SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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WILLIAM MAXWELL,)

Petitioner,)

v.) No. 25-5930

SANDRA DINIS, ACTING WARDEN,)

Respondent.)

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Washington, D.C.

Monday, November 2, 2026

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:06 a.m.

APPEARANCES:

MASHA G. HANSFORD, ESQUIRE, Washington, D.C.; on behalf of the Petitioner.

KEVIN J. BARBER, Assistant to the Solicitor General, Department of Justice, Washington D.C.; on behalf of the Respondent supporting vacatur.

BRIAN W. BARNES, ESQUIRE, Washington, D.C.; Court-appointed amicus curiae in support of the judgment below.

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P R O C E E D I N G S

(10:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 25-5930, Maxwell versus Dinis.

Ms. Hansford.

ORAL ARGUMENT OF MASHA G. HANSFORD

ON BEHALF OF THE PETITIONER

MS. HANSFORD: Mr. Chief Justice, and may it please the Court:

Mr. Maxwell's claim in this case is that he's being held in prison in violation of federal law because the First Step Act requires his release from prison and transfer to home confinement or to a halfway house. That is a distinct and lower level of custody.

That claim falls squarely within the text of the federal habeas statute because it asserts that Respondent, the Warden of Mr. Maxwell's prison, is holding him "in custody in violation of the laws of the United States." It also falls within the core historical province of the Great Writ. And it is materially indistinguishable from this Court's decision in Preiser against Rodriguez,

which held that claims seeking release from prison to parole must be brought in habeas.

The Fifth Circuit dismissed Mr. Maxwell's case on the ground that habeas is only available where a prisoner seeks complete release. No one defends that rule here. The government, as Respondent, agrees that habeas is the appropriate vehicle and, despite gesturing at a few supposed off-ramps, supports vacatur of the decision below.

Even amicus appointed to defend the judgment below does not endeavor to defend the reasoning of the Fifth Circuit. Instead, amicus acknowledges that habeas is available for some level-of-custody claims, but he argues not for Mr. Maxwell's claim here.

Amicus's efforts to limit habeas finds no footing in statutory text or in history, and he offers no principled basis for distinguishing the types of claims that are in from those that are out. Perhaps most starkly, amicus cannot distinguish FSA prerelease custody from parole given the legal and practical similarities between the two.

Congress put transfer to prerelease

custody for prisoners to earn good-time credits at the heart of the First Step Act. When a warden fails to release a prisoner under that authority, habeas is available.

I welcome the Court's questions.

JUSTICE THOMAS: Before we get to the merits, would you spend a few minutes on the review bar that you argue, also the exhaustion issue that seems to have been pushed aside, and the possible mootness problem that we're -- that we face?

MS. HANSFORD: Absolutely, Justice Thomas. Happy to address both.

To start with the 3621(b) argument, the government, in its brief, raised the possibility that there's a judicial review bar. But that argument -- that provision does not apply to the claims in this case. 3621(b) says not -- a designation of a place of imprisonment under this subsection is not reviewable in any court. That's a determination under 3621(b).

Mr. Maxwell's claim in this case is not a challenge to anything the BOP did under 3621(b). It is an assertion under 3624(g) and 3634(d)(4) -- (d)(4)(C), which is the right to

be transferred, not BOP's discretionary decision.

And I think that the -- the First Step Act very clearly treats that as its own distinct form of release. In particular, you can look at 3624(g)(2) and 3624(g)(4) that talk about prisoners placed in prerelease custody pursuant to this subsection as in 3624. So it is a different authority. And we're not invoking the 3621(b).

Now, to the extent that the ultimate decision as to which halfway house, Halfway House A or B, still goes through 3621(b), I think that itself is not clear because I think there are regulations that are supposed to adopt the 3621(b) standards pursuant to 3624(c)(6). But, even assuming that is the case, all that means is that Mr. Maxwell cannot dispute being placed in Halfway House A versus Halfway House B, not that he somehow has no ability to obtain judicial review of the decision under a different provision.

And the government's cross-reference argument cannot possibly be right because BOP always designates the place of imprisonment

under 3621(b), but nobody thinks that a prisoner cannot challenge whether he's sent to prison, whether his conviction is invalid, just because the last step of the determination is which particular prison.

And you also asked about mootness, Justice Thomas. The -- this case is currently not moot because Mr. Maxwell is in custody, but, in the event the government releases him before the opinion in this case issues, it also would not be moot.

So the -- in -- whether he is in custody under 2241 is, of course, measured at the outset of the case. So all that is required at this point is that there be a cognizable case or controversy, that there be some meaningful relief. That is satisfied here because the restoration of Mr. Maxwell's good-time credits, he would argue that that should reduce his time on supervised release because the First Step Act provides that good-time credits can be used towards supervised release, and the Ninth Circuit has held that means it can be used to reduce the term of supervised release.

Now I acknowledge there's a circuit conflict on that issue. There is, in fact, a pending cert petition before you about that. But the test for mootness isn't whether you are persuaded by that argument at this stage. Under Chafin versus Chafin, the question is just whether it's not in a substantial argument. It's plainly not in a substantial argument. So a live controversy will remain.

JUSTICE ALITO: Is your client -- I'm sorry.

JUSTICE THOMAS: Would you address the exhaustion?

MS. HANSFORD: Exhaustion. Absolutely. So we agree that exhaustion is a live issue for remand. In fact, Mr. Maxwell sought to appeal the exhaustion issue, and it was the Fifth Circuit that sua sponte dismissed the case instead on the ground of habeas. So we do not think this Court should address exhaustion. That is the issue we want to litigate in the Fifth Circuit.

The reason that this was exhausted -- I think there are three reasons that Mr. Maxwell will raise before the Fifth

Circuit.

First, he will point out that he did, in fact, cite the First Step Act in the administrative grievance materials. The best example of that is Joint Appendix 17.

The second argument is that exhaustion would have been futile because Mr. Maxwell's argument in this case is to BOP's method of calculating good-time credits. That is actually reflected in BOP's regulations, and it would have been futile to ask the prison administrators to go against those.

And then, finally, Mr. Maxwell has also raised problems of obstruction of the process and has asserted a right under Perttu to a jury trial related to those.

But those are the three arguments on exhaustion that we would like to make on remand.

JUSTICE JACKSON: Which you could make on remand and not have anything to do with this case. In other words, these issues, exhaustion and, I mean, I guess mootness is here, but the 3621(b) and exhaustion issues are separate and they -- they weren't really litigated below.

Is that correct?

MS. HANSFORD: Yes, Justice Jackson. Mr. Maxwell didn't get the opportunity to litigate exhaustion below, and we agree that this Court does not need to address any of those other issues.

JUSTICE JACKSON: Let me ask you about the rule statement that you put forward. I guess I'm trying to understand whether we really need to use this case to define every circumstance in which habeas is appropriate.

It seems to me the circumstances here are very narrow, whether a prisoner who is claiming that he's being unlawfully detained because he's entitled to placement in a halfway house if his good-time credits had been calculated properly, that under those circumstances, narrowly, is he able to bring that claim in habeas or, as the Fifth Circuit said, is that the kind of claim that would -- that has to be brought as a Bivens claim?

That seems to me to be a very narrow inquiry that doesn't require us to have to explore all circumstances in which habeas might be available.

MS. HANSFORD: That's completely fair, Justice Jackson. We're happy with a narrow rule here. I think our basic submission is a challenge to a distinct and lower level of custody is cognizable. I agree completely that whether something is distinct custody can raise hard questions, and this is an easy application of it, either by looking at a case like Preiser or by using the fact that it requires a change of custodian or by looking at the statutory scheme. I don't think the Court needs to decide which of these indicia are required in future cases.

And we're, in fact, perfectly happy with the government's rule of transfer from prison into the community, kind of sticking close to the language of Preiser itself as an application. We just wanted to show our work a little bit as to how we derived that rule in this case. But I do think that a very narrow opinion in this case makes sense.

And I do think there is some value to proceeding cautiously because, of course, there are implications on both sides of the scope of habeas, and a lot of the time, you hear habeas

cases in the posture of state prisoners being up here arguing for more narrow habeas, so they have broader 1983 rights.

And so I do think there are a lot of implications, and there could be --

JUSTICE JACKSON: But a narrow ruling would be helpful because this kind of situation comes up a lot, right?

MS. HANSFORD: Yes. I do think a narrow ruling that shows that transfer from prison to something that is not prison is cognizable would be helpful because, of course, there are the First Step Act claims, which themselves are very significant, but there are other cases like those that we cited in the certiorari reply brief about transfer by Puerto Rico, for instance, of prisoners from prison to a home confinement electronic monitoring system. I think that type of fact pattern does arise.

And so this kind of rule that you suggested, Justice Jackson, I do think would be helpful as kind of an application of the principles that we're setting out that provides concrete guidance without necessarily

addressing the hard outer-edge cases.

JUSTICE ALITO: Is your client asking to be sent to prerelease custody, or is he simply asking for a declaration that he is entitled to good-time credits?

MS. HANSFORD: We think that a fair interpretation of what he's asking -- and, of course, he was pro se below -- is that he is asking to be sent to prerelease custody, that he is asking to be transferred.

JUSTICE ALITO: Has he satisfied all four of the requirements for prerelease custody?

MS. HANSFORD: Yes, he has. Yes. He has the lowest recidivism rating. He has a qualifying crime. He has satisfied everything. The only dispute is the calculation of the good-time credits. And, in fact, the government itself is here saying it's imminently going to release him to prerelease custody.

The dispute is about the -- the number of good-time credits, and I do think this Court in Preiser and other cases has indicated that -- and in Wolff, for instance, as well

that a challenge to the calculation to the number of good-time credits is a habeas claim on its own even if you are not asking for release, but Mr. Maxwell is seeking release here.

JUSTICE GORSUCH: Do -- do we have to say that, though, to -- to rule for you? I understand an argument that you're -- an entitlement to a lower level of custody is in habeas. That's your view.

But 3624(g) does have, as Justice Alito pointed out, four requirements, only one of which has to do with good-time credits.

Do we need to say that you're -- you're entitled to bring a habeas claim for good-time credit calculations or -- or not?

MS. HANSFORD: No. You certainly do not need to say that in this case. I -- I read this Court's decisions to have already said that. But, to the extent you disagree, we absolutely don't need that here because the request here is release, immediate release, to a halfway house or to home confinement.

JUSTICE BARRETT: Ms. Hansford, why -- I -- I -- I appreciate that you say that you're

happy with the government's rule. Why are you going bigger than the government's rule? Because it does seem to me that your level-of-custody approach presents a lot of question -- a lot of complications that the government and the other side point out, which is, you know, what about transfer to a lower-security facility?

Mr. Chief Justice?

CHIEF JUSTICE ROBERTS: Oh, please.

JUSTICE BARRETT: So why are you even pushing for that rule given the risks of spillover?

MS. HANSFORD: Justice Barrett, as we said, we're happy with a narrow gov- -- application of the government's rule as long as you're comfortable with a distinction between prison and not, which I think you absolutely should be, and I can talk about that.

And I don't think the Court's decision needs to address the minimum/maximum security example. I don't think that would be a distinct form of custody, and I can explain why.

But I do think there can be tricky

questions, and it does depend a little bit on the statutory framework. So I think leaving those -- leaving those for a later time is -- is fine. I think that an opinion in this case that says that release to a distinct and lower level of custody is cognizable, this is an example of that, because it's a release from prison into the community or a release from physical confinement to not, however you want to formulate it, would be a very helpful -- a helpful task. And I don't think spelling out the contours of "distinct" is necessary.

CHIEF JUSTICE ROBERTS: Thank you.

Justice Thomas, anything further?

Justice Alito?

JUSTICE SOTOMAYOR: Justice Scalia used the language "quantum change" in the level of custody. You want us to create new language, "materially less restrictive custody."

Why don't we stick to what we have?

MS. HANSFORD: Absolutely, Justice Sotomayor. I do not mean to quibble with Justice Scalia.

I think the test the Court has

articulated is "lower level of custody," and we think we easily satisfy this requirement because it is such a material change, but quantum -- any -- any adjective you want to use there is -- is fine.

JUSTICE SOTOMAYOR: So, going back to Justice Barrett's question, why do we borrow either when it does create this line-drawing problem? Why do we use either? Isn't the government's articulation clearer and simpler?

MS. HANSFORD: We are -- we are perfectly happy with the government's -- with the government's formulation. Again, I do think we were just trying to show our work as to how we derive it.

JUSTICE SOTOMAYOR: Thank you.

CHIEF JUSTICE ROBERTS: Justice Kagan?

Justice Gorsuch?

Justice Kavanaugh?

Justice Barrett, anything?

Justice Jackson?

JUSTICE JACKSON: Can I just -- can I just ask you about mootness really quickly?

I'm just thinking about our mootness exceptions to the extent that we have them, and

I'm wondering what your views are on whether this could be the kind of situation that would be capable of repetition yet evading review because individuals in this situation are usually near the end of their sentence in any event in order to be able to make this kind of claim.

MS. HANSFORD: So, Justice Jackson, I'm not sure that exception itself would apply. I think the voluntary cessation exception, if the government does release him, and kind of based on its reasoning, might be a better fit here. But I do think that practical point that you raise is a really good reason this Court should be reluctant to dismiss this case, because this is an important issue that is arising in courts across the country.

There's a circuit split where prisoners in two big circuits are told they have to label their requests Bivens claims, which everybody agrees cannot possibly be right. And this is a practical threshold determination that naturally, as you say, arises at the end of somebody's sentence, and so it's very hard for it to even reach district

court once exhaustion, let -- once exhaustion is complete, let alone go all the way up to an appellate court or this Court.

So I think there's a really good practical reason the Court should want to resolve it. And I don't think it's moot for the reason we said here, the Chafin versus Chafin reason, and potentially voluntary cessation.

You know, to the extent you had any doubts about mootness in the event Mr. Maxwell was, in fact, released, we could provide supplemental briefing, but I think this is a pretty easy mootness case just because those good-time credits are still valuable to Mr. Maxwell.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Barber.

ORAL ARGUMENT OF KEVIN J. BARBER

ON BEHALF OF THE RESPONDENT

SUPPORTING VACATUR

MR. BARBER: Mr. Chief Justice, and may it please the Court:

If Petitioner has any avenue for his habeas claim -- or his First Step Act claim, habeas is the one.

Under Preiser and this Court's related cases, habeas is the vehicle for a prisoner's claim alleging unlawfully prolonged confinement in prison even if the liberty he seeks is conditional.

That narrow basic principle resolves this case, so there's no need to adopt Petitioner's amorphous level-of-custody rule.

Amicus's approach, on the other hand, can't salvage the decision below. He rightly recognizes that habeas is available to seek discharge from physical detention. But that describes this very case. Amicus also recognizes that a claim seeking parole sounds in habeas. And prerelease custody in a halfway house or home confinement is a modern version of federal parole.

So, if the Court does decide the question presented despite the judicial review bar in Section 3621(b) and the impending mootness of this case, it should vacate the judgment of the court of appeals.

I welcome the Court's questions.

JUSTICE THOMAS: You say that the prerelease is a modern version of parole. I think amicus does not agree with that.

Would parole be under the control of the Bureau of Prisons?

MR. BARBER: So parole would be under the control of the Parole Commission but, ultimately, the Department of Justice in the same way that prerelease custody is.

JUSTICE THOMAS: Would super- -- would prerelease be under the control of Bureau of Prisons?

MR. BARBER: Yes.

JUSTICE THOMAS: And isn't that his point, that there's a difference between -- at least it would seem that there would be a difference between a custody that's under the Bureau of Prison versus one that is not?

MR. BARBER: We don't view that distinction as material, Justice Thomas. We don't dispute that the distinction exists, but I think I would point this Court to how it has defined parole in its essence before. So, in Morrissey against Brewer, it said the essence

of parole is release from prison before the completion of sentence on the condition that the prisoner abide by certain rules during the balance of the sentence. That's the essence.

JUSTICE THOMAS: And -- but the word -- key word is "release." The -- this is prerelease.

MR. BARBER: That's true, but I think, in a practical matter and in a legal matter, it's distinct from prison. And that's been the key line in this Court's cases. So, if you look at Preiser, Jones against Cunningham, the Court has always made clear that habeas is available when your claim is seeking discharge from actual physical confinement in prison to a different kind of custody, a lower level of custody in Petitioner's terms, but a different kind of custody. It can be legal custody, but it's a different custodial status. In Preiser, it was parole. And in our view, prerelease custody in a halfway house or home confinement is equivalent, for habeas purposes, to parole.

That's why Preiser squarely controls here. And that's why the Court can keep its decision quite narrow and simply say that

Preiser controls this case in the event that you do decide the question presented and do not DIG the case perhaps because of the 3621(b) issue and the impending mootness issue.

JUSTICE GORSUCH: I think the question that follows from Justice Thomas's to my mind, and I want your thoughts on this, Mr. Barber, is, okay, if you concede some into the community is broader than -- than parole, what -- what happens to -- to the next case when somebody does seek a change in the level of custody from, say, a medium security to a minimum security or from a maximum security to a medium security?

Have you put the -- the -- the -- the camel's nose under the tent?

MR. BARBER: Yes. So we think, under the line we draw today, those claims would not be cognizable in habeas because you wouldn't be seeking release from prison. The Court has never actually endorsed a level-of-custody approach that would encompass those kinds of claims. And I took my -- I took my friend, Ms. Hansford, not to even endorse that kind of claim here today.

JUSTICE GORSUCH: What principle, though, in law would distinguish those? I understand that's how you deal with Preiser. But what principle in law distinguishes those?

MR. BARBER: Well, I think the key thing is, first of all, there, you would have no real change in custody at all because you would still be in a prison --

JUSTICE GORSUCH: Oh, my goodness. I'm in a 23 hour -- hours in -- in solitary confinement in super max. I get to move across the street to the medium security facility, and I get to work, I get paid, I stamp license plates. I don't know. I think a lot of prisoners would say that's a big difference and a big step toward returning to the community.

MR. BARBER: Yeah. No, it is a big difference. I take that point. I mean, this is one area in which 3621(b) is critical. One of the --

JUSTICE GORSUCH: Ah, put that aside for the purposes of this question. No easy outs, Mr. Barber.

MR. BARBER: Sure, Sure. Putting that aside -- I do think it's important, but putting

that aside, I think that one of the ways you analyze habeas and the scope of habeas, what claims fall into habeas and what claims fall out, is tradition. The habeas statute, 2241, doesn't tell you anything about what belongs in habeas and what doesn't. It uses the term "habeas corpus," and then we rely on history, tradition, this Court's cases fleshing that out, to determine what falls in and what falls out of habeas.

And I think, in that circumstance, we don't have any tradition of claims being recognized as habeas claims challenging just transfers within prison systems. We have traditions of a lot of other kinds of habeas claims. Habeas has evolved over the years, as the Court made clear in Preiser. It's possible that new claims could emerge in the future. But that's a kind of claim that we have never seen at least from this Court. So we do think that we would have a good case for distinguishing that.

The reason why --

JUSTICE KAGAN: Mr. --

MR. BARBER: -- 3621(b) matters is

because even my friend, Ms. Hansford, I think, acknowledges 3621(b) would foreclose even habeas claims challenging those kinds of even very dramatic changes in the level of custody in prison.

JUSTICE KAGAN: Mr. Barber, we have used the language "reduce the level of custody," right? Coming from Justice Scalia's concurrence, gets picked up by the full Court in Skinner.

Are -- are you rejecting that language? Would you have us reject that language, which we did use in Skinner?

MR. BARBER: You did use it. You were quoting Justice Scalia, I think, or at least referring to his opinion in Dotson. And then, if you look at Dotson, Justice Scalia was talking about the quantum change as great as incarceration to parole.

So I do think that the Court has at least arguably endorsed that idea, that a claim seeking release from prison to parole is cognizable in habeas. I mean, you held that in Preiser.

I don't think the Court has gone

farther than that, certainly not in a holding, because, in Skinner, I mean, that case had nothing to do with levels of custody at all. That was about DNA testing. So I don't think that you're wedded to that language.

JUSTICE KAGAN: So you think that that language that we used in Skinner was too broad?

MR. BARBER: Taken in isolation, I think so, but I think, if you read it in the context that it was used, the citation to Dotson and Justice Scalia's concurrence there, I think it's fine because Justice Scalia was simply acknowledging in Dotson that this Court had already recognized in Preiser that the prison-to-parole claim is cognizable in habeas.

That was critical in Dotson because the prisoners there were not directly seeking transfer to parole; they were just seeking new parole hearings. So that was kind of the central distinction. That's why those claims were allowed to proceed under Section 1983.

But we don't think that you've wedded yourself to the kind of open-ended, amorphous level-of-custody test that Petitioner seemed to advance in his briefs.

JUSTICE KAVANAUGH: On 3621(b), why can't we leave that for remand?

MR. BARBER: You can. You absolutely could. I mean, the -- the remand would probably be -- be moot. So this -- it wouldn't be decided in this appeal because of the impending release of Mr. Maxwell.

I think one of the reasons why we floated the idea of a DIG in our papers is because the 3621(b) issue does threaten to render the question presented academic for all federal prisoners. This isn't a case where there's just some alternative ground, kind of like the exhaustion issue that Justice Thomas raised, where it's just a party-specific thing that could result in the case coming out the same way on remand.

If we're right about 3621(b), then the question presented matters for no federal prisoners because they --

JUSTICE KAVANAUGH: But, if you're -- but, if you're not right about 3621(b), then this question presented does matter and all we have before us is this question presented. So it seems like we should resolve it and leave

3621(b) for the future.

MR. BARBER: Well, I think, when you have another issue that could render the -- the question presented academic for the entire class of people who it would be relevant to, that is the kind of situation where you do DIG the case. You could potentially grant a future case that presents both the habeas question and the 3621(b) question. But, you know, that's not the case that you have before you.

We did brief the 3621(b) issue to some extent in our briefing because we wanted the Court to be aware of the strength of the argument. We do think it's quite a strong argument. We respectfully disagree with my friend, Ms. Hansford, about that.

If you look at the text of 3621(b), it's very clear that it's talking about the place of imprisonment in the sense that the -- the place where a person spends their term of imprisonment. And prerelease custody in a halfway house or home confinement is such a place. We know from --

JUSTICE SOTOMAYOR: I'm sorry, but it has to be under 3621(b) itself because the

provision says "designate the place of prisoner's imprisonment under" -- made "under that subsection." And this is not being made under that subsection. Good-time credit is under different subsections.

MR. BARBER: It is made under that subsection because the ultimate transfer is conducted pursuant to 3621(b). 3624, which contains the First Step Act provisions about prerelease custody and halfway houses and home confinement, feeds into 3621(b), and that's why it's conducted under that subsection.

JUSTICE SOTOMAYOR: But it feeds into it after the -- after what the habeas is attacking, which is the habeas is saying that the calculation is wrong and that under that separate provision of calculation, I would be entitled to release.

The place that -- we don't decide it. We would just say, yes, they're entitled to go. Now the Department -- the Bureau of Prisons will decide where.

MR. BARBER: Yes. So this is a -- an attempt to distinguish between the binary choice of halfway house versus prison versus

which particular halfway house.

JUSTICE SOTOMAYOR: Mm-hmm.

MR. BARBER: We don't think that that is a coherent distinction. We think that has to be encompassed --

JUSTICE SOTOMAYOR: That -- but yours is an incoherent position in suggesting that there's no habeas, that the Bureau of Prison can choose to ignore a statutory command to release altogether --

MR. BARBER: To the contrary, the --

JUSTICE SOTOMAYOR: -- because you're accepting that this is a difference that matters, a release into home confinement or a halfway house, and yet you're saying, what we give in one hand I'm going to take away in the other.

MR. BARBER: The reason, Justice Sotomayor, it's so important to BOP that the judicial review bar apply here is that, yes, sometimes you can have prisoners who satisfy all the eligibility requirements in 3624(g) for transfer to prerelease custody in a halfway house or home confinement, but the transfer cannot be effected for some reason, at least

not immediately.

So you have, in the Osorio-Calderon case from the Eighth Circuit that we cite in our brief, the situation there was that the prisoner was a sex offender. The only available halfway house in Puerto Rico, I think, wouldn't take him, and so an immediate transfer was not possible.

So, if you had courts able to order BOP to make those transfers immediately, that would be a serious problem for the agency. There could be medical issues.

JUSTICE SOTOMAYOR: I'm not quite sure why, because they do it all the time in Puerto Rico. They just remove them from Puerto Rico and put them somewhere else. So --

MR. BARBER: Sure. Sure.

JUSTICE SOTOMAYOR: -- I'm not moved by that.

JUSTICE JACKSON: Can I just --

JUSTICE BARRETT: But, Mr. Barber, we don't have to get into any of this, right? I mean, your -- your argument for a DIG, you know, if it were totally, totally slam dunk and there wasn't any back-and-forth -- we only have

one court of appeals decision on this, I believe, it wasn't litigated below -- we can leave all this. You're not arguing it deprives us of jurisdiction to resolve the QP, correct?

MR. BARBER: Correct, because the habeas cognizability question is also --

JUSTICE BARRETT: Is just --

MR. BARBER: -- jurisdictional.

JUSTICE BARRETT: Right. So we can decide the question, remand it, leave this for the Fifth Circuit so long as we're clear that we're not opining on that question, and we could just resolve this issue?

MR. BARBER: Yes, you totally could.

JUSTICE BARRETT: Right.

MR. BARBER: It's a discretionary call for you --

JUSTICE BARRETT: Right.

MR. BARBER: -- whether you proceed to do that or whether you DIG.

JUSTICE BARRETT: Right.

JUSTICE JACKSON: And didn't we already make --

JUSTICE ALITO: Why is that a --

JUSTICE JACKSON: Sorry.

JUSTICE ALITO: Why is that a -- a prudent course of action?

You are making an argument that I think you admitted in your colloquy with Justice Gorsuch is almost certain to require us, in future cases, to address the question whether habeas can be brought by a prisoner who is challenging a transfer from one level of imprisonment to a less restrictive level of imprisonment.

We will have to decide that important issue in some future cases if we adopt your position, or at least there's a good chance we will have to do that.

But, if the release bar bars all of these claims, we will never have to discuss that issue in relation to the First Step Act. So why is it prudent for us to go ahead and decide this question, which does present challenges, particularly in a situation where -- does the resolution of this issue now by this Court have a practical effect on Mr. Maxwell? Will it?

MR. BARBER: No, both for the 3621(b) issue and the mootness issue. So I agree that

the more prudent course, Justice Alito, would be to DIG the case for that reason.

JUSTICE JACKSON: I don't understand why it wouldn't have -- if we were to rule in enough time before Mr. Maxwell was released, why would it not have an effect on him?

MR. BARBER: Well, as a practical matter, his -- his release is so imminent. You could decide --

JUSTICE JACKSON: Not so imminent that we couldn't rule. It's like the end of January, right?

MR. BARBER: Sure. But that would still just establish that his claim was cognizable in habeas. Then there would need to be a remand, further proceedings.

JUSTICE JACKSON: No, I understand. But I guess what -- what -- what is concerning me about your DIG argument is that it sounds like we are relitigating certiorari.

I mean, did you decide -- or did you make this argument at the cert stage and the Court said, fine, we're still going to accept this case and rule on the question presented? So why now are we going over whether or not we

should have taken the case on this basis?

MR. BARBER: You're absolutely right. We did not raise mootness or 3621(b) at the cert stage. We should have done so.

We did raise exhaustion because -- I think that was our focus because that was the basis for the district court's decision. We should have also raised those --

JUSTICE JACKSON: I mean, usually, a DIG comes up in a situation in which we've taken the case and, because of some complication that we didn't foresee or that wasn't raised, we really can't reach the issue presented.

That's not what you're saying here. And so the concern I'm having is that this other issue that you didn't raise at the cert level is now being floated to undermine our consideration of the question that is presented that we could actually reach in the context of this case.

MR. BARBER: If I may, Mr. Chief Justice?

CHIEF JUSTICE ROBERTS: Sure.

MR. BARBER: So you're absolutely

right. That is the kind of circumstance in which you would DIG a case, and we think this is such a case.

This is a complication that wasn't brought up in the cert papers. That was our bad. We apologize for that.

And because those issues could render the question presented meaningless both in this case and in all other cases that present the question, this is the kind of case where you would properly DIG.

CHIEF JUSTICE ROBERTS: Justice Thomas?

Justice Alito?

JUSTICE ALITO: Well, do you think there is a categorical rule that a case cannot be dismissed as improvidently granted simply because, after we've gotten the case and we've read the briefs and we've heard argument, we have a very severe case of buyer's regret, we can't do that?

(Laughter.)

MR. BARBER: No, Justice Alito. I think this would be a classic case for a DIG for that reason.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

JUSTICE SOTOMAYOR: But you want to win on an argument that you failed to raise on cert?

MR. BARBER: We're not ask --

JUSTICE SOTOMAYOR: That's what you want to do. Enough.

CHIEF JUSTICE ROBERTS: Justice Kagan?

Justice Gorsuch?

JUSTICE GORSUCH: I haven't heard "my bad" before at the podium.

(Laughter.)

JUSTICE GORSUCH: Good on you.

The mootness question, I just wanted to give you an opportunity because we didn't -- I kept cutting you off on that, so I apologize.

But Ms. Hansford said that's the subject -- whether there are collateral consequences of these good-time credits being denied have collateral consequences after release even. And I just wanted to get -- and there apparently is a circuit split on that, and I just wanted to get your thoughts on that.

MR. BARBER: We don't think that the

argument is substantial enough to keep this case alive. We think the statutory text is very clear that the credits are used to shorten the time in imprisonment, and so get into prerelease custody earlier, and then there's a specific statutory provision in 3624(g) that says the credits can also get you an early start to supervised release, but it can't shorten your term of supervised release.

That would be really strange because supervised release is always under the control of the sentencing court. If there's going to be a modification to the length or the conditions of supervised release, you go to the sentencing court.

So, for that and several other reasons that the Second Circuit canvassed in the Rivera-Perez case, we think that that statutory argument lacks all merit very clearly, and so you can't preserve the live controversy in this case by making that kind of argument.

If you could, if you could always just point to some legal theory for why you have a continuing stake in the case and mootness is sort of fended off on that basis, then no case

would ever be moot for the reason that this Court noted in Camreta versus Greene. So we don't think that that basis for keeping the case alive works.

If you do try to decide this case before the January 22, 2027, projected release date, I would just add that you would probably also want to issue your judgment forthwith so that the mootness doesn't occur during the rehearing period. I just wanted to note that for the record.

JUSTICE GORSUCH: So, even if it's not moot here, it's going to be moot down there real quick is what you're telling us?

MR. BARBER: Absolutely, yes.

JUSTICE GORSUCH: Okay.

CHIEF JUSTICE ROBERTS: Justice Kavanaugh?

JUSTICE KAVANAUGH: Do you want to say anything about Trump versus JGG?

MR. BARBER: I think all I would say about that, I don't think it's directly on point here. It does reinforce the idea that habeas evolves.

Transfer claims of the particular kind

at issue in JGG may not have existed at the founding, but they are related to longstanding tradition of habeas claims challenging extradition, for example.

So I think it goes to the idea that this Court discussed in Preiser, which is that, obviously, habeas at the founding was extremely narrow. It only pertained to whether the committing court or the sentencing court had jurisdiction.

But habeas has evolved, and this Court's cases have accepted that. That's one of the reasons why, in our view, this is a core habeas claim that Petitioner is bringing, but -- just like the claim in Preiser -- but you wouldn't have a Suspension Clause problem under 3621(b) because the kind of claim still would not have been cognizable at the founding.

This Court has made clear in Jones against Hendrix and other cases that habeas -- the Suspension Clause version of habeas is that narrow founding-era version.

JUSTICE KAVANAUGH: Thank you.

CHIEF JUSTICE ROBERTS: Justice Barrett?

JUSTICE BARRETT: So, if you're right about the judicial review bar, the question might be academic in the federal context, but would the question, qua question, really have no utility? Because I imagine that it would have applicability in the state context. I mean, Preiser was a state case.

MR. BARBER: I think that's right. It would be relevant to state prisoners bringing analogous claims demanding transfers to halfway houses and home confinement. State criminal justice systems use those settings as well.

I don't think that would be really a virtue with deciding -- proceeding to decide the QP because then you'd be deciding a question that was only relevant to states in a case where no state is a party or an amicus, and so you're not hearing from them.

But I do think that, yes, the question presented could have relevance in those contexts.

JUSTICE BARRETT: Thanks.

CHIEF JUSTICE ROBERTS: Justice Jackson?

JUSTICE JACKSON: I just want to be

clear that the government's position is that the Fifth Circuit was wrong in this case and so is the Petitioner's, right? The -- that the Fifth Circuit's ruling about whether or not this is cognizable in habeas under these circumstances is incorrect? That's the government's position?

MR. BARBER: Yes, and there's certainly no Bivens claim. Yes.

JUSTICE JACKSON: But the government says we shouldn't announce that because of these other issues?

MR. BARBER: Right. I mean, one of them, the 3621(b) issue, just makes the question totally unimportant because no such claim could be brought by virtue of the 3621(b) judicial review bar.

JUSTICE JACKSON: Even though, in the Fifth Circuit, they would still be proceeding under what the government believes to be a mistaken rule until we get to the point of deciding the 3621 question?

MR. BARBER: Yes.

JUSTICE JACKSON: Because we would dismiss the case. We wouldn't actually

announce your preferred 3621 rule, so we'd have a period of time in which the Fifth Circuit would continue to tell people they have to bring this as a Bivens claim because we would not have decided that because the government is concerned about the threshold issue of 3621, which we wouldn't be deciding in any event in this case?

MR. BARBER: Yes. We would hope that what would happen is we would raise -- we wouldn't raise the argument that the Fifth Circuit adopted here that this is somehow not a habeas claim. We would raise 3621(b). We did, in fact, raise it in this case in the district court. We just didn't --

JUSTICE JACKSON: Which you could still do even if we decided this case?

MR. BARBER: Absolutely. But that's -- that would be the focus of the Court's opinion we would hope.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

MR. BARBER: Thank you.

CHIEF JUSTICE ROBERTS: Mr. Barnes.

ORAL ARGUMENT OF BRIAN W. BARNES,
COURT-APPOINTED AMICUS CURIAE
IN SUPPORT OF THE JUDGMENT BELOW

MR. BARNES: Mr. Chief Justice, and may it please the Court:

Federal prisoners typically want two things: better, less restrictive conditions of confinement and earlier release from custody. If Petitioner wins this lawsuit, his term of imprisonment won't be shortened by even a single day, and he will remain subject to control by the Bureau of Prisons. Under the plain terms of this statutory regime, prerelease custody isn't release, and home confinement is a form of confinement.

Petitioner isn't suing for release but for a change in the location where he will serve the remainder of his prison sentence. That places this case on the conditions of confinement side of the line and makes habeas the wrong vehicle for Petitioner's claim.

The parties treat as self-evident the difference between incarceration in a prison on the one hand and a halfway house or home confinement on the other. But the reality of

the federal prison system isn't so simple. A federal prisoner moving from a 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 to another facility with all those same attributes.

A move between two such facilities is not the sort of quantum change in the level of custody that Preiser and its progeny place at the core of habeas corpus. For that reason, Petitioner's claim to entitlement to credits under the First Step Act may be pursued, if at all, only as a civil rights claim.

The Court should affirm the Fifth Circuit's judgment.

And I welcome the Court's questions.

JUSTICE THOMAS: Would you explain a bit more as to why prerelease is different from other forms of conditional custody?

MR. BARNES: I think the principal difference, Justice Thomas, is that with prerelease custody --

JUSTICE THOMAS: I'm sorry, not conditional custody. Conditional release.

MR. BARNES: I under -- if I understand the -- Your Honor's question correctly --

JUSTICE THOMAS: Yeah.

MR. BARNES: -- the -- it's the distinction between prerelease custody and supervised release or parole.

JUSTICE THOMAS: Exactly.

MR. BARNES: I think the principal distinction is the -- the fact that with a prisoner who's in prerelease custody, they're still under the ultimate control of the Bureau of Prisons. That's the -- the fundamental distinction that this Court drew in the Koray case in a related context, and I think it's a very important distinction.

And -- and just to think about two -- two people who are in the same halfway house, subject to the same rules in the halfway house, the one that's in prerelease custody, that person, if they violate the rules, they commit a serious infraction of the rules in the halfway house, they're going to get routed through the Bureau of Prisons' process. It's ultimately going to be a disciplinary hearing

officer in the Bureau of Prisons that's deciding what the consequences of that rules violation will be.

The same situation, but if you have someone in supervised release, in contrast, that's something that's going to be an issue for the probation office, and, ultimately, that will go to a federal district judge, the sentencing court. And --

JUSTICE KAGAN: And parole?

MR. BARNES: Parole, Your Honor, doesn't exist in the federal system.

JUSTICE KAGAN: But it used to? It wasn't BOP, but it was a similar -- it was an agency. It was a --

MR. BARNES: That's --

JUSTICE KAGAN: -- agency within the executive branch.

MR. BARNES: That's correct. It was an agency within the executive branch, but it was a distinct body. You -- you did not have, with the old federal parole system, a situation where people were being released on parole and it was literally the same prison officials who were deciding, you know, which of multiple

prisons someone would serve their time of incarceration in also deciding what to do about somebody violating the conditions of their parole.

And so I think it's really important here to focus on that fact that you have literally the same government officials who are designating a place of incarceration across the federal prison system and who are overseeing the people who are in prerelease custody.

Another point I'd make here that I think is quite significant is that the federal escape statute has been understood to apply to people who are in prerelease custody. Somebody who's serving the remainder of their time in prison -- of incarceration in a halfway house or on home confinement, if they walk away and they're in prerelease custody, they could be prosecuted for escape the same way that a prisoner who escapes from a federal prison can be prosecuted for escape.

That's not true for somebody who's on supervised release. And so that's another way in which these two categories are -- are -- are different and distinct in -- in important ways.

And then the last point I'd make is that the restraints on liberty in the mine run of cases are going to be quite different for someone who's on parole or supervised release on the one hand versus in prerelease custody on the other.

Now, admittedly, there's overlap. You can have people in supervised release who are basically detained in the same halfway house as someone who's in prerelease custody. But that's -- that's the exception. Typically, kind of the core -- there's a core concept of what parole is or what supervised release is, and, typically, these are people who are able to come and go from -- from where they live as they please. They're not required to get permission to sign out from -- from where they live or only permitted to -- to leave their place where they live for very specific, specified reasons.

So that's another way in which this is -- the -- the prerelease custody is just fundamentally and, I think, categorically different.

JUSTICE GORSUCH: I -- I want to get

back to a question I -- I had for Mr. Barber and get your thoughts on it, Mr. Barnes. You know, what -- looking ahead, where does this lead?

And you make the point that a lot of minimum-security prisons don't differ in great deal, if you just want to look at the restrictions on individuals, to some halfway houses. You -- you live in dorms. You -- you can work off site with permission, all kinds of things like that.

And the government, though, is quite adamant that, no, somebody seeking transfer from a medium-security to a minimum-security can't bring a habeas claim. And I just wanted to give you a chance to respond to that.

MR. BARNES: Yes, Your Honor. And I agree with the government that someone moving from medium to minimum security can't bring a habeas claim. I think that follows from this Court's --

JUSTICE GORSUCH: Well, I'm saying, if we -- if we were to rule against you today, what are the consequences for that?

MR. BARNES: Yeah. I -- I do think

one consequence is the next case you're going to hear is a case where somebody is saying, I'm entitled to be moved from a medium- or a low-security prison to a prison camp. Prison camps look, I think, as a factual matter, in a lot of relevant ways quite similar to the typical halfway house. And so that -- that is something to -- to really worry about.

I -- I take the government's response to that largely to just rely on labeling. They say, well, it's obvious that one of these facilities is "a prison" and the other is not. But I would submit that it's not that obvious when we look at a statutory regime that contemplates people serving a term of imprisonment in a halfway house or on a --

JUSTICE SOTOMAYOR: But there's no statutory rule that entitles you to a different level of security, meaning, here, there's a statute that expressly provides for good-time credit to be calculated in a certain way, but there is no statute that would entitle you to habeas release because you have no right to be put in a -- a certain level of security.

MR. BARNES: I think --

JUSTICE SOTOMAYOR: So I don't know why your claim of potential next case is so great.

MR. BARNES: Yeah, I guess what I'd say to that, Justice Sotomayor, is maybe worry less about the future habeas case where somebody is invoking a federal statutory right to be moved between prison facilities and worry more about sort of the due process type of claim that's pernicious.

JUSTICE SOTOMAYOR: But we've already re -- we've already ruled on the due process claims and rejected them. We have explicit cases doing that.

MR. BARNES: The -- the Meachum case rejects the due process claim. But what I would say is there is a -- I think this Court's cases do recognize a due process interest in not having one's parole stripped, being pulled back from parole or pulled back from supervised release without due process.

And if we're going to go down the path of saying prerelease custody is really enough like parole that we're going to treat it the same, then I would submit that it's hard to see

why we wouldn't also treat spending time incarcerated in a federal prison camp.

JUSTICE JACKSON: But that just assumes that we're making the policy determination in the first instance.

I mean, what Justice Sotomayor is suggesting is that Congress appreciated a distinction between prerelease custody, meaning a halfway house, and prison.

So, even if we find it difficult to imagine that a minimum-security prison is different than halfway house, Congress has designated prerelease custody into a halfway house as an entitlement. It had in mind what it meant.

And so I don't understand how we can just suddenly say, well, we think that line is too fuzzy to draw and so we're not going to interpret the statute consistent with what Congress has said.

MR. BARNES: Yeah. Justice Jackson, I think the Court fundamentally needs to draw a line in one of two places. I would just note that the -- the Congress here, it has drawn a line between prerelease custody and just

generally being in prison, but it's also drawn, I would submit, a sharper line between prerelease custody on the one hand and supervised release on the other.

And so just to -- I would bring it back to the fundamental point that people in prerelease custody are still subject to the control of the Bureau of Prisons. And so I don't think that's the kind of quantum change in the level of custody that the Court's existing precedents require for you to have a claim that sounds in habeas.

Let me say a word, there's been a fair amount of discussion about the vehicle issues associated with this case, and I heard counsel for the government suggest that both the question presented in this case as to whether Petitioner's claim sounds in habeas and the 3621(b) bar issue are jurisdictional, that go to the Court's subject-matter jurisdiction, and if that's right, the Court's able to basically decide which order it's going to decide the -- the jurisdictional issues in.

Some lower courts have treated this issue of whether a claim sounds in habeas as --

as jurisdictional. I'm not sure that that's really easy to reconcile with the approach this Court has taken in more recent years to categorizing claims as jurisdictional or not.

And so I just want to flag for the Court that there's -- there may be an issue there. If you think 3621(b) is jurisdictional and you think that the question of whether the claim sounds in habeas goes to the merits of the claim as opposed to subject-matter jurisdiction, then I don't know that the Court can bypass the 3621(b) issue. But, obviously, there's -- there's a lot there.

But I think that's at least an issue the Court ought to think about as it's considering how to approach these -- these vehicle issues.

JUSTICE ALITO: Would it matter if a federal prisoner could bring a Bivens claim to assert the improper denial of good-time credits?

MR. BARNES: Certainly, it wouldn't matter on the government's view. The government's taking the position that there is no vehicle for being able to raise these issues

in court because of 3621(b).

I guess my fundamental front-line point on this, Your Honor, is that the -- the issue -- the -- whatever kind of conceptual confusion we have in the law around what the right cause of action is for a prisoner to bring a conditions-of-confinement claim, if we're talking about a federal prisoner, that's not a sort of type of confusion in the law that can be resolved in this case or that this case particularly calls for the Court to resolve.

The point being there's always going to be some class of claims, whatever the class is, of -- of claims that federal prisoners can bring that fall under the rubric of conditions-of-confinement claims.

And this claim belongs on the conditions-of-confinement side of the line, but however the Court decides this case, it's not going to change the fundamental reality that, you know, to the extent there's confusion about, you know, if a prisoner wants to bring a complaint, you know, complaining about the overcrowding in his -- in his prison cell or about the food that he's being served in

prison, think of a classic conditions-of-confinement claim, that's -- there's going to be this analytical problem of figuring out what the right cause of action is for the federal prisoner to use.

I actually don't think it's that complicated. I think the prisoner can sue in equity to the extent that the prisoner is seeking injunctive relief. But, even if you think that that's a big problem analytically, I don't think it's a reason to reverse the Fifth Circuit.

JUSTICE ALITO: There was some question earlier about the potential impact of this on state prisoners. And isn't it the case that state prisoners and federal prisoners have different incentives regarding the scope of habeas?

So, for state prisoners, habeas is saying you have to bring your case in habeas is not a good thing. They would much prefer to -- to file a 1983 action, whereas, since federal prisoners don't have the option of a 1983 action or potentially a Bivens action, then they want to squeeze it into habeas.

So I -- I wonder if perhaps that is a motivation behind the argument that the government is making here, or maybe it's -- it -- it -- it -- it's -- it has that in mind.

Do you have any thoughts about that?

MR. BARNES: I can't speak for the government, but I think you may well be right that that is driving part of what's going on.

One point I would make just as to the differences between these two regimes that cuts maybe the other way is that the administrative exhaustion, the requirement that one -- someone exhaust administrative remedies before they go to court, that's a judge-made doctrine in the context of habeas, and it's subject to sort of judge-made exceptions.

It's a statutory requirement under the PLRA when you're talking about a conditions-of-confinement claim and I would suggest a somewhat more rigid requirement not subject to exceptions to the same degree. And so that is, you know, another difference between the two regimes.

But, at one level, I think, you know, it would be helpful to the lower courts and

to people who are bringing these kinds -- kinds of claims just to have clarity about whether this type of claim belongs on one side of the line or the other.

JUSTICE KAGAN: And in terms of that clarity, could you give me, again, your rule statement? In other words, something is not a condition-of-confinement claim and does go to habeas if what?

MR. BARNES: I would say if the prisoner is suing for release. And I would construe the word "release" broadly enough to encompass a move from incarceration to parole. But I think, ultimately, the key question is whether the petitioner or the -- the prisoner is suing for release or if they're suing for simply what I would characterize as a change in the -- the conditions of confinement.

JUSTICE KAGAN: So "release" would be defined so as to include parole because?

MR. BARNES: Because -- for several reasons.

One, parole involves a --

JUSTICE KAGAN: Because you can make a case, right, that parole looks an awful lot

like what's going on here?

MR. BARNES: There -- there are similarities and differences. But parole is included because, typically, parole is going to involve significantly greater liberty than what somebody in prison has.

Parole is included because, typically, the move --

JUSTICE KAGAN: I mean, sometimes or sometimes not, right? Somebody out on parole could have gone to a halfway house just like this one?

MR. BARNES: That's -- that's true, Your Honor, although, if somebody's out on parole or they're in supervised release, they're -- they're going to be no longer subject to Bureau of Prisons control, which -- which I would suggest is another really important difference. Ultimately --

JUSTICE KAGAN: Yeah. So, if Congress had said this isn't going to be administered by the Bureau of Prisons, instead, we're going to create its own little separate agency, be the Bureau of Prerelease Custody, that would make a difference?

MR. BARNES: I think it would make a difference. It would particularly make a difference in a case like this one, where you have restrictions on liberty that look, you know, a lot like the restrictions on liberty that -- that we see some people serving in supervised release.

So I -- I think that potentially does make a difference. And, you know, I'd also -- I guess, in Your Honor's hypothetical, I'd ask: Well, you know, somebody who's in that different, new status of prerelease custody, if they walk away from the halfway house, if they committed a crime of escape, does the statute treat -- treat them as serving a term of incarceration or imprisonment?

You know, ultimately, I think this is a statutory interpretation case. What the Court should be trying to figure out is, you know, does the federal habeas statute as, you know, construed alongside this statutory regime contemplate that these -- these claims get routed through habeas or not?

And so I do think that those sort of lines that Congress has drawn and the -- the --

the -- the administrative structure that it's created are important indicia of congressional intent.

JUSTICE KAVANAUGH: In your earlier answers to Justice Kagan, you drew a distinction between BOP having control and the Parole Commission in the parole situation, and I'm wondering why it matters which agency in the executive branch is in control in terms of a rule here?

MR. BARNES: Yeah. So I guess what I would say -- I would answer that question the same way this Court answered it in Koray, that Bureau of Prisons control is one -- one factor that's pointing in the direction of these people being -- continuing to serve a term of incarceration, continuing to have that same status of -- of sort of oversight that -- that they had before when they were in a more traditional prison setting.

So I -- I do think, for that reason, it's an important distinction.

CHIEF JUSTICE ROBERTS: Do you want to address the question of mootness?

MR. BARNES: Yes, Your Honor. So, to

the extent the Court thinks that the question presented is one that goes to subject-matter jurisdiction, then I think you can bypass the mootness issue. Under Sinochem, you can -- the Court can choose the order in which it decides jurisdictional issues.

I -- I'm hard-pressed to see a strong argument that once Mr. Maxwell is released or -- or is -- is transferred to prerelease custody, that the claim -- the question presented in the case is going to make a difference for him. But that's not necessarily a reason that the Court has to dismiss as improvidently granted.

CHIEF JUSTICE ROBERTS: Thank you.

JUSTICE JACKSON: Can I just ask you one quick thing? Is 3624 the relevant statutory provision that Mr. Maxwell is relying on here for his entitlement to go to the halfway house?

MR. BARNES: I -- I believe so.

JUSTICE JACKSON: You believe so, right? And that -- and that statute doesn't say transfer to a prerelease custody. It says a prisoner shall be released by the Bureau of

Prisons on the date of expiration and less any time credited to the service.

So it sounds as though the statute itself is defining the condition of moving to a halfway house as release by the Bureau of Prisons.

MR. BARNES: I'm sorry, Your Honor, which --

JUSTICE JACKSON: 3624. I'm sorry.

MR. BARNES: Which sub -- subsection are you --

JUSTICE JACKSON: (a), date of release. "The prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment less any time credited toward the service of the prisoner's sentence."

And what's striking to me about this is that you -- you've sort of set up an argument that suggests that move -- that -- that the calculation of good-time credits toward a person going to a halfway house should be conceived as not really release but as transfer to a prerelease status.

MR. BARNES: And --

JUSTICE JACKSON: And what I'm suggesting is that the statute doesn't say that. It's not setting the person up as being transferred, but we're still under -- in -- in Bureau of Prisons custody. The statute says a prisoner shall be released by the Bureau of Prisons, suggesting that the status of going to a halfway house does qualify as release as far as the statute is concerned.

MR. BARNES: Yeah, and I -- I --

JUSTICE JACKSON: So am I -- am I wrong about -- am I off base?

MR. BARNES: I -- I read that first sentence --

JUSTICE JACKSON: Yes.

MR. BARNES: -- of subsection (a), Your Honor, as -- as only referring to supervised release, not to prerelease custody.

JUSTICE JACKSON: Got it. Thank you.

MR. BARNES: So that's -- I think that's the --

JUSTICE JACKSON: Thank you.

MR. BARNES: Yeah.

JUSTICE KAGAN: I was thinking when I was preparing for this case about the same

question that Justice Alito raised about does the government -- might -- might the government have some ulterior motive, if you will, for being on this side of the table rather than on that side of the table.

I'm not sure it matters all that much, but, to the extent it does, wouldn't that mean that the government would be embracing wholeheartedly Ms. Hanford's test rather than urging us to state a narrow rule?

MR. BARNES: I've puzzled over the same thing, Your Honor. Unfortunately, I don't -- I'm not sure I have an answer to the question, but it -- it -- it may be that the government's always going to win in those inter-prison transfer cases because of the Meachum decision because there's not a statute that arguably entitles prisoners to be moved from one prison to another.

And so that might be a category of cases the government doesn't care about for that reason, but I -- I don't know.

JUSTICE SOTOMAYOR: Could it be as simple as that they respect precedent?

MR. BARNES: That -- that may be right

as well, Your Honor. I don't know.

CHIEF JUSTICE ROBERTS: Counsel -- Justice Thomas?

Justice Alito?

Justice Sotomayor?

Justice Kagan?

Justice Jackson?

Okay. Thank you very much, counsel.

Rebuttal, Ms. Hansford?

REBUTTAL ARGUMENT OF MASHA G. HANSFORD
ON BEHALF OF THE PETITIONER

MS. HANSFORD: Thank you, Mr. Chief Justice. I'd like to start with the DIG discussion. Very quickly, on 3621, I think Justice Sotomayor identified the many statutory problems with the government's argument, but as Justice Barrett says, it's certainly not a slam-dunk. In fact, I think it's a very weak argument, and it cannot overcome the St. Cyr level of clarity, let alone being a reason for this Court to address it.

As Justice Kavanaugh pointed out, there's a lot of practical impact to the question. Even on the off chance that this Court ultimately resolves the 3621(b) argument

in the government's favor, there's going to be a lot of confusion in the interim, and there is a lot of relevance to state prisoners from this question as well.

And, finally, it sets an incentive for parties to identify kind of plausible, in-the-ballpark jurisdictional bars after cert if this Court were to DIG on that basis.

Relatedly, the case is going to continue to be important for Mr. Maxwell himself. He intends to continue to litigate this in the event he is released into the halfway house because of that supervised release issue.

And I think there's just no reason for this Court to have buyer's remorse on this case. I think, as the colloquy with Court-appointed amicus illustrates, the result in this case should be straightforward. Even under amicus's own rule, Mr. Maxwell is seeking release. The relevant question for habeas is always the authority of the immediate jailer. It is not whether the executive branch can hold a person somewhere. And this case is really indistinguishable from parole in all the

relevant respects, including the fact that it is still serving the end of the term of imprisonment but in the custody of a different warden and in completely different conditions. And you can look to this Court's decisions in Medley, Bonner, and, of course, Preiser for that.

Ultimately, Mr. Maxwell's claim here is that his current jailer lacks lawful authority to keep him in custody. That is a heartland habeas claim. So we would ask this Court to reverse.

Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Barnes, this Court appointed you to brief and argue this case as an amicus curiae in support of the judgment below. You have ably discharged that responsibility, for which we are grateful.

The case is submitted.

(Whereupon, at 11:11 a.m., the case was submitted.)

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yourself [1] **27:**23
you've [2] **27:**22 **65:**19