

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 RESPONDENT

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The Fifth Circuit held that a prisoner’s claim seeking transfer to prerelease custody in a halfway house or home confinement based on time credits under the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, must be brought in “a civil rights suit” under *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and that a habeas suit under 28 U.S.C. 2241 “is not the proper vehicle” for such a claim. J.A. 35. The Court-appointed amicus curiae rightly declines (Br. 41-42) to defend the first half of that holding. And his defense of the second half is unpersuasive. This Court’s precedents establish that a claim alleging unlawfully prolonged imprisonment and seeking release from prison into the community is properly brought in habeas. See, e.g., *Jones v. Hendrix*, 599 U.S. 465, 475 (2023); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Amicus accordingly acknowledges that habeas

encompasses “claims to end or shorten a prisoner’s physical detention,” Br. 14; see Br. 20, which is exactly what petitioner’s time-credits claim seeks to do: shorten his confinement in federal prison and thereby obtain “speedier release into the community,” *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005).

Amicus’s contrary view rests on the unlikely proposition that a person in prerelease custody in a halfway house or even *in his own home*—who is allowed to come and go for such varied purposes as “job-related” or “job-seeking activities,” “community service,” “religious activities,” and “family-related activities,” 18 U.S.C. 3624(g)(2)(A)(i)(II)(aa), (cc), (ff), and (gg)—remains in “physical detention” equivalent to prison. See Amicus Br. 9 (“a prisoner in Prerelease Custody is * * * *imprisoned*”); *id.* at 25 (“[t]he ‘level of custody’ in Prerelease Custody is the same as in prison”). That is wrong as a matter of both law and common sense. Habeas is the proper vehicle for petitioner’s claim because he alleges that he has been unlawfully deprived of time credits that would shorten his confinement in prison, and he seeks as a remedy accelerated transfer out of prison and into prerelease custody in the community.

To be sure, amicus is correct about several other points. He correctly resists (Br. 16-20) extending habeas to “conditions of confinement” claims and counsels (Br. 34-37) against petitioner’s suggestion that habeas should encompass all challenges to a prisoner’s “level of custody.” Amicus also correctly recognizes that “Congress appears to have barred” judicial review of First Step Act claims like petitioner’s in 18 U.S.C. 3621(b), Br. 40; see Br. 41, which ultimately makes it of little practical importance whether such claims should sound in habeas. See Gov’t Br. 36-40. But with respect to the question presented, amicus only reinforces the flaws in

the Fifth Circuit’s threadbare analysis. Therefore, absent dismissal of the writ of certiorari as improvidently granted, the judgment of the court of appeals should be vacated.

A. Claims Challenging Unlawfully Prolonged Confinement In Prison Are Cognizable In Habeas

1. *The government’s standard is correct and workable*

a. As we explained in our opening brief (at 21-24), this Court’s cases establish a clear rule: Habeas is the proper vehicle for a prisoner’s claim alleging that he is being subjected to unlawfully prolonged confinement in prison and seeking immediate or accelerated release into the community. “In England, as in the United States, the chief use of habeas corpus has been to seek the release of persons held in actual, physical custody in prison or jail.” *Jones v. Cunningham*, 371 U.S. 236, 238 (1963). In *Preiser v. Rodriguez*, 411 U.S. 475 (1973), this Court applied that principle to state prisoners who alleged that they had been wrongfully deprived of “good-conduct-time credits” and who sought to have those credits restored so that they would be sooner released from prison to parole—even though parole would not terminate the the State’s custody and would still include significant constraints on their liberty. See *id.* at 476, 500; see also Gov’t Br. 27-32.

Petitioner’s claim is the same in all material respects. He alleges that the Bureau of Prisons (BOP) has unlawfully withheld time credits that, under the First Step Act, should be applied toward his transfer to pre-release custody, and he seeks as a remedy the restoration of the credits and thus his earlier transfer out of prison. See Gov’t Br. 25. As petitioner notes (Br. 25), *Preiser* “all but answers the question presented.” Because petitioner is challenging the duration of his con-

finement in prison and seeking to accelerate his transfer out of prison, his claim sounds in habeas. As petitioner notes, moreover (Br. 19), that understanding draws textual support from the federal habeas statutes. See 28 U.S.C. 2255(e) (providing that a habeas claim is available to a federal prisoner when a Section 2255 motion would be “inadequate or ineffective to test the legality of his detention”).

b. Amicus’s objections (Br. 37-39) to that reasoning are misplaced. He faults us for “question begging” because “[a] halfway house falls in ‘a twilight zone between prison and freedom.’” Br. 37 (quoting *Ramsey v. Brennan*, 878 F.2d 995, 996 (7th Cir. 1989) (Posner, J.)). But that is precisely the point. A halfway house falls in a “twilight zone *between* prison and freedom,” *Ramsey*, 878 F.2d at 996 (emphasis added), because as a general matter, such a facility is not prison, as the governing statutes make clear. Gov’t Br. 29; see, e.g., 18 U.S.C. 3624(g)(5) (authorizing revocation of prerelease custody and return of the person to “prison”). It is instead a setting that is more akin to parole or bail, forms of conditional release from prison that a habeas action has traditionally been used to obtain. Our approach rests on a straightforward syllogism, not circular logic.

Amicus’s observation (Br. 37) that transfer to a halfway house would leave petitioner “in BOP custody at a location ultimately controlled by BOP” does not defeat that syllogism. Emphasizing some discrete similarities between halfway houses and prisons only reinforces the fact that the former are “very different” from the latter. *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 243 (3d Cir. 2005). We have already explained (Br. 27-29) why BOP’s continued legal custody over individuals in prerelease custody does not make a difference with respect to the availability of habeas.

Nor does BOP’s “ultimate control” over persons in prerelease custody render habeas unavailable to seek that form of transfer out of prison. The nature and extent of BOP’s control in the prerelease-custody setting are significantly different from its control over inmates in prison. Cf. Admin. Off. of the U.S. Cts., *Residential Reentry Centers: Reference Guide 2* (Mar. 2020) (noting that halfway houses “are operated by vendors under contract” with BOP), <https://www.uscourts.gov/file/28164/download>. The government also maintains ultimate control over those who are on bail, parole, and supervised release—which is why those forms of release are conditional rather than absolute. See, e.g., *Anderson v. Corall*, 263 U.S. 193, 196 (1923) (“While on parole the convict is bound to remain in the legal custody and under the control of the warden until the expiration of the term.”). Yet amicus accepts (Br. 14-15) that habeas is available to seek release from prison or jail to those statuses.

In disputing our approach, moreover, amicus conspicuously omits (see Br. 37-39) any discussion of the other main form of prerelease custody, home confinement. See 18 U.S.C. 3624(g)(2). It would blink reality to equate residency in one’s own home—even subject to the serious restrictions that home confinement entails, see 18 U.S.C. 3624(g)(2)(A)—to prison. And amicus does not advance the counterintuitive proposition that habeas is available to seek transfer only to that form of prerelease custody and not to a halfway house.

2. This case does not require a “level of custody” analysis

a. Amicus’s other main contention (Br. 37-38) about our prison-focused approach is that some BOP prison facilities—particularly federal prison camps—are so

low-security as to be similar to halfway houses in certain respects. But that hardly renders our “rule * * * hopelessly indeterminate,” contra Amicus Br. 38. However permissive low-security prisons may be, they remain categorically distinct from halfway houses and home confinement.

For example, courts of appeals have held “[w]ithout exception,” *United States v. Batts*, 758 F.3d 915, 917 (8th Cir. 2014) (per curiam), that prison camps are not encompassed by Sentencing Guidelines § 2P1.1(b)(3), which provides an offense-level reduction for a defendant convicted of escape if he escaped from “a community corrections center, community treatment center, ‘halfway house,’ or similar facility.” *Ibid.*; see, e.g., *Batts*, 758 F.3d at 917; *United States v. Tapia*, 981 F.2d 1194, 1197-1198 (11th Cir.) (per curiam), cert. denied, 508 U.S. 979 (1993); *United States v. Shaw*, 979 F.2d 41, 44-45 (5th Cir. 1992); *United States v. Brownlee*, 970 F.2d 764, 765 (10th Cir. 1992) (per curiam); *United States v. McGann*, 960 F.2d 846, 847 (9th Cir.) (per curiam), cert. denied, 506 U.S. 897 (1992). Those courts have concluded that prison camps are “generically different from the facilities listed” in the guideline and thus are not “‘similar facilit[ies].’” *McGann*, 960 F.2d at 847 (citation omitted). Among other reasons, halfway houses and comparable facilities are “integrated into the community,” whereas “[a] prison camp, even though there may be no perimeter barriers and residents may have some freedom to come and go, is an environment separated from the community.” *Brownlee*, 970 F.2d at 765; see *Shaw*, 979 F.2d at 45 (noting that “the federal prison camp’s purpose is to incarcerate the inmate while the community center’s purpose is to bring the inmate back into society”); 18 U.S.C. 3624(c)(1) (prerelease custody is intended to “afford th[e] prisoner a reasonable oppor-

tunity to adjust to and prepare for the reentry of that prisoner into the community”). There are also other “major difference[s] between the community center type facilities and a prison camp.” *Shaw*, 979 F.2d at 43; see, e.g., *ibid.* (contrasting halfway houses with prison camps by noting that prisoners at one camp were “counted at least five times a day, six on weekends,” were “never allowed unauthorized visitors,” and had “strictly enforced” visiting hours).

Thus, a prisoner’s claim demanding transfer within a prison system to a low-security facility is categorically distinct from a claim, like petitioner’s, demanding transfer to prerelease custody. Only the latter type of claim seeks “immediate or speedier release” out of prison and “*into the community*,” which is the essence of a habeas claim challenging unlawfully prolonged imprisonment. *Dotson*, 544 U.S. at 82 (emphasis added).

b. The superficial similarities between halfway houses and prison camps may not matter at all under the view of petitioner, who proposes (e.g., Br. 3-5, 12-20) that habeas encompasses claims challenging a prisoner’s “level of custody.” That rule may mean that even claims seeking transfer to a lower security level *within* a prison or prison system may be brought in habeas. See, e.g., *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (Posner, J.) (contending that if a prisoner seeks “the run of the prison in contrast to the approximation to solitary confinement that is disciplinary segregation,” then “habeas corpus is his remedy”). Under petitioner’s approach, amicus’s effort to equate prerelease custody to imprisonment would not mean that petitioner’s claim does not lie in habeas; it may suggest only that claims seeking transfer to less restrictive conditions of imprisonment are *also* cognizable in habeas.

For several reasons, this Court should not allow all level-of-custody challenges to be brought in habeas. It is not necessary to do so to resolve this case, since petitioner prevails under our narrower rule, which turns on whether the claim seeks a transfer out of prison. Petitioner acknowledges as much. See Br. 5 (describing his claim as “seeking accelerated transfer from prison to distinct and materially less restrictive custody served outside of prison walls”); Br. 18 (“a federal habeas court may order the custodian to release the petitioner from prison and transfer him to a lower level of custody”); Br. 24 (“habeas can be used to ‘free a petitioner from prison custody’”) (brackets and citation omitted).

Contrary to petitioner’s suggestion (Br. 19-29), this Court has not already adopted a framework allowing broad level-of-custody challenges in habeas. Petitioner cites precedents recognizing the availability of habeas to secure bail or parole, but such claims seek *discharge* from prison or jail (as does petitioner’s claim), and thus belong in habeas under our narrower rule. See Br. 19-26 (citing, *e.g.*, *Ex parte Bollman*, 4 Cranch 75 (1807); *Ex parte Hull*, 312 U.S. 546 (1941); and *Preiser*, *supra*); see also *Jones v. Hendrix*, 599 U.S. at 475 (contemplating a habeas claim that a prisoner “has unlawfully been denied parole or good-time credits”). As amicus explains (Br. 23), *In re Bonner*, 151 U.S. 242 (1894), held that habeas was available to challenge imprisonment that was not authorized by statute, which is not a level-of-custody claim.

Nor do this Court’s modern cases hold that habeas encompasses all level-of-custody claims, contra Pet. Br. 25-29. No such claim was raised in *Skinner v. Switzer*, 562 U.S. 521 (2011), which held that 42 U.S.C. 1983 rather than habeas was the proper vehicle for a state prisoner’s claim seeking DNA testing of crime-scene evi-

dence. See 562 U.S. at 534. The Court did indicate that habeas is not “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.*’” *Ibid.* (emphasis added; brackets and citation omitted). But the Court was quoting Justice Scalia’s concurring opinion in *Dotson*, which suggested only that a “‘*quantum* change in the level of custody,’ such as *release from incarceration to parole*,” is “permissible habeas relief.” 544 U.S. at 86 (quoting *Graham*, 922 F.2d at 381) (emphases added); see Amicus Br. 26. Similarly far afield are cases involving the use of habeas to challenge a sentence of death, see *Hill v. McDonough*, 547 U.S. 573, 583 (2006), or to block a detainee’s transfer out of the country, see *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam); *id.* at 674 (Kavanaugh, J., concurring).

Allowing all level-of-custody claims to proceed in habeas would be in tension with this Court’s precedents. As amicus notes, the Court has allowed state prisoners to proceed under Section 1983 when challenging their placements in prison environments that are more restrictive. Br. 35 (citing *Haines v. Kerner*, 404 U.S. 519 (1972) (per curiam), and *Meachum v. Fano*, 427 U.S. 215 (1976)). Such claims, unlike petitioner’s, are difficult to distinguish from other challenges to prisoners’ “conditions of confinement,” which likely are not cognizable in habeas. See Amicus Br. 16-20; see also *Muhammad v. Close*, 540 U.S. 749, 751 n.1 (2004) (per curiam). Thus, unlike our rule, a broad level-of-custody approach would risk making the scope of habeas as “hopelessly indeterminate” as amicus fears (Br. 38). For this case, it suffices to apply the Court’s precedents holding that a claim challenging unlawfully prolonged imprisonment

and seeking accelerated transfer out of prison into the community sounds in habeas.

B. Petitioner Would Prevail Even Under Amicus’s Approach

1. *Prerelease custody in a halfway house or home confinement is not “physical detention”*

Amicus instead proposes the following standard: a “prisoner’s claim sounds in habeas” if it “implies [1] that his physical detention must be shortened or terminated, [2] that he is entitled to earlier release on bail or parole, or [3] that the sentencing court ordered him to serve his sentence in a place it did not have jurisdiction to send him.” Amicus Br. 20; see *id.* at 21-23. Yet that framework would yield the same result as ours in this case. Petitioner’s claim is that his physical detention in prison must be shortened based on his First Step Act time credits and that he is therefore entitled to accelerated transfer out of prison to prerelease custody.

Amicus’s disagreement with that logic rests on the premise that someone in prerelease custody remains in physical detention. But prerelease custody in a halfway house or home confinement is not “physical detention” under any ordinary understanding of that term. Prerelease custody does not depend on physical restraints or barriers, but rather on the releasee’s compliance with restrictions on his liberty: the rules and regulations of the halfway house, for example, or the restrictions for home confinement imposed by the First Step Act and BOP. See 18 U.S.C. 3624(g)(2). That is why amicus describes (Br. 23, 37) BOP as retaining “ultimate[]” control over prisoners in prerelease custody. Cf. *Black’s Law Dictionary* 1384 (12th ed. 2024) (defining “physical custody” as “[c]ustody of a person (such as an arrestee)

whose freedom is *directly* controlled and limited”) (emphasis added).

Amicus’s view also cannot be reconciled with precedent. In light of the practical similarities for present purposes between prerelease custody, parole, and bail, see pp. 12-16, *infra*, amicus is compelled to place (Br. 20) claims seeking parole or bail in a separate, second category of cognizable habeas claims—necessarily implying that he views parole and bail as entailing continued “physical detention” as well. But this Court has not taken that view. In 1963, it recognized the basic distinction between parole—despite its attendant “significant restraints on [parolees’] liberty”—and “actual, physical custody,” “physical confinement,” and “physical imprisonment.” *Jones v. Cunningham*, 371 U.S. at 238, 240, 242; see *id.* at 243 (the “writ always could and still can reach behind prison walls and iron bars”). Ten years later, the Court in *Preiser* did the same, holding that a claim seeking release from prison to parole must be brought in habeas. The Court’s core reason for that holding was that such a claim seeks to terminate unlawful “physical restraint,” “physical confinement,” and “physical custody.” *Preiser*, 411 U.S. at 486-487.

Amicus accordingly errs (Br. 25) in dismissing *Preiser* as pertaining only to “release on parole.” *Preiser* did not turn on the particularities of parole—it did not even discuss them. It instead rested on the more general principle, which this Court had recognized before *Preiser*, that a claim sounds in habeas if it alleges “illegal physical confinement” and demands “release from physical custody” as a remedy. 411 U.S. at 487; see *id.* at 489-490, 494, 500; see also *Jones v. Cunningham*, 371 U.S. at 238. That principle also governs this case.

Indeed, it is telling that amicus derives his own “physical detention” category from *Preiser* itself. See

Amicus Br. 21 (“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.”) (quoting *Preiser*, 411 U.S. at 485-487). Over the decades, *Preiser* and its progeny have guided the Court’s analysis of the scope of habeas in a range of cases—including several that did not involve parole at all. See, e.g., *Fernandez v. United States*, 608 U.S. 411, 420-423 (2026); *Nance v. Ward*, 597 U.S. 159, 167-168 (2022); see also *Dotson*, 544 U.S. at 78-82. This Court’s decisions “are ‘governed by general principles, rather than ad hoc improvisations.’” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 470 (2017) (Gorsuch, J., concurring in part) (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 25 (2004) (Rehnquist, C.J., concurring in the judgment)).

In short, claims seeking parole or bail do not, as amicus would have it (Br. 20), compose a freestanding category of cognizable habeas claims. They are instead *examples* of claims that sound in habeas because they seek release from “physical detention.” Because petitioner’s claim falls comfortably within that category, he would prevail under amicus’s own framework.

2. Prerelease custody is materially similar to parole and supervised release

Even if amicus were correct that prerelease custody in a halfway house or home confinement entails continued physical detention, there would be no principled basis for distinguishing petitioner’s claim from claims that seek release to parole or supervised release or bail. There are various significant differences among all of those forms of conditional release. See, e.g., *United States v. Haymond*, 588 U.S. 634, 652 (2019) (plurality

opinion) (“‘unlike parole,’ supervised release wasn’t introduced to replace a portion of the defendant’s prison term, only to encourage rehabilitation *after* the completion of his prison term”) (brackets and citation omitted). For instance, a defendant on pretrial bail differs from someone on parole or supervised release because he has not yet been convicted of a crime. Yet amicus accepts that habeas is available for someone seeking those forms of release, notwithstanding their differences. The distinctive characteristics of prerelease custody do not support a different result here.

By statute, amicus observes (Br. 29), a person in pre-release custody is still “serving a term of imprisonment” and is referred to as a “prisoner,” 18 U.S.C. 3624(c)(1), unlike someone on supervised release. But several statutory provisions illustrate that Congress distinguished between being in prison and being in prerelease custody—including by authorizing BOP to “revoke the prisoner’s prerelease custody and require the prisoner to serve the remainder of the term of imprisonment * * * in prison.” 18 U.S.C. 3624(g)(5); see Gov’t Br. 29-30. Moreover, what matters is not the terminological point, but the substantive difference. Whether a claim sounds in habeas depends not on labels but on the nature of “the allegations made” and “the relief sought.” *Olivier v. City of Brandon*, 607 U.S. 552, 566 (2026). In this regard, amicus’s citation (Br. 29) of *United States v. Johnson*, 529 U.S. 53 (2000), undermines his own argument. *Johnson* held that a term of supervised release begins only once a prisoner is *actually* released from prison, not when his term of imprisonment should have ended. See *id.* at 56-60. Our approach likewise focuses on release from actual imprisonment, consistent with this Court’s habeas precedents.

Amicus further attempts (Br. 30) to distinguish pre-release custody and supervised release based on “the severity of restrictions on liberty” that each status imposes. As we have explained (Gov’t Br. 30-31), a categorical distinction between prerelease custody and supervised release is untenable. Individuals on supervised release can be subject to restrictions on their liberty that are equal to or even greater than those that apply to prerelease custody. Compare Sentencing Guidelines § 5D1.3(b)(2) (conditions of supervised release), with, *e.g.*, 18 U.S.C. 3624(g)(2)(A) (conditions of prerelease custody in home confinement). The relative restrictiveness will depend on various individualized determinations. For example, the First Step Act requires BOP, “to the extent practicable, [to] provide that increasingly less restrictive conditions shall be imposed on prisoners” in prerelease custody “who demonstrate continued compliance with the conditions of such prerelease custody, so as to most effectively prepare such prisoners for reentry.” 18 U.S.C. 3624(g)(4). And as amicus acknowledges (Br. 31-32), many terms of supervised release are served in the very same environments where prisoners spend prerelease custody. See Sentencing Guidelines § 5D1.3(b)(3)(K) (“Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of supervised release.”).

Amicus also emphasizes (Br. 30-31) that supervised release is overseen by the Judicial Branch (through sentencing courts and probation officers), whereas prerelease custody is overseen by the Executive Branch (through BOP). But that too is a distinction without a difference, since parole has also been overseen by the Executive Branch. See *Mistretta v. United States*, 488 U.S. 361, 364-365 (1989); *Knight v. United States*, 73

F.3d 117, 120 (7th Cir. 1995) (“The Parole Commission supervises the paroled convict and may at any time, upon notice and hearing, change the conditions of the parole, revoke it or even terminate it entirely.”) (citation omitted), cert. denied, 519 U.S. 827 (1996).

This Court’s decision in *Reno v. Koray*, 515 U.S. 50 (1995), does not support amicus’s effort (Br. 32-34) to distinguish prerelease custody from supervised release for habeas purposes. *Koray* held that a defendant who is ordered “released” on bail subject to the condition that he reside in a halfway house is not in “official detention” for purposes of a sentencing-credit statute, 18 U.S.C. 3585(b), even though a defendant who is “detained” in the custody of BOP could be placed in the same environment and earn such credit. See 515 U.S. at 62, 65. That result was not as anomalous as it appeared, the Court explained, because the difference between released and detained defendants had “legal and practical significance”: for instance, a released defendant “is not in BOP’s custody” and “cannot be summarily reassigned to a different place of confinement unless a judicial officer revokes his release.” *Id.* at 63.

Koray did not involve or address prerelease custody or the scope of habeas, so its reasoning sheds little light on the question presented in this case. The “legal and practical significance” of BOP custody for the “official detention” issue of statutory interpretation in *Koray*, 515 U.S. at 63, does not suggest that it has the same significance with respect to the availability of habeas. The precedents discussed above show that it does not. As we have explained, BOP’s continued legal custody over prisoners in prerelease custody cannot control the habeas analysis. See Gov’t Br. 27-29. While amicus’s distinctions between prerelease custody and other forms of

conditional release from prison may matter for other legal purposes, they are immaterial here.

C. Amicus Identifies No Other Plausible Avenues For First Step Act Time-Credit Claims

Furthermore, as we previously explained (Br. 32-35), for claims like petitioner’s, there is no potential avenue that is more suitable than habeas. Amicus recognizes (Br. 41) that the court of appeals “was mistaken” when asserting “that federal prisoners like [p]etitioner might be able to proceed under *Bivens*.” See J.A. 35. Petitioner is not suing for damages or raising a constitutional claim, and this Court is very unlikely to extend *Bivens* to a new type of claim—particularly one arising in the prison setting. See, e.g., *Goldey v. Fields*, 606 U.S. 942, 944-945 (2025) (per curiam); see generally U.S. Amicus Br. at 11-21, *Nielsen v. Watanabe*, cert. granted, No. 25-417 (oral argument scheduled for Nov. 9, 2026).

The other avenues for relief discussed by amicus are only marginally more plausible than a *Bivens* suit. His leading candidate is a suit “in equity for an injunction.” Br. 40 (citing *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015)). But First Step Act claims like petitioner’s are not constitutional claims (unlike most conditions-of-confinement claims), see Gov’t Br. 34; cf. *Armstrong*, 575 U.S. at 327, so amicus must have in mind an *ultra vires* claim alleging governmental action “in excess of * * * statutory authority,” *Dalton v. Specter*, 511 U.S. 462, 472 (1994). Such a claim requires a showing that “an agency has taken action entirely ‘in excess of its delegated powers and contrary to a *specific prohibition*’ in a statute,” and is thus “‘essentially a Hail Mary pass’” that “‘rarely succeeds.’” *Nuclear Regulatory Comm’n v. Texas*, 605 U.S. 665, 681-682 (2025) (citations omitted).

It is difficult to imagine a First Step Act claim that could clear that exceptionally high bar. Claims like petitioner’s allege that BOP has failed to discharge affirmative duties under the Act to grant time credits and transfer eligible prisoners to prerelease custody, not that the agency has violated any specific statutory prohibition. Cf. *Nuclear Regulatory Comm’n*, 605 U.S. at 681. Permitting such claims would be particularly inappropriate because, as amicus acknowledges (Br. 42), it would allow prisoners to circumvent “the host of substantive and procedural limitations that Congress has imposed on habeas petitioners.” See Pet. Br. 32-33; Gov’t Br. 34-35.

Amicus briefly suggests (Br. 41) that prisoners “may” also be able to bring First Step Act claims via the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* Petitioner himself considers (Br. 31) it “unclear” whether the APA would work. But Congress has clearly precluded APA review. It provided in 18 U.S.C. 3625 that the APA “do[es] not apply to the making of any determination, decision, or order under this subchapter,” *ibid.*, which includes the provisions of the First Step Act governing prisoners’ transfers to prerelease custody, 18 U.S.C. 3621 and 3624. See *Sills v. FCI Talladega Warden*, No. 22-12656, 2023 WL 1775725, at *4 n.3 (11th Cir. Feb. 6, 2023) (per curiam) (“§ 3625 expressly exempts the BOP’s prisoner-placement and prerelease-custody decisions, including home confinement, from judicial review under the [APA]”). And a mandamus action under 28 U.S.C. 1361 (see Amicus Br. 41) would likely fail for the same reasons that an *ultra vires* claim would, given that “only exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion will justify” mandamus. *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 380 (2004) (citations and internal quo-

tation marks omitted). The absence of any other suitable avenue for bringing a claim like petitioner's confirms that habeas, contrary to the decision below, would be the right one.

D. The Fifth Circuit's Judgment Should Be Vacated

1. In the end, however, the foregoing is beside the point if the First Step Act, in 18 U.S.C. 3621(b), has foreclosed judicial review of BOP's decisions regarding transfers to prerelease custody, as we contend (Br. 36-40) and the Eighth Circuit recently held. See 18 U.S.C. 3621(b) ("Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court."); *Osorio-Calderon v. Warden*, 179 F.4th 1158, 1163-1165 (8th Cir. 2026). Amicus seems to agree, stating that "Congress appears to have barred" claims like petitioner's in Section 3621(b). Amicus Br. 40; see *id.* at 41.

Although certain congressional amici disagree with that view, their arguments lack merit. They observe that Section 3621(b) refers to BOP's designation of the place of imprisonment "under this subsection," and they suggest that a prisoner's placement in prerelease custody under the First Step Act is controlled exclusively by other statutory provisions "governing whether someone has become eligible for prerelease custody," such as Section 3624. Sens. Durbin and Booker Amicus Br. 12 n.4; see Rep. Raskin Amicus Br. 13-14. But, as we have explained and "[p]etitioner's own habeas petition" acknowledges (Gov't Br. 37), Section 3624 does not displace Section 3621(b). See, *e.g.*, 18 U.S.C. 3624(c)(6)(A) (requiring BOP to "ensure that placement in a community correctional facility" is "conducted in a manner consistent with section 3621(b)").

A contrary reading “would result in troubling anomalies” that would not “accord[] with the statutory scheme.” *Boggs v. Boggs*, 520 U.S. 833, 850-851 (1997). For example, BOP could be forced to place prisoners in prerelease custody under the First Step Act without regard for the placement considerations listed in Section 3621(b), such as “the prisoner’s security designation, the prisoner’s programmatic needs, the prisoner’s mental and medical health needs,” “other security concerns of the Bureau of Prisons,” “minimum standards of health and habitability established by the Bureau,” and other important factors. 18 U.S.C. 3621(b); cf. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (“When confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at liberty to pick and choose among congressional enactments and must instead strive to give effect to both.”) (citation and internal quotation marks omitted). If amici were correct, a court could order BOP to transfer a prisoner to prerelease custody even if there were no facilities with space for him, or if the only available facilities were plainly inappropriate for the prisoner—for instance, facilities located near schools, in the case of a prisoner with a history of sex offenses against children. Section 3621(b) thus plays an essential role in BOP’s ability to responsibly implement the First Step Act’s risk-and-needs-assessment system, of which the time-credit incentive program is a central part.

Some amici also emphasize the First Step Act’s “mandatory language” requiring BOP to place eligible prisoners in prerelease custody. Sens. Durbin and Booker Amicus Br. 12 n.4; see 18 U.S.C. 3632(d)(4)(C) (“The Director of the Bureau of Prisons *shall* transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.”) (emphasis

added). But Congress’s use of mandatory language is not inconsistent with its preclusion of judicial review as a means to enforce the mandate on the agency. See, *e.g.*, *Mullin v. Doe*, 609 U.S. 324 (2026). That is particularly so where, as here, Congress has provided other mechanisms for oversight of the agency’s implementation of the statute. For example, the First Step Act directs the Attorney General to “develop and implement training programs for Bureau of Prisons officers and employees responsible for administering the [risk-and-needs-assessment] System,” 18 U.S.C. 3632(f), and to “ensure that the Bureau of Prisons is using the System in an appropriate and consistent manner” by “monitor[ing] and assess[ing] the use of the System, which shall include conducting annual audits of the Bureau of Prisons regarding the use of the System,” 18 U.S.C. 3632(g). The Act likewise directs the Comptroller General to conduct an audit every two years, including of “[w]hether the Bureau of Prisons transfers prisoners to prerelease custody or supervised release as soon as they are eligible for such a transfer.” § 103(7), 132 Stat. 5214. Congress understandably viewed those means of oversight as more appropriate than judicial enforcement in this context.

2. If our reading of Section 3621(b) is correct, the question presented in this case “will be essentially academic.” Gov’t Br. 41. Even though a prisoner like petitioner could theoretically bring a First Step Act time-credit claim via habeas, that claim would be barred by Section 3621(b), which applies “[n]otwithstanding any other provision of law.” 18 U.S.C. 3621(b). Resolution of the question presented is also likely to be academic for petitioner himself. Even under the BOP calculation of time credits that he challenges, he is currently scheduled to be eligible for transfer to a halfway house in Jan-

uary 2027, see Gov't Br. 14, 41, which would render moot his habeas claim for an earlier transfer.

For those reasons, this Court may wish to dismiss the writ of certiorari as improvidently granted. The scope of habeas corpus is a recurring issue, see, *e.g.*, *J.G.G.*, 604 U.S. at 672; *Olivier*, 607 U.S. at 562-564, that is important at both the federal and state levels. It is therefore especially appropriate for the Court to reserve decisions in this area for cases in which they will have practical consequences. But if the Court does not dismiss, the appropriate disposition is vacatur and remand for further proceedings.

* * * * *

For the foregoing reasons and those stated in our opening brief, the judgment of the court of appeals should be vacated.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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