No. 25-4404

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD ANTHONY WILFORD,

Petitioner-Appellant,

v.

JAMES ENGLEMAN,

Respondent-Appellee.

On Appeal from the United States District Court
for the Central District of California, Los Angeles
No. 2:24-cv-01470-DDP-GJS
Hon. Dean D. Pregerson, Presiding

APPELLANT'S OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel American Civil Liberties Union discloses that it has no parent corporations and that no publicly held corporations hold 10% or more of its stock.

Dated: January 29, 2026

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STATEMENT OF JURISDICTION

Richard Anthony Wilford appeals the denial of his habeas corpus petition. The district court had jurisdiction under 28 U.S.C. § 2241. Final judgment was entered on May 21, 2025. (1-ER[1]-3.) Wilford timely filed a notice of appeal on July 15, 2025. (1-ER-29.) Fed. R. App. P. 4 (a)(1). This Court has jurisdiction under 28 U.S.C. § 2253.

STATEMENT OF ISSUE

Whether, after placing an individual on home confinement, the Federal Bureau of Prisons (BOP) violates the Due Process Clause by revoking that individual's home confinement and returning that individual to prison absent any alleged violation or wrongdoing, and without any notice or hearing.

STATEMENT OF CASE

In 2014, Wilford was sentenced to 340 months' imprisonment, which was later reduced to 280 months. *See United States v. Wilford*, 2022 WL 2392237, at *50 (D. Md. 2022).

On December 7, 2022, Wilford was designated to FCI Terminal Island. (1-ER-7.) On May 9, 2023, the Warden at Terminal Island approved Wilford for home confinement under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, § 12003(b)(2), 134 Stat 281, 516 (2020). (1-

[1] "ER" refers to Appellant's Excerpt of Record.

ER-7.) "BOP staff informed [Wilford] that he would remain at home for the balance of his sentence" and "never informed [him] that he could be re-imprisoned without a violation of his confinement conditions." *Id.* Wilford was released to home confinement on or about June 15, 2023. *Id.*

While on home confinement, Wilford never violated any rules, and he was never accused of violating any rules. (1-ER-8.) Nevertheless, on August 2, 2023, BOP suddenly revoked Wilford's home confinement and brought him back to prison. BOP provided no explanation whatsoever as to why this revocation was warranted, no notice of rights, and no hearing. (1-ER-7.) Wilford is currently incarcerated in FCI Schuylkill. Without relief, he will remain in prison until August 4, 2030.[2]

STANDARD OF REVIEW

This Court "review[s] de novo a district court's decision granting or denying a petition for a writ of habeas corpus filed pursuant to § 2241." *Wilson v. Belleque*, 554 F.3d 816, 828 (9th Cir. 2009) (citing *Angulo-Dominguez v. Ashcroft*, 290 F.3d 1147, 1149 (9th Cir. 2002)).

SUMMARY OF ARGUMENT

Wilford has now spent two and a half years in prison instead of home confinement, absent any alleged wrongdoing and absent any opportunity to contest

[2] *See* BOP Inmate Locator Search: Richard Wilford, Federal Bureau of Prisons, https://perma.cc/4W94-WNMJ (last visited Jan. 27, 2026).

his revocation. Indeed, under the district court's order, BOP can remove individuals like Wilford from their homes and remand them to prison absent *any* alleged wrongdoing, notice, or opportunity to be heard. And, according to the court below, even if courts agreed that revocation was unconstitutional, they would be powerless to remedy that violation by restoring people to home confinement.

The Supreme Court has confirmed that home is far different from prison. In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Court held that while people conditionally released from prison on parole remain in "custody" and must follow myriad conditions, they have a vested liberty interest that cannot be revoked absent an alleged violation, notice, and opportunity to be heard. Twenty-five years later, the Supreme Court unanimously held in *Young v. Harper* that a preparole program, in which people likewise remained in "custody" subject to conditions, "was sufficiently like parole that a person in the program was entitled to the procedural protections set forth in *Morrissey* before he could be removed from it." 520 U.S. 143, 145 (1997) (citation omitted).

Home confinement is indistinguishable from parole and preparole. On home confinement, while people are technically in "custody" and must comply with certain rules, they live at home, spend time with loved ones, seek and maintain gainful employment, attend religious services, and otherwise reintegrate into their community. Thus, multiple circuit courts have applied *Morrissey/Young* to

analogous conditional-release programs. And multiple district courts, in this Circuit and beyond, have held that people on home confinement have a liberty interest in remaining on home confinement that BOP cannot revoke without the due process *Morrissey* requires.

The district court here made several critical errors. First, the court completely ignored the directly applicable Supreme Court precedent in *Young*, which extended the due process protections granted to parolees in *Morrissey* to preparolees – a context materially indistinguishable from home confinement. Second, the court relied on this Court's decision in *Reeb v. Thomas*, 636 F.3d 1224 (9th Cir. 2011), which is not applicable here because *Reeb* did not involve BOP removing a person from their home and remanding them to prison.

Third, the district court erred by concluding that it could not restore Wilford to home confinement even if his due process rights were violated. The court again ignored the clearly applicable and binding precedent in *Young*, where the Supreme Court remedied the petitioner's unlawful revocation by ordering him restored to conditional release. Further, the district court improperly relied on cases that rejected the courts' authority to grant CARES Act home confinement placement in the *first instance*. But that is not what happened here. This case is about the court's power—where BOP has *already granted* CARES Act home confinement—to remedy an

unconstitutional revocation by restoring the individual to home confinement. As *Young* makes clear, this Court has that power.

Accordingly, the district court's judgment should be reversed with directions that Wilford be immediately restored to home confinement.

ARGUMENT

I. BOP Revoked Wilford's Home Confinement Absent Due Process.

A. People conditionally released from prison have a protected liberty interest.

The Supreme Court has confirmed that those conditionally released from prison live a life far different than ones who remain incarcerated, and they have a "valuable" constitutionally protected liberty interest in remaining in the community. *Morrissey*, 408 U.S. at 482. This is so even where their parole-grant was discretionary. *Id.* at 477-78. While parolees remain in "custody" and must abide by certain conditions, they enjoy "many of the core values of unqualified liberty." *Id.* at 482. That liberty "enables [them] to do a wide range of things open to persons who have never been convicted of any crime" such as obtaining gainful employment, living at home, spending time with loved ones, and "form[ing] the other enduring attachments of normal life." *Id.* Further, a person on parole is "entitled to retain his liberty as long as he substantially abides by the conditions of his parole," and relies on "at least an implicit promise that parole will be revoked only if he fails to live up

to the parole conditions." *Id.* at 479, 482. And revocation "inflicts a 'grievous loss' on the parolee and often on others." *Id.* at 482.

Accordingly, the Due Process Clause "imposes procedural and substantive limits on the revocation of [] conditional liberty[.]" *Black v. Romano*, 471 U.S. 606, 610 (1985) (discussing *Morrissey*). Revocation is only permissible if the accused "fails to abide by the rules" of their conditional release. *Morrissey*, 408 U.S. at 479. The "decision to revoke" entails "a retrospective factual question whether the [supervisee] has violated a condition[.]" *Black*, 471 U.S. at 611. Where, as here, the record is "so totally devoid of evidentiary support" that a petitioner in fact violated a supervision rule, revocation is impermissible. *Douglas v. Buder*, 412 U.S. 430, 432 (1973) (invalidating revocation absent violation).

Thus, the government cannot revoke conditional release without the required due process protections. These include (a) written notice of the alleged violation and rights; (b) a prompt hearing before a neutral decisionmaker to determine whether there is probable cause to support the alleged violation, including the right to appear at the hearing, present witnesses and evidence, and confront adverse witnesses; and (c) a final revocation hearing before a neutral decisionmaker to determine whether the violation was committed and, if so, whether the violation warrants revocation in a written decision. *Morrissey*, 408 U.S. at 485-89. People also have a due process right to assistance of counsel under certain circumstances, including if they have a

"colorable claim" of innocence or of substantial mitigating factors. *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973). *Morrissey*'s protections apply to analogous forms of conditional release such as probation, *id.* at 782, and supervised release, *see United States v. Sesma-Hernandez*, 253 F.3d 403, 407-08 (9th Cir. 2001).

Twenty-five years after *Morrissey*, the Court extended these due process protections to a discretionary "preparole" program. *See Young*, 520 U.S. at 147. In *Young*, the government claimed *Morrissey* was inapplicable because "preparolees, unlike parolees, remained within the custody of the Department of Corrections" and their reimprisonment "was nothing more than a 'transfe[r] to a higher degree of confinement[.]'" *Id.* at 148-150. The Court unanimously rejected this "nonexistent distinction," *id.* at 150, explaining that "[t]he 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." *Id.* at 147 (quoting *Morrissey*, 408 U.S. at 477). Like the parolee in *Morrissey*, the Court reasoned, the preparolee in *Young* remained in legal custody but "was released from prison before the expiration of his sentence[;]" "kept his own residence;" and "lived a life generally free of the incidents of imprisonment." *Id.* at 148. And, while the decision to release him to preparole was discretionary, he relied on an "'implicit promise' that his liberty would continue so long as he complied with the conditions of his release[.]" *Id.* at 150 (quoting *Morrissey*, 408 U.S. at 482). Thus, although preparole differed in some ways from

parole, it "was sufficiently like parole" that *Morrissey*'s due process protections applied. *Id.* at 145.

B. *Morrissey* and *Young* apply to home confinement.

Home confinement is materially indistinguishable from the parole program considered in *Morrissey* and the preparole program at issue in *Young*. During home confinement, while people remain technically in "custody" and must follow certain rules, they can live with their loved ones, wear their own clothes, cook their own food, get a job, and otherwise reintegrate into their community.[3] Some home confinement conditions, such as electronic monitoring, were not at issue in *Morrissey* or *Young*, but given "technological advancements" since those decisions, *Tompkins v. Pullen*, 2022 WL 3212368, at *10 (D. Conn. 2022), and a general shift toward punitive supervision, such conditions are now commonplace for those on conditional release.[4] Even with these added conditions, the status of people on home

[3] *See* Cory A. Booker, *CARES Act Home Confinement Three Years Later*, at 9 (June 2023), https://www.booker.senate.gov/imo/media/doc/cares_act_home_confinement_policy_brief1.pdf.

[4] *See* Columbia University Justice Lab, *Too big to succeed: The impact of the growth of community corrections and what should be done about it*, at 5 (Jan. 29, 2018), https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf (discussing increased use of electronic monitoring on parole and probation); Human Rights Watch & ACLU, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States* (2020), https://www.aclu.org/publications/aclu-and-hrw-report-revoked-how-probation-and-parole-feed-mass-incarceration-united-states (discussing punitive shift in supervision).

confinement "is very different from that of confinement in a prison." *Morrissey*, 408 U.S. at 482; *see also Young*, 520 U.S. at 147; *Tompkins*, 2022 WL 3212368, at *10.

Moreover, those on home confinement—and their loved ones—rely on an "implicit promise" that they will remain on home confinement as long as they comply with conditions of release. *See Young*, 520 U.S. at 147-48 (quoting *Morrissey*, 408 U.S. at 482). Their home confinement conditions "sa[y] nothing" about revocation without cause. *Id.* at 151; *see also Tompkins*, 2022 WL 3212368, at *10. This promise has further been communicated through governing statutes, rules, BOP policies, and statements by senior BOP officials.[5] For example, Congress specified that home confinement is intended to be served during "the *final months* of [the individual's] term." 18 U.S.C. § 3624 (c)(1) (emphasis added). Senior BOP officials have explained that they screened people for CARES Act home confinement placement "for service of the remainder of their sentences."[6] Further,

[5] Contrary to the district court's characterization, Wilford does not assert these sources as "the source of a claim of constitutional right or violation." (1-ER-23.) Rather, they give rise to an "implicit promise" that release will not be revoked arbitrarily, which is a factor that courts may consider when determining if people have a protected liberty interest in conditional release. "[I]t is not clear how heavily this promise or this reliance weighed in the overall analysis" in *Morrissey* and *Young*, but "[r]egardless of the weight to be given this factor, [] there is ample evidence in the record which could lead" people on home confinement "to reasonably expect that [they] would not be reincarcerated without cause." *Tompkins*, 2022 WL 3212368, at *10.

[6] U.S. Dep't of Just., Statement of Michael D. Carvajal, Director, and Dr. Jeffery Allen, Medical Director, Federal Bureau of Prisons, Before the U.S. Senate Committee on the Judiciary, at 6 (June 2, 2020),

the 2023 Department of Justice Final Rule for home confinement under the CARES Act confirms that, following expiration of the Act, people already on CARES Act home confinement can "remain in home confinement under the CARES Act for the remainder of [their] sentence" and may be reincarcerated "[i]n the event [that the person] violates the conditions of supervision[.]"[7] This comports with BOP statements that people are subject to "transfer back to secure correctional facilities if there are any significant disciplinary infractions or violations of the [home confinement] agreement."[8] As former BOP General Counsel Kenneth Hyle explained, generally people on home confinement "would not be returned to a secured facility, unless there was a disciplinary reason for doing so, as the benefit of home confinement is to adjust to life back in the community, and therefore removal from the community would obviously frustrate that goal."[9]

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https://www.judiciary.senate.gov/imo/media/doc/Carvajal-Allen%20Joint%20Testimony.pdf.

[7] Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 88 Fed. Reg. 19830, at 19840 (Apr. 4, 2023), https://www.govinfo.gov/content/pkg/FR-2023-04-04/pdf/2023-07063.pdf.

[8] U.S. Dep't of Just., Fed. Bureau of Prisons, Memorandum for Christopher H. Schroeder, Assistant Att'y Gen., Office of Legal Counsel, from Kenneth Hyle, Gen. Couns., Re: Views Regarding OLC Opinion, *Home Confinement of Federal Prisoners After the COVID-19 Emergency*, at 5 (Dec. 10, 2021) ("BOP Memo"), https://www.aclu.org/sites/default/files/field_document/bop_cares_memo_12.10.21.pdf; *see also* U.S. Dep't of Just., Fed. Bureau of Prisons, *Home Confinement Program Statement*, at 7 (Sept. 6, 1995), https://www.bop.gov/policy/progstat/7320_001_CN-1.pdf ("major violations [] could result in the inmate's termination from the program.").

[9] BOP Memo at 5.

Finally, revocation of home confinement is an "immediate disaster," *Wolff v. McDonnell*, 418 U.S. 539, 561 (1974), and "inflicts a 'grievous loss' on the parolee and often on others," *Morrissey*, 408 U.S. at 482—ripping people away from their jobs, homes, caregiving obligations, and community ties.[10]

i. Circuit courts have applied *Morrissey/Young* to analogous forms of conditional release.

At least three circuits have applied *Morrissey/Young* to similar forms of conditional release. For example, the Sixth Circuit recognizes that people serving their criminal sentence at home who are subject to a "electronic-monitoring device at all times," and "must obtain permission to leave the home and may do so only for discrete reasons," have a protected liberty interest in their continued placement at home rather than in a prison. *Ortega v. U.S. Immigr. & Customs Enf't*, 737 F.3d 435, 439 (6th Cir. 2013). That court explained:

> A prison cot is not the same as a bed, a cell not the same as a home, from every vantage point: privacy, companionship, comfort. And the privileges available in each are worlds apart—from eating prison food in a cell to eating one's own food at home, from working in a prison job to working in one's current job, from attending religious services in the prison to attending one's own church, from watching television with other inmates in a common area to watching television with one's family and friends at home, from visiting a prison doctor to visiting one's own doctor. These marked disparities between individual liberty in the one setting as opposed to the other suffice to trigger due process.

[10] *See, e.g.*, Tiffany Cusaac-Smith, *They were released from prison because of COVID-19. Their freedom didn't last long*, USA Today (July 20, 2022, 5:59 AM), https://perma.cc/P39V-USPR.

Id. (internal citation omitted).

Similarly, the First Circuit held that people have a liberty interest in an "electronic supervision program" (ESP), in which they serve the remainder of their prison terms at home, subject to electronic monitoring. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 870, 887-90 (1st Cir. 2010). Even though people on ESP cannot leave without approval and must follow strict conditions, "ESP, unlike institutional confinement of any kind, allowed the appellees to live with their loved ones, form relationships with neighbors, lay down roots in their community, and reside in a dwelling of their own choosing (albeit subject to certain limitations) rather than in a cell designated by the government." *Id.* at 888-890. Accordingly, people serving their sentence at home under this program were "constitutionally entitled to written notice of the justification [for their revocation] before a hearing takes place." *Id.* at 892 (citing *Morrissey*, 408 U.S. at 481; *Wolff*, 418 U.S. at 563-64).

Likewise, the Second Circuit has held that a person on a work release program "enjoyed a liberty interest, the loss of which imposed a sufficiently 'serious hardship' to require compliance with at least minimal procedural due process." *Kim v. Hurston*, 182 F.3d 113, 117-18 (2d Cir. 1999) (internal citation omitted); *see also Anderson v. Recore*, 446 F.3d 324, 333 (2d Cir. 2006) (explaining that "due process requires some opportunity . . . to argue that the charges sustained . . . did not warrant revocation of his [temporary work release]"); *Friedl v. City of New York*, 210 F.3d

79, 84 (2d Cir. 2000) (observing that "[p]risoners on work release have a liberty interest in continued participation in such programs").[11]

ii. District courts have applied *Morrissey/Young* to home confinement.

While caselaw on federal home confinement specifically was relatively "scant" when the Magistrate Judge here issued her report and recommendation, (1-ER-19), numerous district courts—including within this Circuit—have held that *Morrissey* and *Young* apply to home confinement revocation. For example, a Central District of California Court held that "[r]elease to home confinement . . . creates a significant liberty interest" under *Morrissey/Young*. *Wesa v. Engleman*, 2025 WL

[11] The law in the Seventh Circuit is muddled. In *Paige v. Hudson,* the court held that "being removed from a home-detention program into jail is a sufficiently large incremental reduction in freedom to be classified as a deprivation of liberty." 341 F.3d 642, 643 (7th Cir. 2003). The court explained that "the difference between being confined in a jail and being confined to one's home is much greater than the difference between being a member of the general prison population and an inmate of a prison's segregation wing[.]" *Id.* at 643-44. But later in *Domka v. Portage Cnty., Wis.*, the same court stated "we are not prepared to say that *Paige* is necessarily controlling" where the petitioner "was not a probationer but instead a prisoner serving his time outside the jail[.]" 523 F.3d 776, 781 (7th Cir. 2008). The court ultimately found that even if the petitioner did have a protected liberty interest, he had "waived any due process protections that *may* have been required," and the court "save[d] for another day the narrow question of whether a prisoner—as opposed to a probationer, parolee or pre-parolee—has a liberty interest in a home detention program." *Id*. Notably, the court in *Domka* did not explain how the pre-parolee in *Young* differed in any way from "a prisoner serving his time outside the jail." *See id*. In fact, that's exactly what happened in *Young*: the Court explained the pre-parole system as one in which incarcerated people were "conditionally released from prison before the expiration of their sentences." 520 U.S. at 145.

2005224, at *11 (C.D. Cal. 2025). Thus, revoking the petitioner's home confinement absent any violation, and without explanation, notice, or an opportunity to be heard, "strongly suggests a violation of due process." *Id.* The court therefore granted preliminary injunctive relief restoring the petitioner to home confinement pending adjudication of the habeas petition. *Id.* at *11, 13.

Another district court in this Circuit also granted a preliminary injunction restoring the petitioner to home confinement following revocation absent any alleged violation, notice, or opportunity to be heard. *Kuzmenko v. Phillips*, 2025 WL 779743, at *7 (E.D. Cal. 2025) (granting TRO); *see* Order at 2, *Kuzmenko v. Phillips*, No. 2:25-cv-00663 (E.D. Cal. Mar. 12, 2025), ECF No. 20 (adopting TRO as preliminary injunction). The court determined that "it is more likely that home confinement, which grants Petitioner many of the freedoms outlined in *Young*, resembles a preparole situation more so than one of an institutional setting." *Kuzmenko*, 2025 WL 779743, at *3.[12] The court also held that "[d]etaining an individual without any explanation is not only chilling, but also flatly inconsistent with any notion of due process." *Id.* at *5. And a petitioner "is harmed every day she is improperly incarcerated rather than on home confinement." *Id.* at *7; *see also Martin v. Phillips*, 2025 WL 732829, at *6 (E.D. Cal. 2025) (same).

[12] The court discussed *Morrissey/Young* in its jurisdictional analysis. On the merits, the court addressed the statutory language of First Step Act home confinement, which is not at issue here.

Indeed, courts beyond this Circuit have granted habeas petitions, holding that people on home confinement "possess[] a liberty interest in home confinement" that cannot be revoked without "the *Morrissey* procedural protections." *Mason v. Alatary*, 2024 WL 3950643, at *6-10 (N.D.N.Y. 2024); *see also Adepoju v. Scales*, 782 F. Supp. 3d 306, 321 (E.D. Va. 2025) (holding petitioner's "removal from [prerelease custody] and reincarceration without notice or explanation violates due process."); *Tompkins*, 2022 WL 3212368, at *10-11 ("[H]ome confinement within one's community unquestionably is more analogous to parole and to pre-parole than it is to confinement within a prison" and therefore people on home confinement have a "liberty interest that trigger[s] due process protections as described in *Morrissey*."); *Freeman v. Pullen*, 658 F. Supp. 3d 53, 65-66 (D. Conn. 2023) (same). Numerous other courts have found such claims "substantial" and granted release pending disposition of the habeas petitions.[13]

[13] *See* Order, *Cardoza v. Pullen*, No. 22-cv-00591 (D. Conn. Aug. 22, 2022), ECF No. 39 ("Petitioner raises a substantial claim of a violation of her procedural due process rights[.]"); Order, *Daniels v. Martinez*, No. 22-cv-00918 (E.D.N.Y. Feb. 23, 2022) (similar); Order, *Lallave v. Martinez*, No. 22-cv-00791 (E.D.N.Y. Feb. 11, 2022) (similar); Order, *Wiggins v. Stover*, No. 3:23-cv-00842 (D. Conn. July 27, 2023), ECF No. 19 (similar). Each case ultimately was dismissed on other grounds, given the petitioner was no longer incarcerated, and accordingly the courts did not issue a final merits decision.

C. The district court relied on inapposite cases.

i. *Reeb v. Thomas* is not controlling.

The district court improperly relied on *Reeb*. There, this Court dismissed an incarcerated person's challenge to their expulsion from "RDAP"—a prison-based drug treatment program—for lack of jurisdiction. *Reeb*, 636 F.3d at 1226. *Reeb* is not controlling here for at least three reasons.

First, RDAP is very different from home confinement. RDAP is based *inside* federal prisons: participants in the program remain incarcerated during their treatment. *Id.* at 1225 (petitioner's RDAP was located "at the Federal Correctional Institution at Sheridan, Oregon."). Further, RDAP carries only the *potential* for early release from prison, subject to BOP's *discretion*. As the *Reeb* Court explained, "[a]s an incentive for successful completion of RDAP, the BOP *may* reduce a prisoner's sentence by up to one year" at its discretion. *Id.* at 1226 (citing 18 U.S.C. § 3621(e)(2)(B)) (emphasis added).

A person's interest in continuing to live at home on *already-granted* home confinement is fundamentally different from remaining in the RDAP program inside of prison. People on home confinement are not in prison. They live at home, freely spend time with their loved ones, obtain gainful employment, and otherwise reintegrate into the community. *See supra* Section I(B) (describing home confinement). And they do not have the mere *potential* for early release from prison—BOP *already* released them from prison early by granting home

confinement for the "final months" of their term. 18 U.S.C. § 3624(c)(1). Thus, whether people have a liberty interest in staying in an *RDAP* program inside of a prison does not control whether people have a liberty interest in staying at *home* on *home confinement*.

Second, the Court in *Reeb* only addressed the liberty interest question in one conclusory sentence in a footnote. That footnote only concerned the RDAP program and its discretionary benefit that the petitioner had never received. The Court's due process analysis, in its entirety, states, "To the extent that Reeb alleges equal protection and due process violations, these claims must necessarily fail . . . Reeb [] cannot prevail on his due process claim because inmates do not have a protected liberty interest in either RDAP participation or in the associated discretionary early release benefit." *Reeb*, 636 F.3d at 1228 n.4 (citing *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979); *Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976); and *Jacks v. Crabtree*, 114 F.3d 983, 986 n.4 (9th Cir. 1997)). The Court's parentheticals describing these cases—like *Reeb* itself—have nothing to do with a protected liberty interest in remaining on already-granted conditional release. *See id.*

Finally, this Court should not read *Reeb*, as the district court below did, to "caution[] against extending the procedural due process protections required by *Morrissey*" to other contexts. (1-ER-25.) None of this Court's subsequent decisions

citing *Reeb* contain any language cautioning against the extension of *Morrissey/Young* due process protections in comparable contexts. Further, since *Reeb*, multiple district courts in this Circuit have extended *Morrissey/Young* to home confinement, *see supra* Section I(B)(ii), and other analogous forms of release. The district court failed to address these cases.

For example, the district court in Oregon held that a "Short Term Transitional Leave Program" located in a halfway house "provided [the petitioner] with sufficient freedom to confer a protected liberty interest requiring *Morrissey's* procedural protections." *Bristol v. Peters*, 2018 WL 6183274, at *2, *6 (D. Or. 2018). Like home confinement, the leave program allowed people to reintegrate into the community prior to their prison-release date, subject to compliance with conditions including a curfew, geographical restrictions, and drug testing. *Id.* at *2, *5. The court held that even though the petitioner "was subject to a few conditions not present in *Young*[,]" there was "no serious dispute that freedoms [Petitioner] enjoyed on release were 'significantly greater' than while in prison." *Id.* at *5-6. Notably, the court applied *Morrissey* and *Young* even though the leave program explicitly afforded the Department of Corrections "discretion [to] immediately remove or suspend an inmate from the program . . . without a hearing, for administrative reasons." *Id.* at *5 (internal citation omitted). The court reasoned (1) that authority "raises serious due process concerns" and (2) the petitioner's "belief that [the

Department of Corrections] would not revoke his release arbitrarily in the absence of a violation was a reasonable belief[.]" *Id.*

Courts within this Circuit have also applied *Morrissey/Young* to revocation of placement in a civil commitment treatment program, *Borchers v. Belcher*, 2012 WL 1231742, at *7-8 (D. Ariz. 2012), *report and recommendation adopted*, 2012 WL 1231032 (D. Ariz. 2012), and to release pending immigration proceedings, *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969-70 (N.D. Cal. 2019). Thus, the district court erred in construing *Reeb* to limit the application of *Morrissey* and *Young*.

ii. The cited district cases did not reach the merits or consider directly applicable Supreme Court precedent.

The district court relied on non-binding district court cases that were *pro se*, did not reach the merits, and failed to consider the directly applicable precedents of *Morrissey* and *Young*. *See* (1-ER-22-23) (citing *Triplett v. FCI Herlong, Warden*, 2023 WL 2760829 (E.D. Cal. 2023), *report and recommendation adopted*, 2023 WL 3467145 (E.D. Cal. 2023); *Tetterton v. Warden, FCI Fort Dix*, 2023 WL 4045086 (D.N.J. 2023); *Romano v. Warden, FCI Fairton*, 2023 WL 3303450 (D.N.J. 2023)).

In *Triplett*, the court dismissed for lack of standing and jurisdiction, without reaching the merits. 2023 WL 2760829, at *3-4. The court only addressed BOP's discretion to grant or deny placement onto home confinement *in the first instance*—stating that because "placement in home confinement is a discretionary decision,"

petitioner had no liberty interest in home confinement placement and lacked standing. *Id.* at *3 (citing 34 U.S.C. § 60541(g)(1)(B)).[14]

This case, however, isn't about BOP's discretion to grant CARES Act home confinement placement *in the first instance*. Rather, it is about those who have a protected liberty interest in remaining on home confinement, that cannot be revoked without due process, once BOP has *already granted* home confinement. Indeed, "[t]he differences between an initial grant of parole and the revocation of the conditional liberty of the parolee are well recognized." *Greenholtz,* 442 U.S. at 10 . This is simply because "[i]t is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions of his release, than to his mere anticipation or hope of freedom." *Id.* (internal citation omitted).

Nor do *Tetterton* and *Romano* support the district court's conclusion. Those cases, decided by the same judge, also did not reach the merits, dismissing on jurisdiction and exhaustion grounds. *See Tetterton*, 2023 WL 4045086, at *2-8;

[14] The court also erroneously held that it lacked jurisdiction under 28 U.S.C. § 2241 because "petitioner's claims do not fall within the core of habeas[.]" *Id.* at *2-3. However, as the district court correctly concluded here, the petition "plainly challenges the manner and location of the execution of Petitioner's sentence and, thus, can be considered under Section 2241." (1-ER-13) (citing *Pinson v. Carvajal*, 69 F. 4th 1059, 1067-68 (9th Cir. 2023)).

Romano, 2023 WL 3303450, at *2-8.[15] The opinions discussed the petitioners' liberty interests only in the context of exhaustion—specifically, whether the exception to the exhaustion requirement for actions that "clearly and unambiguously violate Petitioner's constitutional rights" applied. *See Tetterton*, 2023 WL 4045086, at *5, 7-8 (cleaned up); *accord Romano*, 2023 WL 3303450, at *4, 7-8. The courts held that, given "sparse" caselaw, they "[could] not conclude that the decision to revoke Petitioner's home confinement without a hearing . . . *clearly and unambiguously* violated a constitutional right" and thus dismissed for failure to exhaust. *Tetterton*, 2023 WL 4045086, at *7-8 (emphasis added); *accord Romano*, 2023 WL 3303450 at *7-8. That is a distinct inquiry from whether, as a matter of *first impression*, people on home confinement have a liberty interest in remaining in the community. Thus, *Tetterton* and *Romano* are irrelevant.

Moreover, the petitioner in *Romano*, originally *pro se*, subsequently obtained counsel and filed an amended petition. The district court emphasized that the amended petition raised "serious due process and liberty concerns" and recognized that "as a practical and human matter, the experience of serving a sentence at home

[15] The courts' jurisdiction analyses repeated the same errors as *Triplett*, discussed *supra* note 14.

differs dramatically from incarceration in a prison." *Romano v. Warden*, 779 F. Supp. 3d 498, 503, 506 n.11 (D.N.J. 2025).[16]

The two cases the district court briefly referenced in a footnote—*Cardoza v. Pullen*, 2022 WL 3212408 (D. Conn. 2022), and *Touizer v. Att'y Gen. of the United States*, 2021 WL 371593 (S.D. Fla. 2021), *aff'd*, 2021 WL 3829618 (11th Cir. 2021)—likewise fail to support the court's ruling. (*See* 1-ER-23 n.7.) The district court aptly noted that the court in *Cardoza* initially dismissed the petition. (1-ER-20-21 n.6.) But the district court failed to recognize that an amended petition was filed, and the court held that the "Petitioner raises a substantial claim of a violation of her procedural due process rights" under *Morrissey* and *Young*, and granted release pending a decision on the petition. Order, *Cardoza v. Pullen*, No. 22-cv-00591 (D. Conn. Aug. 22, 2022), ECF No. 39. Thus, if anything, *Cardoza* actually *supports* Wilford's position.

Meanwhile, *Touizer* repeats the same fundamental error as *Triplett*, *Tetterton*, and *Romano*: erroneously focusing on BOP's discretion to release people onto home confinement in the first instance, rather than the authority to revoke *already-granted* home confinement placement without due process. Further, the court did not even

[16] The court dismissed for lack of jurisdiction based on its interpretation of Third Circuit precedent. That order is currently on appeal.

cite the binding precedents in *Morrissey* and *Young*. *See Touizer*, 2021 WL 371593, at *4.

D. Wilford's revocation violated due process.

BOP unlawfully revoked Wilford's home confinement absent (1) any alleged violation or (2) due process. First, revocation was substantively erroneous because BOP did not accuse Wilford of violating any home confinement condition. *See Morrissey*, 408 U.S. at 479. Second, Wilford's revocation was independently unconstitutional because BOP failed to provide the procedural protections required by *Morrissey*. *See id.* at 485-89. Indeed, BOP uprooted Wilford from his home and remanded him to federal prison with no notice or opportunity to be heard *whatsoever*. Thus, BOP violated Wilford's constitutional due process rights.

II. The Court Has Power to Restore Wilford to Home Confinement.

This Court has authority to restore Wilford to home confinement to remedy his erroneous revocation. "In habeas cases, federal courts have broad discretion in conditioning a judgment granting relief" and may "dispose of habeas corpus matters as law and justice require." *Lujan v. Garcia*, 734 F.3d 917, 933 (9th Cir. 2013) (citing *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987)). Further, "the purpose of habeas remedies is to 'put the defendant back in the position he would have been in if the [constitutional] violation never occurred.'" *Id.* at 935 (quoting *Nunes v. Mueller*, 350 F.3d 1045, 1057 (9th Cir. 2003)) (alteration in original).

The district court's contention that it lacked the power to restore Wilford to home confinement, (1-ER-15-16), rests on a fundamental misconception of the issues. The court relied on inapposite cases holding that courts lack jurisdiction to order a person's placement onto home confinement *in the first instance*. *See id.* (collecting cases).[17] But, as the district court itself recognized, Wilford "is not challenging a BOP decision to deny him home confinement as an initial matter." (1-ER-19.); *see supra* Section I(C).

Courts can remedy unlawful revocations by restoring people to previously-granted conditional release, regardless of their authority to order that conditional-release placement in the first instance. That is precisely what happened in *Young v. Harper*. There, the Court held that the government unlawfully revoked petitioner's preparole status absent any alleged violation or due process, and affirmed the Tenth Circuit's remedy: remand to the district court "with instructions to issue the writ of habeas corpus unless Mr. Harper is reinstated to the [preparole] Program[.]" *Harper v. Young*, 64 F.3d 563, 567 (10th Cir. 1995), *aff'd*, 520 U.S. 143 (1997). And "[a]fter reinstatement, any attempt to remove Mr. Harper from the Program must, of course, comply with the procedures mandated by" *Morrissey*. *Id.* Whether the Court could

[17] One cited case, *Albrecht v. Birkholz*, held that the court lacked jurisdiction to order the petitioner onto home confinement to remedy an erroneous revocation. 2023 WL 5417099, at *2 (C.D. Cal. 2023). However, *Albrecht* itself erroneously rested on cases that addressed the authority to place people on home confinement in the first instance, thus repeating the same error. *See id.* (collecting cases).

have authorized the petitioner's *initial* release to preparole was wholly irrelevant to its power to *restore* the petitioner to preparole. *See generally id.*

Indeed, multiple courts in this Circuit have granted relief restoring petitioners to home confinement. *See, e.g.*, *Kuzmenko*, 2025 WL 779743, at *7 ("Respondents are ordered to transfer Ms. Vera Kuzmenko back to prerelease custody"); *Martin*, 2025 WL 732829, at *7 (same); *Wesa*, 2025 WL 2005224, at *13 (converting TRO ordering petitioner's restoration to home confinement into a preliminary injunction and "enjoin[ing] Petitioner's further removal from prerelease custody . . . pending the adjudication of his underlying Petition").

Moreover, this Circuit *has* granted habeas relief ordering release on parole. In *McQuillion v. Duncan*, the Circuit held that the California parole board unconstitutionally rescinded the petitioner's parole-grant and, as a remedy, "remanded to the district court with instructions to 'grant the writ' [of habeas corpus]" and "order his immediate release" from prison. 342 F.3d 1012, 1014-15 (9th Cir. 2003). The Court granted this relief even though it plainly lacked power to place the petitioner on state parole in the first instance.

Here, the Court has the power to issue a writ of habeas corpus restoring Wilford to home confinement and "back in the position he would have been in if the [constitutional] violation never occurred.'" *Lujan*, 734 F.3d at 935. Alternatively, as in *Young*, the Court may issue a writ of habeas corpus unless BOP reinstates Wilford

to home confinement. Any future attempt to revoke Wilford's home confinement must comply with *Morrissey*. *See Young*, 64 F.3d at 567.

CONCLUSION

This Court should reverse and hold that BOP unlawfully revoked Wilford's home confinement without due process. To remedy that wrong, it should order Wilford restored to home confinement placement.

Dated: January 29, 2026

Respectfully Submitted,

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STATEMENT OF RELATED CASES

The undersigned counsel is not aware of any related case in this Court.

Dated: January 29, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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