordered the prisoner to serve his sentence in a place it lacked jurisdiction to send him are also valid habeas claims. In *Bonner*, a prisoner had been “ordered to be confined in the penitentiary, where the law d[id] not allow the court to send him for a single hour.” 151 U.S. at 259. This Court held that a sentencing court “must keep strictly within the limits of the law authorizing it to take jurisdiction, and to try the case, and to render judgment,” and not “pass beyond those limits,” as it did in that case. *Id.* at 256. However, when the law “place[s] it within the power of the court, at its discretion, to order execution of its sentence” at any of the multiple locations, a court can designate the place of imprisonment “as it pleases.” *Ex parte Karstendick*, 93 U.S. 396, 399 (1876).

2. Petitioner’s claim to entitlement to transfer to a halfway house or home confinement does not fit within any of the recognized categories of prisoner habeas claims.

Petitioner is not seeking an immediate or quicker release from physical detention. Transfer to a halfway house or home confinement would still keep Petitioner in BOP custody at a location ultimately controlled by

BOP. *See* 18 U.S.C. § 3624(c). He would be monitored and could be sent back to a prison facility by BOP. *See id.* § 3624(g). He would also continue to serve his term of imprisonment. *See id.* § 3624(a). The relief Petitioner seeks thus would not result in his release from physical detention.

Petitioner also does not seek release to parole or its federal equivalent, Supervised Release. He instead seeks transfer to something very different—Prerelease Custody. *See infra* 28–34. Petitioner therefore does not seek release to parole.

Finally, Petitioner does not contend that his current place of imprisonment is unauthorized by his criminal sentence. While Petitioner states “federal law does not authorize his existing custody” “because federal law requires his transfer to a lower level of custody,” Pet’r Br. at 16, he does not argue that the sentencing court in his case ordered him to serve his sentence in a place it lacked jurisdiction to send him. Because Petitioner was sentenced federally, his current imprisonment in a federal prison is authorized by his sentence. *See* 18 U.S.C. § 3621(b).

Because Petitioner’s claim does not fall into any of the recognized categories of claims for prisoners that are cognizable in habeas, his petition was properly dismissed.

B. The cases cited by Petitioner and Respondent do not suggest a different line or that Petitioner’s claim is on the habeas side of it.

1. Petitioner and Respondent point to this Court’s decision in *Preiser* as supporting their argument that Prerelease Custody sounds in habeas, *see* Pet’r Br. at 25–26; Resp’t Br. at 21–23, but that case was about release on parole, which is different than the relief sought by Petitioner here. The federal equivalent of parole—the relief sought in *Preiser*—is Supervised Release, *not* Prerelease Custody. *See United States v. Haymond*, 588 U.S. 634, 652 (2019) (“In parole’s place, Congress established the system of supervised release.”). So the modern federal analogy to *Preiser* would be a prisoner seeking good time credits for earlier Supervised Release. Seeking transfer to Prerelease Custody is a distinct claim, not covered by *Preiser*’s holding. The decision below is therefore entirely consistent with *Preiser*.

2. Petitioner and Respondent also make much of the Court’s observation in *Skinner* that habeas can be an available remedy in cases in which “the relief sought would . . . reduc[e] the level of custody.” 562 U.S. at 534 (quoting *Dotson*, 544 U.S. at 86 (Scalia, J., concurring)). *See* Pet’r Br. at 26–27; Resp’t Br. at 23–24. But that language is best understood to apply to parole, bond, and Supervised Release, *not* to Prerelease Custody. The “level of custody” in Prerelease Custody is the same as in prison—BOP maintains full control. *See* 18 § U.S.C. 3624(c). The “level of custody” for an individual on Supervised Release, by

comparison, is materially lower, conducted by a different entity, and overseen by the courts. *See id.* § 3624(e).

Notably, Justice Scalia’s concurrence in *Dotson* uses “release from incarceration to *parole*”—the federal equivalent of which is Supervised Release—as an example of a reduction in the level of custody. *Dotson*, 544 U.S. at 86 (Scalia, J. concurring) (emphasis added). And the Seventh Circuit decision Justice Scalia was drawing from in his *Dotson* concurrence found that a suit for transfer into a work release program was *not* cognizable in habeas even though the prisoner was “seeking a different program or location or environment” that would have been less “restrictive” than the environment he was in. *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (Posner, J.). That decision, in turn, relied in part on a Third Circuit case that held that a prisoner’s claim to be entitled to home furlough should be brought under Section 1983 and not as a habeas claim. *See id.* (citing *Wright v. Cuyler*, 624 F.2d 455, 458 (3d Cir. 1980) (Garth, J.)). Far from supporting reversal of the decision below, these cases strongly support the view that transfer from prison to a halfway house or home confinement is not the sort of change in “level of custody” that is cognizable in habeas.

3. Petitioner and Respondent also point to this Court’s observation in *Jones*, 599 U.S. at 475, that “a prisoner might wish to argue” in a suit under Section 2241 “that he has unlawfully been denied parole or good-time credits.” *See* Pet’r Br. at 18–19, 27–28; Resp’t Br. at 24. But this statement is best understood to refer to Supervised Release and *not* to Pretrial

Custody. Again, the federal equivalent of parole is Supervised Release, *not* Prerelease Custody. Federal credits under Section 3624(b) are given “toward the service of the prisoner’s sentence,” meaning they shorten the duration of the term of imprisonment—whether in prison or Pretrial Custody—and hasten the prisoner’s release—either unconditional or Supervised Release. 18 U.S.C. § 3624(b)(1). Time credits under Section 3632(d) can be applied toward Supervised Release *or* Prerelease Custody, but the reference to good-time credits in *Jones* is best understood as referring *only* to those that would apply toward Supervised Release and therefore result in the federal equivalent of parole, thus the shortening of the duration of imprisonment before release. *See* 18 U.S.C. § 3632(d)(4)(C).

Neither should the analysis change based upon this Court’s suggestion in *Jones* that a habeas petitioner under Section 2241 might be able to argue “that he is being detained in a place or manner not authorized by the sentence.” 599 U.S. at 475. That observation is best understood as referring to cases like *Bonner*, where the Court held that the writ was available when the sentencing court ordered a prisoner to serve his sentence at a state prison to which the court lacked jurisdiction to send him. *See* 151 U.S. 242. In any case, Petitioner does not claim that he is being detained in a “manner not authorized by his sentence,” *Jones*, 599 U.S. at 475, for all agree that Petitioner’s sentence authorizes his imprisonment at the federal prison where he is currently incarcerated.

4. Finally, Petitioner cites multiple cases for the proposition that any claim of “unlawful custody” or

invalid detention is enough to bring a habeas claim. Pet'r Br. at 16–17, 28–29. But most of Petitioner's cases addressed situations where the basis for an individual's detention was challenged and they are thus not analogous to Petitioner's claim. *See e.g.*, *Rasul v. Bush*, 542 U.S. 466, 472 (2004) (alleging, among other things, that petitioners had not “been charged with any wrongdoing”); *Walker v. Wainwright*, 390 U.S. 335, 335 (1968) (alleging that petitioner “had been deprived of counsel at his preliminary hearing, that a coerced confession had been used against him at trial, and that he had been denied the right to an effective appeal”).

None of this Court's precedents cited by Petitioner and Respondent therefore require this Court to use a different line to distinguish between claims that can be brought in habeas and those that cannot. They also do not require this Court to hold that Petitioner's claim is cognizable in habeas.

C. Prerelease Custody is materially different from parole.

A detailed examination of the relief sought by Petitioner confirms why his claim does not sound in habeas. Transfer to Prerelease Custody—even at a half-way house or home confinement—is, contrary to claims by Respondent, *see* Resp't Br. at 30, materially different from a release to parole, the federal equivalent of which is Supervised Release. The relevant statutory text and factual distinctions between the two situations support this conclusion. Claims to entitlement to transfer to Prerelease Custody, unlike claims to entitlement to be released on parole, therefore do not sound in habeas.

1. The plain language of the federal statutes demonstrate the legal differences between Prerelease Custody and Supervised Release. Prerelease Custody, as the term indicates, occurs *before release*, or before “the date of the expiration of the prisoner’s *term of imprisonment*.” 18 U.S.C. § 3624(a) (emphasis added). The statute even refers to those in Prerelease Custody as “prisoner[s].” *Id.* § 3624(c)(1). That is not the case for Supervised Release, also referred to as “Supervision After Release,” which as the term indicates, is a form of *release*. *Id.* § 3624(e). Under the statute, when an individual is released to Supervised Release, that changes their status from a “prisoner” to a “person released.” *Id.* A prisoner in Prerelease Custody is therefore still under BOP control and *imprisoned*—not *released*—under the statute, while a person on Supervised Release is *not* imprisoned and *is* released.

Here, Petitioner is seeking accelerated transfer to a halfway house or home confinement based on an application of time credits, and thus a transfer to Prerelease Custody. Applying these statutory terms to this case, Petitioner is seeking a change in the condition of his *imprisonment*—from being a “prisoner” in the prison facility to being a “prisoner” in Prerelease Custody at another location. He is *not* seeking *release*. And as this Court explained, “the ordinary, commonsense meaning of release is to be freed from confinement. To say [petitioner] [wa]s released while still imprisoned diminishes the concept the word intends to convey.” *Johnson*, 529 U.S. at 57. Petitioner therefore does not seek release from his confinement and does not have a habeas claim.

2. Differences in the severity of restrictions on liberty and who has the ability to impose them further underscore the important difference between Prerelease Custody and Supervised Release. A court may not order that a prisoner serve his sentence of imprisonment in Prerelease Custody. *See* 18 U.S.C. § 3621(b). Instead, BOP has discretion to determine a prisoner’s place of imprisonment. *See id.* §§ 3624(c)(4), 3621. Conditions of Prerelease Custody are set by the Executive Branch. *See id.* §§ 3624(g)(2)(A)(i)(III), (g)(2)(A)(iii), (g)(2)(B). They include 24-hour electronic monitoring and a requirement to remain in a prisoner’s home except for specified reasons, subject to BOP approval. *See id.* § 3624(g)(2)(A)(i). Conditions of Supervised Release, by contrast, are set by the Judicial Branch. *See id.* § 3583(a). A court may require an individual to “remain at his place of residence during nonworking hours and . . . have compliance monitored by telephone or electronic signaling devices” “only as an alternative to incarceration” and after considering a number of statutory factors. *Id.* § 3583(e)(4). These differences, contrary to Respondent’s characterization, are not “relatively minor,” even “in comparison to the difference between physical imprisonment and [P]rerelease [C]ustody.” Resp’t Br. at 32; *see supra* at 6–9.

The differences in the procedures relating to the monitoring and revocation of Prerelease Custody and Supervised Release further reinforce the important distinction between them. Regardless of the specific individual who may be the custodian of a prisoner, *see* Pet’r Br. at 14, 35, the Executive Branch through BOP has custody over individuals in Prerelease Custody and can change their conditions or revoke the

transfer, *see* 18 U.S.C. § 3624(g)(5); *see also Andreozzi v. Manager, Residential Reentry Mgmt. Seattle*, No. 2:23-cv-01106-JNW-GJL, 2023 WL 7156173, at *1 (W.D. Wash. Oct. 31, 2023), *objections overruled*, No. 2:23-cv-01106-JNW-GJL, 2024 WL 689509 (W.D. Wash. Feb. 20, 2024) (explaining that while petitioner was at a halfway house he “remains in the legal custody of [BOP]”); *Nekvasil v. United States*, No. 1:22-CV-617, 2022 WL 4115428, at *2 (W.D. Mich. Sep. 9, 2022) (noting the petition stated petitioner was “currently being held in ‘home confinement’ in the custody of [BOP]”). Individuals on Supervised Release, by contrast, are supervised by probation officers, *see* 18 U.S.C. § 3624(e), and the Judicial Branch must intervene to change conditions or revoke release, *see id.* § 3583(e). This further demonstrates the distinction between individuals imprisoned and those released. Or as the Eighth Circuit put it, “[s]upervised release is not detention, but prerelease custody is.” *Fortner v. Eischen*, 170 F.4th 655, 658 (8th Cir. 2026).

3. To be sure, a court may order an individual who is on Supervised Release to live in a halfway house or be under home confinement. *See* 18 U.S.C. §§ 3583(e)(4), (d); *see also id.* §§ 3563(b)(11), (b)(19). But residence in a halfway house or home confinement can be imposed by a court only if it is “reasonably related to” a number of statutory factors, involves “no greater deprivation of liberty than is reasonably necessary,” and “is consistent with any pertinent policy statements issued by the Sentencing Commission.” *Id.* § 3583(d). And home confinement “may be imposed only as an alternative to incarceration.” *Id.* § 3583(e)(4). One statistical analysis of the Supervised Release conditions for a small sample of federal

prisoners found that only around 12% (8/66) were required to spend time in a “halfway house” or had “residency restrictions” and approximately 22% (15/66) had some type of “monitoring” or “location restriction,” demonstrating the infrequent nature of such conditions. *Collecting Conditions: A Snapshot of Supervised Release in 2023 in The U.S. District Court for the District of Connecticut* 10, 15–16, THE ARTHUR LIMAN CTR. FOR PUB. INT. L. (Jan. 28, 2025), <https://perma.cc/9X55-YZ3T>. Accordingly, while there is sometimes overlap in the restrictions on liberty experienced by individuals on Supervised Release and those in Prerelease Custody, the circumstances under which those restraints are imposed are not the same.

Petitioner and Respondent suggest this limited overlap in the physical location of some individuals justifies treating Prerelease Custody and Supervised Release the same. *See* Pet’r Br. at 34–37; Resp’t Br. at 29–32. But the Court rejected a very similar argument in *Reno v. Koray*, 515 U.S. 50 (1995). In that case, the Court interpreted the statutory language of the Bail Reform Act of 1984 to determine whether a person who is “released” on bail to a community treatment center remains in “official detention.” *Id.* at 65. The defendant argued that because an individual “released” “may be subjected to conditions . . . that are just as onerous as those faced by ‘detained’ defendants” they should be considered “officially detained.” *Id.* at 62 (citation omitted). The defendant also argued that because “sentenced” prisoners were deemed to be in “official detention” while at the same facilities, time at them should count as “official detention” for all individuals present. *Id.* Petitioner makes similar points in his brief—noting both Prerelease Custody and

Supervised Release can occur at similar locations. *See* Pet'r Br. at 34–37. Respondent also makes similar arguments—analogizing the restrictions of Prerelease Custody to those of parole and bail. *See* Resp't Br. at 29–32.

The Court rejected such arguments in *Koray*. As the Court explained, even though “a defendant ‘released’ to a community treatment center could be subject to restraints which do not materially differ from those imposed on a ‘detained’ defendant” at the same center, “[u]nlike defendants ‘released’ on bail, defendants who are ‘detained’ or ‘sentenced’ *always remain subject to the control of the Bureau.*” *Koray*, 515 U.S. at 62–63 (emphasis in original). Contrary to Respondent’s claim that “it does not matter that the relevant statute calls those in [P]rerelease [C]ustody ‘prisoners’ who are serving ‘a term of imprisonment,’” Resp’t Br. at 29 (citations omitted) (cleaned up), it “*is an important distinction, as the identity of the custodian has both legal and practical significance.*” *Koray*, 515 U.S. at 63 (emphasis added). As the Court in *Koray* explained, the conditions of an individual out on bail could only be changed by the court, while those of a detained individual could be changed by BOP. *See id.* So too here. Conditions of Supervised Release are supervised by probation officers, *see* 18 U.S.C. § 3624(e), and can only be changed by a court, *see id.* § 3583(e), while conditions of Prerelease Custody are controlled and can be changed by BOP, *see id.* § 3624(g)(5).

The Court in *Koray* noted concerns that distinguishing between two groups of individuals compelled under different legal regimes to remain in the same treatment center “may seem unwise policy” given that

they “are similarly situated in fact.” 515 U.S. at 64. But the Court decided an “alternative construction . . . has its own grave difficulties.” *Id.* These include the requirement of “a fact-intensive inquiry” to try to determine on what side of the line a claim may fall, *id.*, which would similarly result from the analytical frameworks that Petitioner and Respondent urge the Court to adopt in this case. Hewing to the distinction between Prerelease Custody and Supervised Release, by contrast, provides “clear notice.” *Id.* When a prisoner is placed on parole or Supervised Release, they are released from confinement for habeas purposes—regardless of their physical location. By contrast, when a prisoner is transferred to Prerelease Custody, they are not released but are still imprisoned.

D. The alternative approaches proposed by Petitioner and Respondent are unworkable.

In urging reversal or vacatur of the decision below, Petitioner and Respondent propose somewhat different standards for distinguishing habeas claims from conditions of confinement claims. Neither of the standards urged by the parties is consistent with this Court’s precedents, and both would lead to serious line-drawing problems.

1. Petitioner urges the Court to recognize a “level-of-custody” claim that sounds in habeas if it “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.” Pet’r Br. 38. This rule conflicts with this Court’s cases and is unworkable.

Petitioner’s rule would make prisoner claims cognizable in habeas that the Court has already treated as legitimate subjects of Section 1983 claims. In *Haines v. Kerner*, 404 U.S. 519 (1972), the Court allowed a prisoner to sue under Section 1983 over transfer from the general prison population to solitary confinement. Whatever the precise bounds of Petitioner’s “materially less restrictive” test, the move from solitary confinement to the general prison population surely qualifies.

Petitioner’s approach is also inconsistent with *Meachum v. Fano*, 427 U.S. 215 (1976), in which the Court considered a Section 1983 claim of a state prisoner who had been transferred to a maximum-security prison with “substantially more burdensome conditions” without a hearing. *Id.* at 225. The Court there held that “[t]he conviction has sufficiently extinguished the defendant’s liberty interest to empower the State to confine him in any of its prisons,” because “[c]onfinement in *any* of the State’s institutions is within the normal limits or range of custody which the conviction has authorized the State to impose.” *Id.* at 223–25 (emphasis added). That case was decided three years after *Preiser*, yet no one contested that the prisoner’s claim was properly brought under Section 1983.

The only way to reconcile *Haines* and *Meachum* with Petitioner’s rule is if there is overlap between claims that can be brought under Section 1983 and claims that are cognizable in habeas. But Petitioner is not advancing the argument that there is any such overlap.

Petitioner’s rule is also unworkable. Determining whether a particular change in custody is “materially less restrictive” would be very difficult as a practical matter and would require a fact-intensive, prisoner- and facility-specific inquiry. This is exactly the sort of “fact-intensive inquiry” the Court sought to avoid in *Koray*, 515 U.S. at 64. The fact that the conditions of custody at halfway houses and home confinement are supposed to vary over time for a prisoner when they comply additionally confuses the analysis. *See* 18 U.S.C. § 3624(g)(4). Further, what one prisoner considers a “material” change in the restrictions on his liberty might not be considered material by another.

Moreover, it is not even clear that a Prerelease Custody location such as a halfway house will always be “materially less restrictive” than a BOP prison or “involve many fewer restrictions on a person’s liberty than imprisonment.” Pet’r Br. at 34–35. As detailed above, *supra* 6–9, a federal prisoner moving from a federal prison camp to a halfway house may be moving from one facility with dormitory-style housing and no perimeter fence that he leaves to work off-site with minimal supervision to another facility with all those same attributes. The report of a former federal prisoner demonstrates the complicated nature of determining whether a placement would be “materially less restrictive.” *See* KERIK, *supra* at 285–86. He opined that “in many ways, [he] was more restricted during the six months [he] spent on home confinement . . . than [he] was in the [federal prison] camp.” *Id.* While detention in prison as opposed to in a halfway house or home confinement may “usually” or “generally” differ in some ways, Pet’r Br. at 35–36, those general

observations do not capture the actual complexities of the situation and do not always hold.

2. Respondent's rule fares no better. Respondent proposes the rule should be: "[A] prisoner's claim seeking an accelerated transfer out of prison (*i.e.*, a transfer 'into the community') is cognizable under Section 2241." Resp't Br. at 26. But Respondent's application of her rule to this case is question begging, and the rule would be unworkable in practice.

Respondent's application of her proposed rule begs the question. A halfway house falls in "a twilight zone between prison and freedom," *Ramsey v. Brennan*, 878 F.2d 995, 996 (7th Cir. 1989), and to simply declare that Petitioner would be "out" of prison if transferred to such a facility is to assume away the central difficulty of this case. If Petitioner is transferred to a halfway house, he will still be in BOP custody at a location ultimately controlled by BOP. See 18 U.S.C. § 3624(c). While that location might not be on the same grounds as the prison where Petitioner is currently incarcerated, BOP's continued control of Petitioner as custodian "has both legal and practical significance." *Koray*, 515 U.S. at 63. Labeling the sleeping quarters in only one of these locations a "prison cell," Resp't Br. at 31–32, does not change this legal reality.

Respondent's proposal to distinguish between who is "in" or "out" of prison by asking whether the individual has been "transferred 'into the community'" also does not help. Resp't Br. at 26. BOP's own policy assigns some federal prisoners a "Community" custody level. BOP Change Notice 5100.08, CN-3, ch. 2 pp. 1–2 (emphasis omitted). They "may be eligible for

the least secure housing,” “may work on outside details with minimal supervision, and may participate in community-based program activities.” *Id.* at ch. 2 p. 1. Such prisoners are therefore normally transferred to “Low or Minimum security level” facilities, which include federal prison camps. *Id.* at ch. 7 p. 3. BOP’s understanding of the “community” therefore seems to include both BOP facilities such as prison camps and the Prerelease Custody locations of half-way houses and home confinement, in contrast with Respondent’s categorization. BOP is also authorized to allow a prisoner to temporarily leave “the place of his imprisonment” to “participate in a training or educational program *in the community*” or to “work at paid employment *in the community*,” among other purposes. 18 U.S.C. §§ 3622(b)–(c) (emphases added). Respondent’s rule is hopelessly indeterminate when applied to the spectrum of restrictions on liberty that federal prisoners face in lower security settings.

3. Respondent also argues that drawing the line at “custody” would not work. Resp’t Br. at 27–30. Respondent is correct that the Court has held that individuals on parole are in “custody” for the sake of bringing a habeas claim, *see, e.g., Samson v. California*, 547 U.S. 843, 851 (2006), while prisoners can also bring habeas petitions to be released on parole, *see Jones*, 599 U.S. at 475. So a prisoner could bring a habeas claim to seek release from the “custody” of imprisonment to the “custody” of parole. But there is a difference between the entity with “custody” for prisoners in Pretrial Custody and individuals on Supervised Release that this Court should look to as support for distinguishing between such claims for habeas purposes. A prisoner is “committed to the custody of [BOP] until

the expiration of the term imposed.” 18 U.S.C. § 3621(a). A prisoner in Prerelease Custody is described by statute as “a prisoner serving a term of imprisonment,” *id.* § 3624(c)(1), and is therefore in BOP custody. By contrast, someone on Supervised Release is “released by [BOP] to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court,” *id.* § 3624(e), and is therefore *not* in BOP custody. At least for federal prisoners, therefore, recognition of who has custody over the individual can help inform whether a claim sounds in habeas.

E. Prisoner claims of entitlement to transfer to a halfway house or home confinement fit comfortably within the established framework for conditions of confinement suits.

Petitioner warns of “a slew of doctrinal complexities” if the Court treats his claim as challenging the conditions rather than the fact or duration of his confinement, Pet’r Br. 29, and Respondent says there is “no other avenue than habeas for a claim like petitioner’s,” Resp’t Br. 32. Both are wrong. Affirming the Fifth Circuit’s judgment would simply mean treating Petitioner’s claims like those of all other federal prisoners who challenge the conditions of their confinement. And although Congress appears to have foreclosed judicial review of statutory claims regarding application of time credits under the First Step Act, that has no bearing on whether Petitioner’s claims sound in habeas.

1. Federal prisoners such as Petitioner who seek court orders altering the conditions of their confinement have several avenues available for seeking judicial review.

First, and most significant, a prisoner who believes the conditions of his confinement violate federal law may sue in equity for an injunction. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015). There is nothing “ill-defined and murky” about this area of this law, Pet’r Br. 31 (quotation marks omitted); the authority of courts sitting in equity to review the lawfulness of executive action “reflects a long history of judicial review . . . , tracing back to England” and has been exercised by this Court since the early days of the Republic. *Armstrong*, 575 U.S. at 327 (citing Jaffe & Henderson, *Judicial Review and the Rule of Law: Historical Origins*, 72 L.Q. REV. 345 (1956)). Respondent is wrong to suggest that this power only extends to constitutional claims. *Compare* Resp’t Br. at 34, *with Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 647 (2002) (adjudicating claim in equity that federal statute forbade enforcement of state law).

As Petitioner observes, the “power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations.” Pet’r Br. 31 (quoting *Armstrong*, 575 U.S. at 327). Although the question is not before the Court, Congress appears to have barred such equitable relief in cases that concern the application of time credits under the First Step Act. *See* 18 U.S.C. § 3624(b). If that is so, it would hardly be the first time that Congress has limited the authority of federal courts to enjoin government

action alleged to violate a federal statute. *See, e.g., Collins v. Yellen*, 594 U.S. 220, 237 (2021); *Armstrong*, 575 U.S. at 327–29; *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 74 (1996). There is nothing unusual or constitutionally suspect about Congress creating a statutory benefit for federal prisoners while curtailing judicial review of how that benefit is distributed.

Federal prisoners who seek a judicial decree altering the conditions of their confinement may have other causes of action as well—including claims under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; *see In re Federal Bureau of Prisons’ Execution Protocol Cases*, 980 F.3d 123, 136–37 (D.C. Cir. 2020), and for mandamus, *see* 28 U.S.C. § 1361. Congress may well have foreclosed those causes of action in cases in which a federal prisoner sues over application of time credits under the First Step Act. *See* 18 U.S.C. §§ 3621(b), 3625. But to the extent Congress barred these other avenues of judicial review, it is only another reason the Court should not expand the writ beyond its historical and doctrinal bounds and thereby potentially open the courthouse doors when Congress meant to shut them.

The Fifth Circuit suggested that federal prisoners like Petitioner might be able to proceed under *Bivens*, 403 U.S. 388. Because Petitioner seeks equitable rather than monetary relief, that suggestion was mistaken. But federal prisoners who seek a court order changing the conditions of their confinement generally may proceed in equity and do not need to resort to *Bivens* to sue. *See Simmat v. United States Bureau of Prisons*, 413 F.3d 1225, 1231–32 (10th Cir. 2005) (McConnell, J.), *abrogated on other grounds by Jones*

v. Bock, 549 U.S. 199, 216 (2007); *see also Bivens*, 403 U.S. at 400 (Harlan, J., concurring) (observing that all Justices appeared to agree that federal agents may be sued for an injunction based upon “the presumed availability of federal equitable relief, if a proper showing can be made in terms of the ordinary principles governing equitable remedies”).

2. Petitioner frets that if the Court decides his claim is not cognizable in habeas, suits seeking transfer into Prerelease Custody would not be subject to the host of substantive and procedural limitations that Congress has imposed on habeas petitioners. *See* Pet’r Br. 32–33. That is true, but it is also true for all other cases in which federal prisoners sue for an injunction altering the conditions of their confinement. If Congress wishes to further channel where, how, and when such cases are brought, it knows how to do so. In any event, the “problem” Petitioner identifies—if it is a problem at all—appears to be purely theoretical as it relates to claims regarding application of time credits under the First Step Act; for cases like this one, all the causes of action that federal prisoners ordinarily use to challenge the conditions of their confinement are likely foreclosed. *See* 18 U.S.C. § 3621(b).

3. Affirming the Fifth Circuit would mean that at least some state prisoners claiming a federal right to transfer to a halfway house or home confinement could proceed under Section 1983. Petitioner says 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.” Pet’r Br. 33 (quoting *Preiser*, 411 U.S. at 492). That

might have been correct when the Court decided *Preiser* in 1973, but Congress has since enacted the Prison Litigation Reform Act (PLRA), which requires exhaustion of administrative remedies before state prisoners may bring conditions of confinement claims in federal court. *See generally* 18 U.S.C. § 3626. There is no reason to think that the PLRA is not up to the task of weeding out meritless state prisoner suits demanding transfers to halfway houses or home confinement, serving the same function in these cases as it does in others in which state prisoners challenge the conditions of their confinement.

Even apart from the PLRA, if the Court affirms, it hardly seems likely that the federal courts will be flooded with state prisoner claims under Section 1983 demanding transfers to halfway houses. The parties have identified only a handful of such cases, none of which got past the pleading stage. *See, e.g., Ingram v. SCI Smithfield*, No. 22-1541, 2023 WL 110588, at *2 (3d Cir. Jan. 5, 2023) (“To the extent [the prisoner] claims a due process violation based on his initial confinement at [a state prison facility], as opposed to in a [halfway house], he fails to state a claim for relief.”). As conditions of confinement claims go, claims to entitlement to transfer to a halfway house or home confinement are not particularly promising and are unlikely to survive a motion to dismiss.

CONCLUSION

The judgment of the Fifth Circuit should be affirmed.

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Respectfully submitted,

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