

No. 25-5930

In the Supreme Court of the United States

WILLIAM MAXWELL, PETITIONER

v.

SANDRA DINIS, ACTING WARDEN

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

REPLY BRIEF FOR THE PETITIONER

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The court of appeals held in this case that habeas is unavailable unless a prisoner seeks outright release from custody. The government agrees with Mr. Maxwell that the decision below is incorrect and should be vacated. Even the amicus appointed to defend the judgment below does not defend the Fifth Circuit’s rule. Amicus accepts that at least *some* level-of-custody claims are cognizable in habeas, but argues that Mr. Maxwell’s claim is not among them. Amicus can defend the court of appeals’ judgment only by abandoning its reasoning and substituting an entirely new approach in its place.

But amicus’s approach is barely better. Amicus proposes to limit habeas to three newly discovered categories—an arbitrary taxonomy that finds no footing in the text of the habeas statute, the history of habeas, or the

reasoning of this Court's precedents. Instead, amicus simply gathers the facts of the cases this Court has already decided and declares the set closed without explaining why. Amicus also endeavors to back into his preferred result, arguing that Mr. Maxwell's claim is a conditions-of-confinement claim and therefore not cognizable in habeas. But while some cases have held that claims that fall at the core of habeas cannot be brought under Section 1983, amicus cites no authority for using a conditions-of-confinement label to remove *from habeas* a type of challenge that otherwise would fall within it. And Mr. Maxwell's claim is not a conditions-of-confinement claim at all: he contends that continued confinement in prison, whatever the conditions, is unlawful.

Amicus also suggests that Mr. Maxwell is not seeking to change his level of custody. Amicus seizes on Congress's reference to individuals on prerelease custody as "prisoners" to argue that halfway houses and home confinement are simply a form of prison. But the relevant statutes make clear that prerelease custody is a distinct form of "custody," which is the relevant inquiry here, and Congress has repeatedly distinguished halfway houses and home confinement from prison in other provisions. Amicus's effort to answer the fact that Mr. Maxwell's claim involves a change in custodian likewise overlooks that the relevant custodian for purposes of habeas is not the broader agency but rather the person with immediate custody over the prisoner. Amicus next relies on a few cherry-picked anecdotes describing prison camps, while disregarding the robust body of case law and other evidence recognizing that prerelease custody is materially less restrictive than prison. And he fails to appreciate that prerelease custody is much more analogous to parole than is his preferred alternative of supervised release.

Finally, although the government agrees that the decision below is incorrect and that the judgment should be vacated, it tosses out two alternative theories for why Mr. Maxwell’s habeas claim might ultimately fail. As the government itself promptly recognizes, this Court’s normal practice would be to leave arguments of that sort for consideration on remand. On the merits, the government’s argument about administrative exhaustion is no more persuasive than it was when the government raised it in its brief in opposition. And its argument about the judicial review bar in 18 U.S.C. 3621(b)—which the government did not raise in the court of appeals or at the certiorari stage—overlooks the fact that the bar applies to claims “under this subsection” rather than the distinct subsections (18 U.S.C. 3624(g), 3632(d)(4)) that required Mr. Maxwell’s release to a halfway house or home confinement on the basis of earned-time credits. The government also raises the possibility that it might release Mr. Maxwell within a few months, mooted this case; but even if it does so before this Court issues its opinion, Mr. Maxwell’s claim will remain live. This Court should reverse the judgment below and remand for consideration of the merits of Mr. Maxwell’s claim.*

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

Despite being appointed to defend the judgment below, amicus is not able to offer any argument supporting the rule adopted by the court of appeals. Instead, amicus concedes that level-of-custody claims can be actionable.

* Although this case does not concern the underlying criminal prosecution, Mr. Maxwell disputes the government’s and amicus’s characterization of his alleged conduct as explained in his pending motion under 28 U.S.C. 2255. See *Maxwell v. United States*, Civ. No. 25-16419, Dkt. 6 (D.N.J. Jan. 12, 2026).

See Br. 25-26 (citing *Skinner v. Switzer*, 562 U.S. 521, 534 (2011)). But he attempts to resuscitate the judgment below by arguing that only certain level-of-custody claims are cognizable, while all others are not. *Id.* at 20, 25. By all appearances, amicus seeks to confine habeas jurisdiction to the precise examples previously recognized by this Court’s precedents. But he identifies no principle for distinguishing between level-of-custody claims that are in and out, nor any coherent basis for the Court’s decisions to date. Amicus’s other doctrinal move—contending that claims of the type at issue here are not cognizable in habeas because they are conditions-of-confinement claims—likewise fails both in principle and in application.

1. Amicus’s proposed rule would limit habeas to where: (1) the claim “implies that [the prisoner’s] physical detention must be shortened or terminated”; (2) the claim seeks “earlier release on bail or parole”; or (3) the claim contends that “the sentencing court ordered [the prisoner] to serve his sentence in a place it did not have jurisdiction to send him.” Br. 20. Amicus spends little time justifying those categories (see *id.* at 21-23), and one would search his brief in vain for any effort to ground them in the text of the habeas statute or historical practice.

As an initial matter, amicus offers no reason *why* habeas should be limited to his proposed categories. The text of the habeas statute extends the writ to any prisoner “in custody” in violation of federal law, and it broadly authorizes federal courts to “dispose of the matter as law and justice require.” 28 U.S.C. 2241, 2243; see Pet. Br. 16-19. History and precedent confirm that the writ has long been used for any claims seeking release to a lower level of custody. See Pet. Br. 19-25; Habeas Scholars Br. 15-29. Amicus cannot identify a single authority that has purported to limit habeas to the categories he now identifies.

Remarkably, despite drawing his categories to accommodate precedent, amicus fails to account for one of this Court’s most recent habeas decisions, *Trump v. J.G.G.*, 604 U.S. 670 (2025) (per curiam), which held that claims challenging immigration removals fall within the scope of habeas even if the detainees do not “formally request release from confinement.” *Id.* at 672; see *id.* at 674 (Kavanaugh, J., concurring); Pet. Br. 28-29. The immigration transfers at issue in *J.G.G.* do not fit into any of amicus’s categories: the detainees did not contest the fact of physical detention or the validity of a judgment or sentence, nor seek release to bail or parole, nor challenge a court’s order directing transfer that the court lacked jurisdiction to direct. Amicus’s approach to habeas would therefore have required the opposite result in *J.G.G.*

Nor do amicus’s three categories otherwise hold up. As to the first, amicus suggests (Br. 21-22) that the province of habeas is seeking the invalidation of a judgment or sentence. But as this Court has made clear, the reach of the writ is not so limited. Instead, after the enactment of 28 U.S.C. 2255, Section 2241’s core function is providing a vehicle for a prisoner to challenge “‘the legality of his *detention*’ without attacking the validity of his *sentence*.” *Jones v. Hendrix*, 599 U.S. 465, 475 (2023) (quoting 28 U.S.C. 2255(e)).

As to the second category, see Br. 22-23, 25, amicus accepts that claims seeking earlier release on bail or parole are cognizable in habeas under this Court’s decisions, but endeavors to limit those decisions to their facts. The decisions themselves foreclose that approach. Rather than being limited to parole as amicus contends (Br. 25), *Preiser* makes clear that habeas extends to claims in which the petitioner is “being unlawfully subjected to physical restraint” and seeks “release from such confinement,” including claims that a petitioner is “unlawfully

confined in the wrong institution.” *Preiser v. Rodriguez*, 411 U.S. 475, 486 (1973); see Pet. Br. 25-26; U.S. Br. 21-23.

Amicus also dismisses (Br. 25-26) this Court’s decision in *Skinner* and Justice Scalia’s concurrence in *Wilkinson*, which explained 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 *Wilkinson v. Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)); see Pet. Br. 26-27; U.S. Br. 23-24. According to amicus, that language is “best understood to apply to parole, bond, and [s]upervised [r]elease, *not* [p]rerelease [c]ustody.” Br. 25. But that is not what the Court and Justice Scalia actually said.

Amicus speculates that Justice Scalia may have believed that level-of-custody claims are limited to “release from incarceration to *parole*” based on the lower court authority cited in his opinion. Br. 26. But even accepting that dubious premise, the underlying authority is not so cramped. In *Graham v. Broglin*, 922 F.2d 379 (1991), the Seventh Circuit reasoned that the “general[]” rule is that claims seeking a “quantum change in the level of custody” are cognizable in habeas. *Id.* at 381. Amicus also points (Br. 26) to a Third Circuit case cited in *Graham* (but not by Justice Scalia), which rejected a habeas claim challenging the denial of a home furlough. *Wright v. Cuyler*, 624 F.2d 455, 458 (1980). But that decision hinged on the temporary nature of the furlough in question, which allowed the prisoner to be released for seven days at a time, returning to prison at the end of that period. *Ibid.*

Similarly, in defining his third category, amicus tries to circumscribe this Court’s decision in *Bonner* as one where the sentencing court lacked jurisdiction to send the prisoner to a particular place. Br. 23. But the Court recognized in *Bonner* that habeas applies to restrictions on

liberty “from any source”—“equally as well from the unauthorized acts of courts and judges as the unauthorized acts of individuals.” 151 U.S. 242, 259 (1894). That easily encompasses cases where the Executive violates the law by keeping a person imprisoned in a place unauthorized by statute. Similarly, and contrary to amicus’s contention (Br. 24, 27), Mr. Maxwell *does* claim that he is being detained in a “manner not authorized by his sentence” when his sentence is properly viewed in light of the First Step Act, *Hendrix*, 599 U.S. at 475; see U.S. Br. 24.

2. Amicus also contends that the claim here is a conditions-of-confinement claim, which in amicus’s view should take it outside the scope of habeas. Br. 16-20, 34-37. That argument fails at each turn.

As amicus acknowledges (Br. 16-17), this Court has not resolved whether a conditions-of-confinement claim may ever be brought in habeas, see, *e.g.*, *Ziglar v. Abbasi*, 582 U.S. 120, 144-145 (2017), and courts of appeals have long been divided on the issue, see, *e.g.*, *Fortner v. Eischen*, 170 F.4th 655, 656 (8th Cir. 2026). This case would be a poor vehicle to resolve that conflict, given that it involves a federal prisoner and federal and state prisoners may be differently situated with respect to whether conditions-of-confinement claims are cognizable in habeas. See *Nettles v. Grounds*, 830 F.3d 922, 931 & n.6 (9th Cir. 2016) (en banc).

What is more, amicus’s conditions-of-confinement-based reasoning gets the analysis backwards. This Court has considered whether a claim falls within the core of habeas because civil-rights statutes contain an “implicit exception” for such claims in light of “considerations of linguistic specificity, history, and comity” that justify giving the habeas statute precedence. *Wilkinson*, 544 U.S. at 79. Amicus cites no authority from this Court for the analytically inverse approach of first determining that a claim is

a conditions-of-confinement claim and then using that label to limit the scope of the *habeas statute*.

In any event, the argument fails on its own terms because amicus is wrong to treat Mr. Maxwell's First Step Act claim as challenging his conditions of confinement. See Br. 20, 29. Mr. Maxwell does not seek better conditions within his existing custody. No alteration of the "circumstances" of Mr. Maxwell's incarceration would redress his claim here, see *Muhammad v. Close*, 540 U.S. 749, 750 (2004); Pet. Br. 38; instead, the only remedy he seeks is *release* from his present incarceration. Amicus offers no meaningful response to that central distinction.

Relatedly, amicus is wrong to suggest that Mr. Maxwell's rule conflicts with decisions from this Court that considered the merits of Section 1983 claims challenging the transfer of prisoners to a maximum-security prison and disciplinary confinement. See Amicus Br. 35 (citing *Meachum v. Fano*, 427 U.S. 215 (1976), and *Haines v. Kerner*, 404 U.S. 519 (1972) (per curiam)). Neither decision addressed the question whether Section 1983 rather than habeas was the appropriate vehicle, and so those cases do not "constitute precedents" for the scope-of-habeas question. *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 170 (2004) (citation omitted). In any event, those decisions involved the discretionary movement among prisons "within the normal limits or range of custody" authorized by the conviction, *Meachum*, 427 U.S. at 225-227, or within a single prison, see *Haines*, 404 U.S. at 519-520. Mr. Maxwell's claim, by contrast, is that he is being imprisoned in a place "expressly forbidden" by statute, which requires release to a distinct and materially lower level of custody. *Bonner*, 151 U.S. at 256. Deeming that claim cognizable would not resolve the availability of habeas in the distinct scenarios amicus posits.

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

Mr. Maxwell’s First Step Act claim seeking release to a halfway house or home confinement is a level-of-custody challenge for several reasons. Federal law treats prerelease custody as a legally distinct form of custody; Mr. Maxwell challenges his immediate custodian’s authority to hold him in prison; prerelease custody is materially less restrictive than prison; and prerelease custody is analogous to parole in relevant respects. See Pet. Br. 34-37; U.S. Br. 25-32. Because all those features point toward the same conclusion, this Court need not resolve whether any one standing alone suffices to create a cognizable custody claim. See U.S. Br. 26.

1. To begin with, Congress established prerelease custody as a legally distinct form of “custody.” *E.g.*, 18 U.S.C. 3624(g)(2), (4)-(5); see Pet. Br. 34. Amicus does not grapple with those statutory provisions and instead relies solely on the fact that Section 3624 refers to those on prerelease custody as “prisoners” whose term of imprisonment has not yet expired. Br. 29 (citation omitted). But Congress’s use of the “prisoner[.]” label is immaterial. The question is whether prerelease custody is a distinct form of “custody,” not whether it can, for some purposes, be considered imprisonment. 28 U.S.C. 2241(c). Moreover, far from viewing prerelease custody and imprisonment as equivalent, Congress distinguished prisons and community-based facilities in several provisions. See U.S. Br. 29-30 (citing provisions). As the government explains, the relevant statutes “make clear” that serving time on “prerelease custody” is not the same as serving time in “prison.” *Id.* at 29.

Amicus’s argument on this point is also internally inconsistent. Federal law calls those on supervised release

or on parole “prisoners,” even though amicus accepts that a claim seeking supervised release or parole sounds in habeas. See, *e.g.*, 18 U.S.C. 1761(a), 3621(h)(5)(C)(iv), 4042(b). And while amicus emphasizes that individuals released to prerelease custody continue to serve their term of imprisonment, see Amicus Br. 29, so do individuals released on parole, see *Johnson v. United States*, 529 U.S. 694, 725-726 (2000) (Scalia, J., dissenting); *Anderson v. Corall*, 263 U.S. 193, 196 (1923).

2. Reinforcing the point, a First Step Act claim such as the one at issue here seeks release from the unlawful custody of the prison warden into the custody of another—generally, a residential reentry management officer. See Pet. Br. 35. That accords with the traditional understanding of habeas, which “contemplate[s] a proceeding against some person who has the *immediate custody* of the party detained.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). That rule asks habeas’s fundamental question: does the custodian have lawful power over this body in this place? See *id.* at 434-435.

Once again, amicus ignores that authority and instead tries to move up a level of generality by noting that Mr. Maxwell would still be within the custody of the Bureau of Prisons on prerelease custody. See Amicus Br. 23-24, 38-39. But that asks the wrong question: a habeas claim challenging present physical confinement operates against the “immediate custodian,” not some “remote supervisory official”—let alone the broader agency. *Padilla*, 542 U.S. at 435. Indeed, if amicus’s agency-level reframing were correct, it is hard to justify amicus’s concession (and *Preiser*’s holding) that claims seeking release on parole are cognizable in habeas given that both the Bureau of Prisons and the U.S. Parole Commission are housed within the Department of Justice. Cf. Amicus Br.

22-23. As the government explains, the Bureau of Prisons’ “legal custody over someone in prerelease custody is important for various purposes,” but “the availability of habeas is not one of them.” Br. 29.

3. Prerelease custody is also materially less restrictive than prison, placing individuals in their own communities and allowing them much broader leeway to work, attend religious services, and reconnect with their families, among other privileges. See Pet. Br. 35-36; U.S. Br. 30-32; Raskin Br. 16. Both longstanding case law and the real-life experiences of those who have served time in a halfway house or on home confinement confirm that prerelease custody is “not merely a change of address, but a change in kind” from prison. FAMM Br. 2, 11-18; see Pet. Br. 36 (collecting cases). That makes sense given that the core purpose of prerelease custody is to help prisoners prepare for reentry into the community. See, *e.g.*, 18 U.S.C. 3624(g)(2)(A)(i)(II)(gg), (g)(4).

Amicus ignores those authorities and instead relies on a few anecdotal accounts to claim that some forms of incarceration may sometimes involve similar conditions as prerelease custody. See Br. 6-9, 36-37. But that misses the point. Even if the conditions in a prison camp may sometimes look similar to the conditions in prerelease custody, that does not mean that serving time in prison is the same as serving time in prerelease custody. Under the former, as amicus himself notes, the Bureau of Prisons has unreviewable authority to assign a prisoner to a higher-security facility. See 18 U.S.C. 3621(b); Amicus Br. 4-5. Under the latter, by contrast, the prisoner has a “statutory entitlement” (U.S. Br. 25) to less restrictive conditions, which grow “increasingly less restrictive” over time. 18 U.S.C. 3624(g)(4). The meaningful measure is the ceiling on restraint, not a temporary status that can be taken away at any time. And while amicus cites (Br.

37) a single decision for the notion that a halfway house is a sort of “twilight zone between prison and freedom,” that decision *agreed* with the Bureau of Prisons that time in a halfway house is not the same as incarceration given the limited “degree of restraint” involved. *Ramsey v. Brennan*, 878 F.2d 995, 996 (7th Cir. 1989) (citation omitted); see U.S. Br. 31-32.

Amicus otherwise resists the practical inquiry by relying on *Reno v. Koray*, 515 U.S. 50 (1995). See Br. 32-34, 36-37. But in *Koray*, the Court addressed an entirely different question—what constitutes “official detention” for purposes of crediting the time toward the service of a prison term under 18 U.S.C. 3585(b), rather than what constitutes a challenge to custody for purposes of the habeas statute. 515 U.S. at 52. More broadly, to the extent that it bears on the inquiry here, *Koray* undermines amicus’s argument. The Court there held that releasing a pretrial detainee to a correctional treatment facility (which the separate opinions described as a “halfway house,” see, *e.g.*, *id.* at 65 (Ginsburg, J., concurring)), as a condition of bail was so distinct from imprisonment that it did not qualify as creditable “detention.” *Id.* at 59, 65 (majority opinion). And the Bureau of Prisons’ guidance that the Court upheld in *Koray* specifically determined that “release” to a halfway house or home confinement “as a result of [a statute]” or “a condition of bail or bond”—as opposed to as a matter of the Executive’s discretion—is not “detention” creditable toward the term of imprisonment. *Id.* at 60-61 n.4.

4. In addition, prerelease custody is materially analogous to parole—a status amicus concedes sounds in habeas. See Pet. Br. 36-37; U.S. Br. 30-32; Amicus Br. 22. Both federal parole and prerelease custody are programs run by the Executive Branch that let a prisoner serve a portion of the end of his sentence outside prison walls,

subject to certain restrictions. Compare 18 U.S.C. 3624(g), with 18 U.S.C. 4202, 4205, 4209 (1982). Both are revocable through non-judicial proceedings that can return the individual to prison. Compare 18 U.S.C. 3624(g)(5), with 18 U.S.C. 4214 (1982); 28 C.F.R. 2.52. And prerelease custody was one of the two programs that replaced federal parole when Congress enacted the Sentencing Reform Act of 1984. See Pet. Br. 8. Amicus is wrong to treat supervised release as parole’s sole successor. See Br. 25-26, 28-29.

Amicus purports to devote (Br. 28-34) an entire section of his brief to distinguishing prerelease custody from parole, yet he says almost nothing about parole itself. Instead, he points to differences between prerelease custody and *supervised release*. For instance, amicus notes that supervised release takes place after the term of imprisonment (rather than during); it is set by the court at sentencing (rather than an executive branch official after the sentencing); and it may be revoked only by a court (rather than an executive branch official). Br. 30-31. But in each respect prerelease custody is the same as parole. And even if there are differences between prerelease custody and parole, they are “relatively minor in comparison to the difference between physical imprisonment and prerelease custody in a halfway house or home confinement.” U.S. Br. 32; cf. *Young v. Harper*, 520 U.S. 143, 148-152 (1997) (determining that, despite asserted differences, a preparole program that entailed release from prison was equivalent to parole).

5. Amicus ultimately resorts to the practical concern that any approach other than his own would be “unworkable.” Br. 34, 36-39. But that claim hinges on the assumption that Mr. Maxwell’s rule turns on a “fact-intensive” inquiry. *Id.* at 36. As explained above (pp. 9-11), that is incorrect. The real-world differences between prerelease

custody and prison support Mr. Maxwell's position, but this Court can readily resolve the issue as a matter of law because Congress treated prerelease custody as distinct.

Nor has amicus shown how his own approach is any more workable given that it requires courts to consider whether a claim is sufficiently similar to those in his three proposed categories. For instance, amicus asserts that a claim seeking supervised release falls within the same category as a claim seeking parole. Br. 24. But he does not explain why that is so given the differences between parole and supervised release. See pp. 12-13, *supra*.

To the contrary, practical considerations show why Mr. Maxwell's claim should sound in habeas. For one thing, excluding such claims would potentially leave prisoners wrongly held past their lawful release date with no remedy at all. See Pet. Br. 29-32; U.S. Br. 32-34. Amicus agrees that the Fifth Circuit "was mistaken" in treating *Bivens* as an alternative remedy (Br. 41), but he does not identify a meaningful alternative. In particular, amicus breezily asserts that an implied cause of action would be available in equity, but he does not grapple with the fact that this is a notoriously complex area of the law, see Pet. Br. 31, as the government's argument (Br. 34) that such a cause of action would extend only to constitutional claims well illustrates. See also William Baude et al., *Hart and Wechsler's The Federal Courts and the Federal System* 1208-1209 (8th ed. 2025). And amicus cites no authority for the proposition that ordering the release or transfer of a prisoner is a type of relief traditionally accorded by courts of equity. See Br. 40-41. Nor does amicus identify a limiting principle that would avoid inviting a wide range of prisoner claims to proceed under an implied cause of action rather than under carefully circumscribed habeas doctrine. In any event, amicus's theory does not suffice to defend the judgment below: if an essentially equivalent

vehicle were available to Mr. Maxwell, it was all the more troubling for the Fifth Circuit to dismiss Mr. Maxwell's pro se claim because it was labeled a habeas petition where the government had not disputed the propriety of the procedural vehicle and the court could have simply recharacterized the filing as a claim in equity. See *Castro v. United States*, 540 U.S. 375, 381-382 (2003); see also *Haines*, 404 U.S. at 520.

Habeas, moreover, is the more sensible avenue for claims like Mr. Maxwell's given its substantive and procedural protections for government officials. See Pet. Br. 32-34; U.S. Br. 34-35. Amicus dismisses those concerns as "theoretical" because Congress has purportedly barred all review of such claims brought by federal prisoners under 18 U.S.C. 3621(b). Br. 42. But he provides no analysis in support of that assertion, and it is plainly incorrect. See pp. 17-19, *infra*. Amicus also whistles past the burdens that rejecting habeas could impose on States, suggesting (Br. 42) that the Prison Litigation Reform Act provides them all the protections they need. But that Act imposes a "substantially lower gate" than 28 U.S.C. 2254. *Muhammad*, 540 U.S. at 751; see U.S. Br. 35. The consequences of adopting amicus's proposed approach are particularly stark for the States because his substantial narrowing of the scope of habeas would raise questions about what other claims by state prisoners could be brought under Section 1983. In short, amicus's rule is both legally and practically unsound, and there is no reason for this Court to adopt it.

C. The Government's Alternative Arguments Lack Merit

The government agrees (Br. 24-35, 40) with Mr. Maxwell that the court of appeals erred in resolving the question presented. In its brief supporting vacatur, the government tosses in a few arguments why, in its view, Mr.

Maxwell’s claim “should not ultimately succeed.” Br. 35. And, for good measure, it suggests that the Court could dismiss the writ as improvidently granted. None of those arguments provides a basis to do anything other than reverse the judgment below and remand for further proceedings.

1. a. The government offers two reasons why, in its view, affirmance will ultimately be warranted. The Court need not address those arguments. As the government itself recognizes (Br. 40), the Court’s “usual practice” would be to “leave matters of that sort for remand.” *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 54 (2025). And the government’s bottom line is that the decision below should be vacated. Br. 40, 42; see *id.* at 1 (styling brief as “supporting vacatur”).

b. To the extent the Court reaches them, the arguments also lack merit. As in its brief in opposition, the government argues (Br. 35-36) that Mr. Maxwell failed to exhaust his administrative remedies. But Mr. Maxwell has multiple arguments for why his pro se filings adequately exhausted his administrative remedies; any failure to exhaust should be excused; or the district court otherwise erred in dismissing his claim. See Cert. Reply Br. 2, 8-9. The court of appeals should address those questions in the first instance.

c. The government then introduces (Br. 36-40) the argument that 18 U.S.C. 3621(b) bars review of Mr. Maxwell’s habeas claim.

The government admits that it did not raise a Section 3621(b) argument in its brief in opposition; that it dropped that argument below, raising it in district court but omitting it before the court of appeals; and that the question is “not ripe for this Court’s review” because only a single precedential court of appeals decision has addressed it.

Br. 36 n.3, 40. Especially given the government’s own ambivalence about the argument to date, this Court should leave it to the court of appeals to consider it in the first instance if the government chooses to pursue it on remand.

The government is also plainly wrong that Section 3621(b) bars Mr. Maxwell’s claim. Section 3621(b) instructs the Bureau of Prisons to “designate the place of the prisoner’s imprisonment,” and “direct the transfer of a prisoner from one penal or correctional facility to another” “subject to” various considerations like the resources at a facility, the proximity to the prisoner’s primary residence, and the prisoner’s characteristics. 18 U.S.C. 3621(b). It further provides that “[n]otwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court.” *Ibid.*; see First Step Act of 2018, § 601, Pub. L. No. 115-391, 132 Stat. 5237-5238 (adding this language). The judicial review bar in Section 3621(b) applies only to the designation of a place of imprisonment “under this subsection”—meaning Section 3621(b). Mr. Maxwell’s claim, by contrast, concerns the calculation of earned-time credits under Section 3624(g), and Section 3632(d)’s unqualified command that the Bureau of Prisons “shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.” 18 U.S.C. 3632(d)(4)(C); see, *e.g.*, *Adepoju v. Scales*, 782 F. Supp. 3d 306, 314-315 (E.D. Va. 2025) (collecting cases); see also 18 U.S.C. 3621(b) (imposing a requirement for “making transfers under this subsection” rather than for all transfers).

Reading the Section 3621(b) limitation to extend to every subsection also makes no sense in the context of the statutory scheme: it is one thing for Congress to prohibit judicial review over the Bureau of Prisons’ fact-specific

assessment of what facility is most appropriate for a prisoner; it is another to create mandatory commands that the Bureau of Prisons “shall” award earned-time credits and “shall transfer eligible prisoners” with one hand, while stripping their enforceability with the other. See 18 U.S.C. 3624(g)(2), 3632(d)(4)(C); see also NACDL Br. 7-12; Raskin Br. 8-12; Senators Br. 11-14.

The government’s contrary interpretation of Section 3621(b) does not withstand scrutiny. The government notes (Br. 37) that Section 3621(b) refers to the Bureau of Prisons’ authority to place a prisoner in a community correctional facility. But that provision refers to the Bureau’s duty to provide substance abuse treatment and specifies that a sentencing court’s recommendation or request about such placement “shall have no binding effect” on the Bureau. 18 U.S.C. 3621(b). That is separate from the mandatory system of earned-time credits and prerelease custody established, in exacting detail, by the First Step Act. See 18 U.S.C. 3624(g), 3632(d); see also NACDL Br. 9-11. The government also contends (Br. 37-38) that the judicial-review bar in Section 3621(b) applies to Mr. Maxwell’s habeas claim based on a series of cross-references and inferences. But that attenuated chain of reasoning hardly overcomes “both the strong presumption in favor of judicial review of administrative action and the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction.” *INS v. St. Cyr*, 533 U.S. 289, 298 (2001) (footnote omitted).

What is more, a statute withdrawing judicial review over habeas claims in this context would raise significant constitutional concerns under the Suspension Clause. See *Samak v. Warden, FCC Coleman-Medium*, 766 F.3d 1271, 1291 (11th Cir. 2014) (Pryor, J., concurring) (identifying a “constitutional problem” that arises “when a prisoner seeks to challenge the execution of his sentence, and

no court will hear his challenge”). The government points out that, at the Founding, habeas courts would not question the validity of a judgment entered by a court of competent jurisdiction. Br. 39. But Mr. Maxwell’s claim is different: it is that he is being imprisoned in a place “expressly forbidden” by statute, like “the hulks of a prison ship.” *Bonner*, 151 U.S. at 256; see Habeas Scholars Br. 12 (explaining that, for centuries, the writ has served “to conform custody to law”). An interpretation that avoids those Suspension Clause questions—namely giving effect to the “under this subsection” requirement—is at least “fairly possible.” *Perttu v. Richards*, 605 U.S. 460, 468 (2025) (citation omitted). In the event that the Court reaches the Section 3621(b) argument, it should therefore hold that that provision does not bar judicial review here.

2. In its closing paragraph, the government tries to take a mulligan on its brief in opposition, suggesting that the Court “may wish to dismiss the writ of certiorari as improvidently granted.” Br. 41. There is no persuasive reason to dismiss the writ.

The government contends (Br. 41) that the question “will be essentially academic” if the Court eventually holds that Section 3621(b) bars judicial review. But, as just explained, the Section 3621(b) judicial review bar does not apply. In any event, the Court routinely resolves questions despite the possibility that subsequent developments could deprive its ruling of practical significance. See, e.g., *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 371 (2024); see also *Chatrie v. United States*, 609 U.S. 605, 614 n.2 (2026); *id.* at 656-657 (Alito, J., dissenting). As the government itself recognizes, moreover, the availability of level-of-custody claims in habeas has ongoing practical significance beyond this particular provision of the First Step Act, including for state prisoners. See Br. 41.

The government also gestures (Br. 41) at the possibility that “this case may become moot in a matter of months” because the Bureau of Prisons “projects” that Mr. Maxwell will be transferred to prerelease custody in January 2027. The government did not note that timing when it submitted its brief in opposition, and this Court has emphasized that “post-certiorari actions that would insulate a decision from review * * * must be viewed with a critical eye.” *West Virginia v. B. P. J.*, 146 S. Ct. 2356, 2373 n.3 (2026) (internal quotation marks and citation omitted). Cf. S. Ct. R. 36 (requiring leave of court to transfer a habeas petitioner pending this Court’s review). There is also reason to be skeptical of the Bureau’s “project[ion]” given that it appears that Mr. Maxwell has received multiple notices suggesting various release dates for his transfer to a halfway house, which each time have been withdrawn or modified.

The Court can avoid any question of mootness by deciding this straightforward case promptly after argument. And if Mr. Maxwell is released before the Court issues an opinion, this Court can reverse the court of appeals’ decision dismissing on a threshold ground before addressing any question of mootness. See, e.g., *Sinochem International Co. v. Malaysia International Shipping Corp.*, 549 U.S. 422, 431 (2007).

In any event, after release, Mr. Maxwell will still retain “a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation omitted). That is because Mr. Maxwell would rely on a judicial order restoring his earned-time credits to reduce his overall time in supervised release. See *Gonzalez v. Herrera*, 151 F.4th 1076, 1079-1080 (9th Cir. 2025); see also *Rivera-Perez v. Flowers*, No. 26-396 (cert. petition filed Sept. 17, 2026). The government appears to disagree that earned-time credits can be used for that purpose,

Gonzalez, 151 F.4th at 1078, but that disagreement would concern the merits of the dispute, not mootness. See, *e.g.*, *Chafin v. Chafin*, 568 U.S. 165, 174 (2013). In addition, the government has offered nothing to meet its “formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Already*, 568 U.S. at 91 (citation omitted). In short, there is no obstacle to resolving the question presented. The Court should answer that question and reverse the judgment below.

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

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