

No. 25-4404

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RICHARD ANTHONY WILFORD,
Petitioner-Appellant,

v.

JAMES ENGLEMAN,
Respondent-Appellee.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
DISTRICT COURT No. 2:24-CV-1470-DDP-GJS*

GOVERNMENT’S ANSWERING BRIEF

TODD BLANCHE
Acting Attorney General

BILAL A. ESSAYLI
First Assistant United States
Attorney

ALEXANDER B. SCHWAB
Assistant United States Attorney
Acting Chief, Criminal Division

MINJAE KIM
Assistant United States Attorney
1200 United States Courthouse
312 North Spring Street
Los Angeles, CA 90012
Telephone: (213) 894-2400
Email: Minjae.Kim@usdoj.gov

Attorneys for Respondent-
Appellee
JAMES ENGLEMAN

TABLE OF CONTENTS

DESCRIPTION	PAGE
I. INTRODUCTION.....	1
II. ISSUES PRESENTED.....	3
III. STATEMENT OF THE CASE.....	4
A. Jurisdiction, Timeliness, and Bail Status.....	4
B. Statement of Facts and Procedural History	4
IV. SUMMARY OF ARGUMENT.....	8
V. ARGUMENT.....	9
A. Petitioner Cannot Use Habeas for a Conditions-of-Confinement Claim	9
1. Standard of Review.....	9
2. Petitioner’s Conditions-of-Confinement Claim Falls Outside the Core of Habeas Corpus.....	10
3. Petitioner’s Invocation of Due Process Does Not Bring His Claim Within the Core of Habeas	14
B. Even if the Court Reaches the Merits, Appellant’s Due Process Claim Fails Because He Has No Protected Liberty Interest in Remaining on Home Confinement	19
1. Standard of Review.....	19
2. Petitioner Provides No Legal or Factual Basis that Entitles Him to Home Confinement	19
a. Petitioner Does Not Contest that He is Lawfully in BOP Custody.....	20

TABLE OF CONTENTS (continued)

DESCRIPTION	PAGE
b. While Petitioner is in BOP custody, BOP Has Discretionary Power to Choose the Place of Confinement..... c. The CARES Act Did Not Give Petitioner a Right or a Liberty Interest in Home Confinement..... d. Petitioner Has No Protected Liberty Interest in Home Confinement i. Home confinement materially differs from parole and does not grant a similar liberty interest ii. BOP's mistaken transfer did not create a liberty interest 3. Even if Petitioner Had Some Limited Liberty Interest in Home Confinement, the Flexible Due Process Standard Does Not Demand Morrissey-type Procedures Here.....	21 23 29 30 39 44
VI. CONCLUSION	45

TABLE OF AUTHORITIES

DESCRIPTION	PAGE(S)
 Cases	
<i>Adepoju v. Scales</i> , 782 F. Supp. 3d 306 (E.D. Va. 2025)	37
<i>Anderson v. Recore</i> , 446 F.3d 324 (2d Cir. 2006)	35
<i>Badea v. Cox</i> , 931 F.2d 573 (9th Cir. 1991)	10
<i>Board of Regents v. Roth</i> , 408 U.S. 564 (1972)	29
<i>Borchers v. Belcher</i> , 2012 WL 1231742 (D. Ariz. Mar. 9, 2012)	36
<i>Bowen v. Hood</i> , 202 F.3d 1211 (9th Cir. 2000)	16
<i>Bristol v. Peters</i> , 2018 WL 618327 (D. Or. Nov. 27, 2018)	37
<i>Brown v. Plata</i> , 563 U.S. 493 (2011)	11
<i>Codd v. Velger</i> , 429 U.S. 624 (1977)	33
<i>Crawford v. Bell</i> , 599 F.2d 890 (9th Cir. 1979)	11
<i>Douglas v. Buder</i> , 412 U.S. 430 (1973)	36
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994)	10

TABLE OF AUTHORITIES (continued)

DESCRIPTION	PAGE(S)
<i>Freeman v. Pullen</i> , 658 F. Supp. 3d 53 (D. Conn. 2023).....	37, 38
<i>Friedl v. City of New York</i> , 210 F.3d 79 (2d Cir. 2000)	35
<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005)	13
<i>Gonzalez-Fuentes v. Molina</i> , 607 F.3d 864 (1st Cir. 2010)	33, 34, 35, 36
<i>Green v. Christiansen</i> , 732 F.2d 1397 (9th Cir. 1984).....	40
<i>Greenholtz v. Inmates of Nebraska Penal & Corr. Complex</i> , 442 U.S. 1 (1979)	29, 39
<i>Hernandez v. Campbell</i> , 204 F.3d 861 (9th Cir. 2000).....	15
<i>Jacks v. Crabtree</i> , 114 F.3d 983 (9th Cir. 1997).....	39
<i>Johnson v. Williford</i> , 682 F.2d 868 (9th Cir. 1982).....	39, 40
<i>Jones v. N. Carolina Prisoners' Lab. Union, Inc.</i> , 433 U.S. 119 (1977)	20
<i>Kim v. Hurston</i> , 182 F.3d 113 (2d Cir. 1999)	34, 35
<i>Kuzmenko v. Phillips</i> , 2025 WL 779743 (E.D. Cal. Mar. 10, 2025)	36
<i>Martin v. Phillips</i> , 2025 WL 732829 (E.D. Cal. Mar. 7, 2025)	36

TABLE OF AUTHORITIES (continued)

DESCRIPTION	PAGE(S)
<i>Mason v. Alatary</i> , 2024 WL 3950643 (N.D.N.Y. Aug. 27, 2024)	36
<i>Meachum v. Fano</i> , 427 U.S. 215 (1976)	29
<i>Montanye v. Haymes</i> , 427 U.S. 236 (1976)	8, 30
<i>Moody v. Daggett</i> , 429 U.S. 78 (1976)	30, 39
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	30, 32, 44
<i>Muhammad v. Close</i> , 540 U.S. 749 (2004)	10
<i>Olim v. Wakinekona</i> , 461 U.S. 238 (1983)	39
<i>Ortega v. Bonnar</i> , 415 F. Supp. 3d 963 (N.D. Cal. 2019)	37
<i>Ortega v. ICE</i> , 737 F.3d 435 (6th Cir. 2013)	34, 42, 43
<i>Pinson v. Carvajal</i> , 69 F.4th 1059 (9th Cir. 2023)	passim
<i>Preiser v. Rodriguez</i> , 411 U.S. 475 (1973)	10
<i>Reeb v. Thomas</i> , 636 F.3d 1224 (9th Cir. 2011)	passim
<i>Rodriguez v. Copenhaver</i> , 823 F.3d 1238 (9th Cir. 2016)	14, 16, 17

TABLE OF AUTHORITIES (continued)

DESCRIPTION	PAGE(S)
<i>Romano v. Warden</i> , 779 F.Supp.3d 498 (D.N.J. 2025)	19
<i>Romano v. Warden, FCI Fairton</i> , 2023 WL 3303450 (D.N.J. May 8, 2023)	18
<i>Rose v. Hodges</i> , 423 U.S. 19 (1975)	12
<i>Sandin v. Conner</i> , 515 U.S. 472 (1995)	20, 34, 43
<i>Serrato v. Clark</i> , 486 F.3d 560 (9th Cir. 2007)	21
<i>Tetterton v. Warden, FCI Fort Dix</i> , 2023 WL 4045086 (D.N.J. June 16, 2023)	18
<i>Thornburgh v. Abbott</i> , 490 U.S. 401 (1989)	21
<i>Tompkins v. Pullen</i> , 2022 WL 3212368 (D. Conn. Aug. 9, 2022)	37, 38
<i>Touizer v. Att’y Gen. of United States</i> , 2021 WL 3829618 (11th Cir. Aug. 27, 2021)	18
<i>Triplett v. FCI Herlong</i> , 2023 WL 2760829 (E.D. Cal. Apr. 3, 2023)	18
<i>United States v. Ceballos</i> , 671 F.3d 852 (9th Cir. 2011)	2, 21
<i>United States v. Earl</i> , 729 F.3d 1064 (9th Cir. 2013)	20
<i>United States v. Martinez</i> , 837 F.2d 861 (9th Cir. 1988)	40, 41

TABLE OF AUTHORITIES (continued)

DESCRIPTION	PAGE(S)
<i>United States v. Miller</i> , 547 F.3d 1207 (9th Cir. 2008)	20
<i>United States v. Montoya</i> , 82 F.4th 640 (9th Cir. 2023)	19
<i>United States v. Wilford</i> , 2022 WL 2392237 (D. Md. July 1, 2022)	4, 5
<i>United States v. Wilson</i> , 503 U.S. 329 (1992)	20
<i>Wesa v. Engleman</i> , 2025 WL 2005224 (C.D. Cal. June 6, 2025)	36
<i>Wilkinson v. Dotson</i> , 544 U.S. 74 (2005)	11
<i>Wolff v. McDonnell</i> , 418 U.S. 539 (1974)	36
<i>Woodall v. Federal Bureau of Prisons</i> , 432 F.3d 235 (3d Cir. 2005)	14, 15
<i>Young v. Harper</i> , 520 U.S. 143 (1997)	19, 30, 31, 32
Statutes	
18 U.S.C. § 3621	passim
18 U.S.C. § 3624	passim
18 U.S.C. § 3625	22
21 U.S.C. § 846	4
28 U.S.C. § 2241	passim

TABLE OF AUTHORITIES (continued)

DESCRIPTION	PAGE(S)
Rules	
Fed. R. App. P. 4(a)(1)(B)(iii).....	4
Regulations	
28 C.F.R. § 0.96.....	24
28 C.F.R. § 0.96(u)(2).....	25, 28
88 Fed. Reg. 19830.....	28
Other Authorities	
<i>Discretion to Continue the Home-Confinement Placements of Fed. Prisoners After the COVID-19 Emergency,</i> 2021 WL 6145876 (O.L.C. Dec. 21, 2021)	25

No. 25-4404

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RICHARD ANTHONY WILFORD,
Petitioner-Appellant,

v.

JAMES ENGLEMAN,
Respondent-Appellee.

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
DISTRICT COURT NO. 2:24-cv-1470-DDP-GJS*

GOVERNMENT’S ANSWERING BRIEF

I

INTRODUCTION

In 2022, the Federal Bureau of Prisons (“BOP”) belatedly exercised its pandemic-era discretion under a statutory authority that had recently expired and placed petitioner Richard Wilford (“petitioner”) in home confinement. When BOP realized its error, it corrected its placement decision and returned defendant to a secure institution—consistent with 18 U.S.C. § 3621(b), which gives BOP

“authority to choose locations where prisoners serve their sentence,” *United States v. Ceballos*, 671 F.3d 852, 855 (9th Cir. 2011), and 18 U.S.C. § 3624(c), which limits the availability of home confinement as a prerelease custody option to the final year of a prisoner’s sentence.

Petitioner filed a habeas petition asking the district court to order BOP to return him to home confinement for the remainder of his sentence, which BOP expects will run through 2030. But habeas corpus cannot be used to tell BOP where to place a prisoner. Petitioner is not challenging his actual conviction, the length of his sentence, or BOP’s authority to hold him in custody. Instead, he argues that BOP’s temporary and mistaken use of an expired, emergency authority under the CARES Act vested him with a parole-like right to remain in the community unless he did something wrong, and that BOP could not terminate his placement in home confinement without full parole-revocation procedures. In short, he claims that the Due Process Clause creates a one-way ratchet for pandemic-era home-confinement placement, enforceable in habeas—a position at odds with this Court’s precedent, the decisions of other courts of appeals and almost all district courts to consider the issue, and common sense. The Constitution does

not require BOP to allow petitioner to serve the remaining years of his sentence in home confinement due to BOP's short-lived mistake.

II

ISSUES PRESENTED

Petitioner was moved to home confinement under a provision of the CARES Act that applied during the COVID-19 pandemic but had expired by the time he was moved. Two months later, after BOP realized its mistake, petitioner was returned to prison. This appeal presents two questions:

A. May petitioner use a habeas petition under 28 U.S.C. § 2241 to challenge his return to prison from temporary home confinement, even though his petition does not attack the validity of the underlying conviction or the length of his sentence in BOP custody?

B. Did BOP violate the Due Process Clause by returning petitioner to prison to serve the remainder of his sentence?

III

STATEMENT OF THE CASE

A. Jurisdiction, Timeliness, and Bail Status

The district court entered judgment on May 21, 2025, dismissing petitioner’s petition for a writ of habeas corpus under 28 U.S.C. § 2241.

(ER-3.)¹ Petitioner filed a timely notice of appeal on July 15, 2025.

(ER-29.) *See* Fed. R. App. P. 4(a)(1)(B)(iii). Petitioner is in custody.

B. Statement of Facts and Procedural History

In August 2014, petitioner was sentenced in the District of Maryland to 340 months’ imprisonment following his conviction for conspiracy to distribute and possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846. (SER-13.) In July 2022, the Maryland district court granted petitioner’s sentence-reduction motion in part, reducing his sentence from 340 months to 280 months of imprisonment. *See United States v. Wilford*, No. CR ELH-11-258, 2022 WL 2392237, at *50 (D. Md. July 1, 2022). (*Id.*) Based on this reduced sentence, and assuming he earns all available credits under the First Step Act,

¹ “ER” refers to defendant’s Excerpts of Record, and “SER” refers to the government’s Supplemental Excerpts of Record. “AOB” refers to Appellant’s Opening Brief and is followed by applicable page numbers.

petitioner's projected release date at the time he filed his petition was August 4, 2030, with more than seven years left in custody.² (*Id.*)

In late 2022, petitioner was designated to the Federal Correctional Institution at Terminal Island in San Pedro, California. (*Id.*) Right before the COVID-19 public health emergency ended, the Warden of FCI Terminal Island referred petitioner to home confinement under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281. (SER-13–14.) But petitioner was transferred to home confinement on or about June 15, 2023, more than a month after the CARES Act's "covered emergency period" ended.³ (SER-14.) Less than two months later, on August 2, 2023, the United

² His current expected release date is September 14, 2030. *See* BOP Inmate Locator Search: Richard Anthony Wilford, Federal Bureau of Prisons, <https://www.bop.gov/inmateloc//index.jsp> (last visited Apr. 30, 2026).

³ On April 10, 2023, the President signed a joint resolution of Congress terminating the COVID-19 national emergency. H.J.R. Res. 7, 118th Cong. (2023) (enacted). The "covered emergency period" thus ended on May 11, 2023. *See End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, Centers for Disease Control and Prevention Archive, https://archive.cdc.gov/www_cdc_gov/coronavirus/2019-ncov/your-health/end-of-phe.html (last updated Sept. 12, 2023).

States Marshals Service corrected the mistake by transferring petitioner back to prison. (*Id.*)

Two days later, petitioner filed an emergency motion to stop the transfer in his district of conviction (the District of Maryland), claiming that revocation of his home confinement violated his due process rights and seeking an order directing his return to home confinement. (*Id.*) The Maryland district court denied that motion, explaining that petitioner had failed to exhaust his administrative remedies and that it lacked jurisdiction to order or direct BOP with respect to the placement of an inmate. (*Id.*) Petitioner was thus designated back to FCI Terminal Island. (*Id.*)

Six months later, he filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the Central District of California. (*Id.*) As in his earlier emergency motion, petitioner alleged a violation of his due process rights and sought an order requiring BOP to place him again in home confinement. (*Id.*) The government explained in the filings below why the petition should be denied: (1) its success would not eliminate or shorten the custodial portion of the sentence, a requirement for habeas

jurisdiction (*see, e.g.*, SER-16 (citing *Pinson v. Carvajal*, 69 F.4th 1059, 1062 (9th Cir. 2023)), SER-58 (citing *Pinson*, 69 F.4th at 1073)); and (2) petitioner had identified no law that entitled him to remain on home confinement (*see, e.g.*, SER-18–22; SER-57).

The district court rejected petitioner’s claim on the merits. (ER-4–5 (adopting ER-6–28).) The court held that it had jurisdiction over the habeas petition “to the extent” petitioner asserted a due process claim (ER-14), and then surveyed the caselaw addressing “whether a revocation of home confinement requires prior adherence to the procedural requirements” that would apply to revocation of parole (ER-21). The court noted that the majority of district courts to address the issue had rejected such a requirement, as had this Court in an analogous context involving other BOP programs. (ER-21–23 (following *Reeb v. Thomas*, 636 F.3d 1224 (9th Cir. 2011).) The court therefore concluded that petitioner “had no liberty interest in remaining on home confinement,” meaning that no additional process was required before returning him to prison. (ER-21–25.)

The Petitioner timely appealed. (ER-29.)

IV

SUMMARY OF ARGUMENT

The district court lacked jurisdiction to entertain the petition under 28 U.S.C. § 2241 because it challenged petitioner's conditions of confinement. Because petitioner does not raise constitutional claims relating to the validity of his confinement or the particulars affecting its duration, his claim is not cognizable in habeas.

His due process claim would also fail on the merits. Petitioner provides no legal or factual basis for a liberty interest subject to due process. He proceeds on the assumption that his brief stay in home confinement as a result of the COVID-19 emergency entitles him to the same liberty interest and due process as a parolee who is conditionally released from custody for the remainder of his sentence under specific conditions and understandings. That is wrong: petitioner had no constitutionally protected liberty interest in BOP's temporarily placing him in home confinement, as the district court correctly held. Courts have long concluded that inmates lack a liberty interest in any particular form of confinement within BOP's statutory discretion. *See, e.g., Montanye v. Haymes*, 427 U.S. 236, 242 (1976). Petitioner's

demand that BOP provide notice and hearing every time a prisoner is transferred to a higher level of custody—even if it is a pure exercise of discretion and no factual questions is in dispute, even if the prisoner has years left on his sentence, and even if the prisoner had no right to the lower level of custody in the first place—defies statutes, precedent, and common sense.

Instead of opening the floodgates to habeas petitions for every transfer of an inmate, this Court should reaffirm this Court’s longstanding limits on both habeas jurisdiction and due process challenges to BOP’s authority to determine inmates’ placement. *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023); *Reeb v. Thomas*, 636 F.3d 1224 (9th Cir. 2011). Petitioner’s habeas claim should be rejected.

V

ARGUMENT

A. Petitioner Cannot Use Habeas for a Conditions-of-Confinement Claim

1. Standard of Review

This Court reviews de novo the district court’s determination on its jurisdiction over a habeas corpus petition. *Pinson*, 69 F.4th at 1065.

2. *Petitioner’s Conditions-of-Confinement Claim Falls Outside the Core of Habeas Corpus*

Petitioner is not entitled to invoke federal courts’ habeas jurisdiction to challenge his conditions of confinement. Federal law offers “two main avenues of relief” for prisoners to assert complaints regarding imprisonment: a habeas petition and a civil-rights complaint. *See Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam).

Habeas petitions enable prisoners to challenge “the validity of any confinement or [the] particulars affecting its duration.” *Id.*; *see also Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (when a “prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release . . . his sole remedy is a writ of habeas corpus”); *Pinson*, 69 F.4th at 1072 (“the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested”) (emphasis in original).

In contrast, a civil-rights action “is the proper method of challenging ‘conditions of . . . confinement.’” *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991); *see Farmer v. Brennan*, 511 U.S. 825, 830 (1994) (reviewing a *Bivens* complaint alleging that an inmate’s transfer

to a higher security facility resulted in an Eighth Amendment violation). This Court has “long held that . . . ‘the writ of habeas corpus is limited to attacks upon the legality or duration of confinement’” and does not cover claims “that terms and conditions of . . . incarceration constitute” a constitutional violation. *Pinson*, 69 F.4th at 1065 (quoting *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979)).

This Court should follow its precedent in *Pinson*, which respects the “historic core of habeas corpus.” 69 F.4th at 1075. There, the Court affirmed dismissals of federal inmates’ habeas petitions because their “successes . . . would [not] necessarily demonstrate the invalidity of confinement or its duration.” 69 F.4th at 1071 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)). Indeed, even in the context of COVID-19 posing “grave risks to public health and [contributing to] the tragic mortality rates,” this Court emphasized that “if injunctive relief can remedy the constitutional violations in *Brown*[*v. Plata*, 563 U.S. 493 (2011)], it is hard to see how the conditions faced by [inmates] were so beyond redemption as to require his release.” *Pinson*, 69 F.4th at 1075. Where a petitioner “fails to explain how relief short of release is inadequate to cure the alleged constitutional violation[,]” the petition

presents “a garden-variety Eighth Amendment claim based on [cruel and unusual punishment], which is a standard civil rights claim[,]” “[r]egardless of how [it is] evidenced.” *Id.* at 1073 (simplified).

Here, by the same token, petitioner’s claim falls outside the core of the writ and thus does not lie in habeas. The substance of his petition reveals that petitioner does not seek to invalidate the underlying conviction or sentence—and, critically, he does *not* seek release from BOP custody. (*See, e.g.*, AOB 3, 8.) He wants a different level of custody. Petitioner alleges only that once BOP placed him at home, due process barred BOP from transferring him to another facility without notice and hearing. His due process theory targets only his custody level and location. Home confinement is still confinement; petitioner challenges the *conditions* of his confinement, not the fact or duration of his custody. Because success on that claim would not entitle him to release from BOP custody, it falls outside the core of habeas and is not cognizable under § 2241. *See Rose v. Hodges*, 423 U.S. 19, 21 (1975) (“A necessary predicate for the granting of federal habeas relief to respondents is a determination by the federal court that their *custody*

violates the Constitution, laws, or treaties of the United States.”)
(emphasis added).

Petitioner cannot circumvent the limited scope of habeas merely by asking for placement in “home confinement.” The label slapped on a habeas petition is never outcome-determinative, and the way petitioner fashions the request does not suddenly make release the only possible remedy. *See Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005) (explaining how a pleading, labeled as a Rule 60(b) motion, is in substance a successive habeas petition and should be treated accordingly).

Otherwise, any prisoner alleging any constitutional violation could proceed in habeas merely by asserting that nothing short of release would suffice. *See Pinson*, 69 F.4th at 1072–73 (“[A] successful claim sounding in habeas necessarily results in release, but a claim seeking release does not necessarily sound in habeas.”); *see also id.* at 1072 (“By collapsing the habeas analysis into a simple inquiry of the requested relief, Petitioners[] . . . fail to account for the historic purpose of the writ and misapprehend the relationship between the nature of a claim and its requested relief.”). Cloaking a theory as a constitutional claim

cannot bypass the habeas requirement to attack the fact or duration of custody.

3. *Petitioner’s Invocation of Due Process Does Not Bring His Claim Within the Core of Habeas*

The district court recognized this Court’s precedents holding that ‘federal courts lack jurisdiction to review’ the BOP’s individualized, discretionary custody determinations.” (ER-11 (quoting *Reeb*, 636 F.3d at 1227); *accord* ER-12 (“As *Reeb* makes clear, no Section 2241 jurisdiction exists to review a claim by a prisoner that ‘the BOP erred in his particular case.’”) (quoting *Reeb*, 636 F.3d at 1228); *cf.* AOB 19–23.) But the district court was incorrect that “Section 2241 jurisdiction exists in this case to the extent that Petitioner claims he was deprived of due process.” (ER-14; *see also* ER-4–5.). As support, the district court cited *Pinson*, 69 F.4th at 1067–68, *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235 (3d Cir. 2005), *Reeb*, 636 F.3d at 1227, and *Rodriguez v. Copenhaver*, 823 F.3d 1238, 1242 (9th Cir. 2016). (See ER-13–14.) But none of those cases changes the parameters of § 2241 jurisdiction to make this petition reviewable.

Pinson recognized that this Court had previously stated that challenges to “conditions of a sentence’s execution” may be brought

under § 2241. *See* 69 F.4th at 1067 (discussing *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000)). But *Pinson* clarified the narrow grounds on which § 2241 petitions may be brought: “when a petitioner challenges the post-conviction execution of a sentence rather than the legality of the underlying judgment; and when a petitioner challenges a sentence’s legality where relief under § 2255 is ‘inadequate or ineffective to test the legality of [the] detention.’” 69 F.4th at 1067 (quoting *Hernandez*, 204 F.3d at 864–65).

Pinson did not affirmatively hold that location of the detention falls within the “execution of a sentence.” *See* 69 F.4th at 1067. To the contrary, *Pinson* and *Woodall* both limited the understanding of “execution” of a sentence to the plain meaning of the term, which is “put into effect” or “carry out.” 69 F.4th at 1067–68; 432 F.3d at 243. And because Woodall’s petition directly challenged BOP regulations that limited placement in community confinement, the “petition crosse[d] the line beyond a challenge to, for example, a garden variety prison transfer.” 432 F.3d at 243. Here, petitioner does not challenge any statute or regulation that affects the “execution of a sentence” the way Woodall did.

Reeb also does not support extension of § 2241 jurisdiction, contrary to the district court’s reasoning. (ER-14 (citing 636 F.3d at 1227).) After clarifying that “[a] habeas claim cannot be sustained solely upon the BOP’s purported violation of its own program statement,” *Reeb* noted that “*Bowen v. Hood*, 202 F.3d 1211, 1221–22 (9th Cir. 2000) (per curiam), is not to the contrary” because *Bowen* considered whether BOP could retroactively apply a regulation that changed certain felons’ eligibility for a decreased sentence. 636 F.3d at 1227. *Bowen* involved a challenge to regulations that directly affected the duration of a sentence. Thus, *Reeb* did not hold that “2241 jurisdiction can exist to review claims alleging constitutional or federal law violations by the BOP and/or BOP action in excess of statutory authority,” as the district court stated. Compare ER-14 with 636 F.3d at 1227. *Reeb* and *Bowen* are consistent with *Pinson*.

Nor does *Rodriguez* help petitioner. *Rodriguez* expressly held that BOP “acted contrary to 18 U.S.C. § 3621(b)(4), which directs [BOP], when designating a prisoner to a facility in which to serve his sentence, to consider ‘any statement by *the court that imposed the sentence*.’” 823 F.3d at 1240 (emphasis in original). “It [was] undisputed that

[BOP] relied on a letter from a judge who not only was *not* the sentencing judge, but who had been formally recused from the case due to an actual conflict—namely, his connection to the victim of the crime.” *Id.* (emphasis in original). *Rodriguez* concerned BOP’s improper consideration of a recused judge’s letter to deny Rodriguez’s request for *shortening* his federal sentence. *See id.* at 1241. The issue was still the length of a sentence.

In sum, none of these cases supports the district court’s extension of § 2241 jurisdiction “to the extent that Petitioner claims he was deprived of due process.” The district court was not required to analyze the merits of petitioner’s due process claim merely because he had dressed it up in habeas form.

Indeed, the district court acknowledged numerous cases where courts around the country have dismissed similar § 2241 petitions. (ER-22–23.) Petitioner attempts to distinguish those cases by asserting that all those cases commit “the same fundamental error [of] . . . 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.”

(AOB 22 (emphasis in original).) Not so. The Eleventh Circuit affirmed the dismissal of a § 2241 petition contesting revocation of home confinement. *Touizer v. Att’y Gen. of United States*, No. 21-10761, 2021 WL 3829618, at *1 (11th Cir. Aug. 27, 2021) (per curiam) (petition requested that the court “order the Bureau of Prisons to again release him to home confinement”). (Cf. AOB 22.) A district court in this Circuit also rejected a § 2241 petition after BOP revoked home confinement. *Triplett v. FCI Herlong*, No. 2:22-CV-83 AC P, 2023 WL 2760829, at *1 (E.D. Cal. Apr. 3, 2023) (“Petitioner contend[ed] that his [constitutional rights] were violated when [BOP] revoked his home confinement.”). (Cf. AOB 19–20.) The New Jersey district court likewise dismissed § 2241 petitions after BOP revoked petitioners’ home confinement. *See Tetterton v. Warden, FCI Fort Dix*, No. 23-1394 (CPO), 2023 WL 4045086, at *1 (D.N.J. June 16, 2023) (“Petitioner did not receive a hearing before . . . BOP revoked his home confinement.”); *Romano v. Warden, FCI Fairton*, No. 23-1052 (CPO), 2023 WL 3303450, at *1 (D.N.J. May 8, 2023) (petitioner “remained in home confinement . . . until . . . BOP returned [him] to a halfway house, and then to FCI

Fairton.”).⁴ (*Cf.* AOB 22.) These cases confirm the nationwide practice of dismissing § 2241 petitions challenging revocation of home confinement after the CARES Act ended. A claim demanding that BOP place an inmate in home confinement—whether or not the inmate has been there before—does not “sound in habeas.” *Pinson*, 69 F.4th at 1073.

B. Even if the Court Reaches the Merits, Appellant’s Due Process Claim Fails Because He Has No Protected Liberty Interest in Remaining on Home Confinement

1. Standard of Review

This Court reviews the substance of petitioner’s due process claim *de novo*. *United States v. Montoya*, 82 F.4th 640, 646 n.6 (9th Cir. 2023); *Young v. Harper*, 520 U.S. 143, 147–52 (1997).

2. Petitioner Provides No Legal or Factual Basis that Entitles Him to Home Confinement

Petitioner’s petition assumes he had a constitutionally protected liberty interest in remaining in home confinement after his mistaken transfer under an expired statute. He did not. Because no statute,

⁴ *Romano v. Warden*, 779 F.Supp.3d 498 (D.N.J. 2025), is currently on appeal and was submitted without oral argument on April 20, 2026. *See Romano v. Warden*, No. 25-1876 (3d Cir. 2025).

regulation, or facts in the case created a protected liberty interest that petitioner was deprived of, he cannot establish a due process violation.

a. Petitioner Does Not Contest that He is Lawfully in BOP Custody

“After a district court sentences a federal offender, the Attorney General, through BOP, has the responsibility for administering the sentence.” *United States v. Wilson*, 503 U.S. 329, 335 (1992). Although “prisoners do not shed all constitutional rights at the prison gate, . . . lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” *Sandin v. Conner*, 515 U.S. 472, 485 (1995) (quoting *Jones v. N. Carolina Prisoners’ Lab. Union, Inc.*, 433 U.S. 119, 125 (1977)). “Regardless of where the BOP elects to transfer a person, she or he remains under BOP custody until the prescribed term of ‘imprisonment’ expires.” *United States v. Earl*, 729 F.3d 1064, 1068 (9th Cir. 2013) (quoting *United States v. Miller*, 547 F.3d 1207, 1211 (9th Cir. 2008)). Here, too, “[w]hen he was transferred to home confinement, defendant[] . . . remained under BOP’s legal custody.” *Earl*, 729 F.3d at 1068. Petitioner does not argue otherwise.

b. While Petitioner is in BOP custody, BOP Has Discretionary Power to Choose the Place of Confinement

BOP has sole authority to “designate the place of [a] prisoner’s imprisonment.” 18 U.S.C. § 3621(b); *accord Ceballos*, 671 F.3d at 855. Section 3621(b) authorizes BOP to designate “any available penal or correctional facility” that meets statutory criteria and to transfer a prisoner “from one penal or correctional facility to another at any time,” subject only to consideration of certain factors. Such discretionary determinations are “committed to agency discretion by law.” *Serrato v. Clark*, 486 F.3d 560, 567 (9th Cir. 2007) (simplified). For that reason, the Supreme Court “has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world.” *Thornburgh v. Abbott*, 490 U.S. 401, 408 (1989) (citation omitted).

This Court’s decision in *Reeb*, 636 F.3d 1224, is directly on point. (AOB 16–17.) There, the petitioner challenged BOP’s discretionary determination to admit inmates to a residential drug-abuse treatment program (“RDAP”), and to grant or deny eligible prisoners sentence reductions upon successful completion of such a program. *Id.* at 1226.

This Court “[held] that federal courts lack jurisdiction to review the BOP’s individualized, RDAP determinations,” which are committed to the BOP’s discretion “pursuant to 18 U.S.C. § 3621.” *Id.* at 1228.

Petitioner attempts to distinguish *Reeb* by arguing that the program at issue (drug treatment program at BOP’s discretion while in custody) differs from home confinement. (AOB 16–17.) But as petitioner concedes, *Reeb* concerned a program that is “subject to BOP’s *discretion*,” where “BOP *may* reduce a prisoner’s sentence by up to one year.” (AOB 16 (emphases in original).) Indeed, *Reeb* concerned the same statute. *See* 18 U.S.C. § 3621. And this Court rejected *Reeb*’s habeas challenge to BOP’s decision to expel him from RDAP (and his demand to be readmitted to the program, with a reduction to his sentence upon successful completion). “To find that prisoners can bring habeas petitions under 28 U.S.C. § 2241 to challenge the BOP’s discretionary determinations made pursuant to 18 U.S.C. § 3621 would be inconsistent with the language of 18 U.S.C. § 3625,” which shields such determinations from judicial review under the Administrative Procedure Act. *Reeb*, 636 F.3d at 1227. This Court also rejected *Reeb*’s due process claim, noting that “inmates do not have a protected liberty

interest in either RDAP participation or in the associated discretionary early release benefit.” 636 F.3d at 1228 n.4.

This Court should follow the precedent on point. *Reeb* confirms that § 2241 is an improper mechanism to challenge BOP’s discretionary determinations, such as here.

c. The CARES Act Did Not Give Petitioner a Right or a Liberty Interest in Home Confinement

Petitioner’s claim to a protected liberty interest hinges on BOP’s mistaken transfer under the expired CARES Act. Petitioner was moved to home confinement after the CARES Act expired. But even if the CARES Act had somehow created a judicially cognizable liberty interest in remaining in home confinement for those otherwise ineligible, the text of the statute does not support petitioner’s request to circumvent controlling statutes and regulations—statutes and regulations that underscore, rather than limit, BOP’s discretionary authority to determine the placement of an inmate.

The Congress enacted the CARES Act in response to the pandemic and its effect on the “functioning of the Bureau,” granting BOP home-confinement discretion beyond what it might otherwise have:

HOME CONFINEMENT AUTHORITY.—During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau *may* lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18, United States Code, *as the Director determines appropriate*.

CARES Act § 12003(b)(2), 134 Stat. 281 (emphases added). The Act does not limit BOP’s discretion but rather strengthens it. Congress was careful to highlight BOP Director’s discretion by using the words “may” and “as the Director determines appropriate.” In short, this provision provided BOP with *additional* discretionary power during the “covered emergency period” related to COVID-19 by allowing the agency to circumvent the usual rules of allowing home confinement in the final year and for the shorter of six months or 10% rules. *See* 18 U.S.C. § 3624(c)(1), (2).

The “covered emergency period” has now ended (and, indeed, had already ended when defendant was moved to home confinement), meaning BOP again operates under its ordinary statutory framework—in which the agency “may” designate and change the place of a prisoner’s confinement in its discretion. 18 U.S.C. § 3621(b). And under its regulations, 28 C.F.R. § 0.96, BOP may “permit[]” a prisoner

who had been placed in home confinement prior to the expiration of the “covered emergency period” to remain on home confinement after the expiration of the “covered emergency period,” but only “as the Director determines appropriate,” and “provided the prisoner is compliant with all conditions of supervision.” 28 C.F.R. § 0.96(u)(2). The rule does not *require* BOP to permit a prisoner to remain in home confinement beyond the “covered emergency period”; it merely *allows* BOP to do so. Moreover, the requirement that a prisoner comply with the terms of home confinement is a necessary, but not a sufficient, condition of remaining in home confinement past the “covered emergency period.”

Indeed, the Department of Justice’s Office of Legal Counsel confirmed this understanding. OLC had previously concluded that “all home-confinement prisoners who did not fall within section 3624(c)(2)’s time limits *must* be returned to a correctional facility” after the expiration of the “covered emergency period.” *See* Discretion to Continue the Home-Confinement Placements of Fed. Prisoners After the COVID-19 Emergency, 2021 WL 6145876, at *3 (O.L.C. Dec. 21, 2021) (emphasis added). OLC has now softened its position, opining that the CARES Act “give[s] the [BOP] discretion over which inmates to

return to facilities and which to leave in home confinement at the end of the emergency period.” *Id.* at *4. But in all events—whether the CARES Act mandated the return of home-confinement prisoners to secured facilities at the end of the emergency period, or whether it gave BOP discretion to permit some prisoners to remain in home confinement after the emergency period—under either interpretation, BOP could lawfully remove petitioner from home confinement after the end of the emergency period.

Petitioner asserts that “governing statutes, rules, BOP policies, and statements by senior BOP officials” “further[ed]” an “‘implicit promise’ that they will remain on home confinement as long as they comply with conditions of release.” (AOB 9.) But the statute petitioner cites reveals the lack of statutory basis for petitioner’s entitlement to home confinement. (*See* AOB 9 (selectively quoting 18 U.S.C. § 3624(c)).) The text of 3624(c)(1) *limits* home confinement to “the final months of that term (*not to exceed 12 months*).” (emphasis added). With years left on his sentence, petitioner is neither in his final months of the

term or asking for the maximum of 12 months. Petitioner is asking this Court to override the governing statutory text.⁵

Petitioner’s selective quotation of the DOJ Final Rule for Home Confinement under the CARES Act is misleading. (AOB 10.) The rule does not state that “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.’” (AOB 10 (selectively quoting the DOJ Final Rule).) Nor does it state that the Director *must* permit them to stay. Rather, the regulation simply allows the Director to let some prisoners stay in home confinement without contradicting the normal rules of supervision:

The Director of the Bureau of Prisons is authorized to exercise or perform any of the authority, functions, or duties conferred or imposed upon the Attorney General by any law relating to the commitment, control, or treatment of persons (including insane prisoners and juvenile delinquents) charged with convicted of offenses against the United States, including the taking of final action in the following-described matters:

⁵ To be sure, BOP still has expansive discretion as a general matter to designate the place of confinement under 18 U.S.C. § 3621(b). But petitioner cannot rely on that, because that same discretion forecloses his claim.

...

(u) With respect to the authorities granted under the [CARES] Act:

(2) After the expiration of the “covered emergency period” as defined by the CARES Act, permitting any prisoner placed in home confinement under the CARES Act who is not yet otherwise eligible for home confinement under separate statutory authority to remain in home confinement under the CARES Act for the remainder of the prisoner’s sentence, as the Director determines appropriate, is compliant with all conditions of supervision.

88 Fed. Reg. 19830 at 19840 (codified as 28 C.F.R. § 0.96(u)(2)).

Petitioner’s source highlights the director’s discretionary authority—not a binding promise to the inmates subject to it. As for the other statements, petitioner’s sources are defunct or irrelevant. (ER-9–10, 10 n.8 (the “BOP Memo” to an ACLU webpage leads to an error page; the “1995” BOP statement on home confinement is a 2016 memo on home confinement that does not shed light on BOP’s pandemic-era emergency discretion).)

Taken together, the statutes, regulations, and OLC memo reinforce BOP’s full discretion to determine where to place petitioner, under the CARES Act or afterwards.

d. Petitioner Has No Protected Liberty Interest in Home Confinement

The Fifth Amendment’s Due Process Clause does not change the analysis: petitioner was not deprived of any “liberty” interest without due process of law.

“To determine whether due process requirements apply in the first place, we must look not to the ‘weight’ but to the nature of the interest at stake.” *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 570–71 (1972)). That means that he must “have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” *Greenholtz*, 442 U.S. at 7.

“The Constitution does not . . . guarantee that the convicted prisoner will be placed in any particular prison” or location. *Meachum v. Fano*, 427 U.S. 215, 224 (1976). “Decisions of the Executive Branch, however serious their impact, do not automatically invoke due process nprotection; there simply is no constitutional guarantee that all executive decisionmaking must comply with standards that assure error-free determinations.” *Greenholtz*, 442 U.S. at 7 (citing *Meachum*

v. Fano, 427 U.S. 215, 224 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976); *Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976)).

Petitioner claims that he had a right to continue in home confinement based on BOP staff’s information that “he would remain at home for the balance of his sentence” and that they “never informed [him] that he could be re-imprisoned without a violation of his confinement conditions.” (AOB 2 (quoting ER-7).) But he provides no details about the nature or wording of any such communication. (*Id.*; ER-7; Petition, CR 1 at 5 ¶ 19.) He presents no facts that could justify a judicially cognizable liberty interest in home confinement. And his contrary arguments—that home confinement should be treated like parole, or that BOP’s mistaken transfer created such an interest—are without merit.

- i. Home confinement materially differs from parole and does not grant a similar liberty interest

Home confinement is still a type of “confinement” within a statutory scheme. *See* 18 U.S.C. § 3624(c)(2). It is not parole, and it materially differs from parole. Thus neither *Young v. Harper*, 520 U.S. 143 (1997), nor *Morrissey v. Brewer*, 408 U.S. 471 (1972), applies here. (*Cf.* AOB at 5–15.)

In *Young*, Oklahoma ran two programs under which inmates were conditionally released from prison before the expiration of their sentences. 520 U.S. at 145. One was parole and the other was “preparole.” *Id.* The prepardole program was in effect whenever the population of the prison system exceeded 95% of its capacity. *Id.* The Pardon and Parole Board had a role in the placement of both parolees and prepardolees. *Id.* The Board itself determined who could participate in the prepardole, while the Governor, based on the Board’s recommendation, decided whether a prisoner would be paroled. *Id.* The participants in the prepardole were released subject to constraints similar to those imposed on parolees. *Id.* In determining the “nature of the interest” at stake for the prepardolee, *Young* examined the differences between the parolees and prepardolees. But “[n]one of the differences—real or imaged—support[ed] a view of the [prepardole] as having been anything other than parole as described in *Morrissey*.” 520 U.S. at 149.

Here, at least *four* significant differences exist. *First*, unlike parole, home confinement per statutory right is only available for the shorter of 10 percent of the term of imprisonment of that prisoner or 6

months. *See* 18 U.S.C. § 3624(c). *Second*, unlike parole, home confinement (under the usual rule) is only available in the final year of the sentence. *See id.* *Third*, unlike parole, home confinement under the CARES Act was an emergency measure in response to a public health emergency, that had a clear end date of application. *See* CARES Act, § 12003(b). Home confinement under the CARES Act was meant to be temporary, and BOP has discretion to return CARES Act home-confinement prisoners to secure custody after the end of the “covered emergency period” for any reason, or for no reason at all. That discretion does not exist in the parole context, where parole is expected to last until the expiration of the sentence, and where a parole-revocation decision “involves a . . . factual question: whether the parolee has in fact acted in violation of one or more conditions of his parole.” *Morrissey*, 408 U.S. at 479. The parolee in *Young* relied on an “implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” 520 U.S. at 148. No such promise exists here. Home confinement in and of itself provides no “implicit promise” that inmates will remain in home confinement as long as they are compliant. AOB at 9 (quoting *Young*, 520 U.S. at 147–48). No condition was

necessary to revoke the condition. “[T]he Due Process Clause does not require process unless, in the individual case, there is a relevant factual dispute between the parties.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 894 (1st Cir. 2010) (simplified); *Codd v. Velger*, 429 U.S. 624, 627 (1977) (“[I]f the hearing mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute . . . which has some significant bearing on [the underlying deprivation].”). No fact is in dispute here. *Fourth*, the CARES Act exception is no longer available after the public health emergency was declared over in mid-May of 2022. No legal basis exists for petitioner to remain in home confinement.

Petitioner claims that other circuits “have applied *Morrissey/Young* to analogous forms of conditional release,” but he cites cases involving work-release programs where the revocation of participation in such programs all required a resolution of a factual dispute—and thus where any due process violation was based on inmates’ receiving no notice and therefore no opportunity to “mount a

defense.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 892 (1st Cir. 2010). (See AOB 11–12.)⁶

For instance, in *Kim v. Hurston*, 182 F.3d 113 (2d Cir. 1999), the inmate was released for a temporary work release program. After she was administratively reassigned to another state prison’s custody, she was removed from the work release program for being “medically unsuitable.” 182 F.3d at 116. But she “did not receive notice of the hearing, was not present at it, and received no statement of the reason for her removal.” 182 F.3d at 116. While the Second Circuit acknowledged a “protected liberty interest in continuing in a work release program,” it also noted the Supreme Court’s admonition that the “deprivation [of a liberty interest must] ‘impose[] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.’” *Kim*, 182 F.3d at 117 (quoting *Sandin*, 515 U.S. at 484).

The Second Circuit also specifically noted that the work-release program was “the final phase [of her sentence] in which [the inmate]

⁶ *Ortega v. ICE*, 737 F.3d 435 (6th Cir. 2013), a mistaken immigration-detainer case, does not involve a work release program and is addressed later in this brief. See *infra* at 42–43.

participated,” making it “virtually indistinguishable from either traditional parole or the Oklahoma program considered in *Young*.” *Kim*, 182 F.3d at 118. (See also AOB 12 (citing *Anderson v. Recore*, 446 F.3d 324, 333 (2d Cir. 2006) (similar work release program)); AOB 12–13 (citing *Friedl v. City of New York*, 210 F.3d 79 (2d Cir. 2000) (similar work release program)).) With years left in his custody, petitioner cannot claim the same.

The First Circuit’s decision in *Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010), is also inapposite. Petitioner admits that the prisoners there were released to “serve the remainder of their prison terms at home” through Electronic Supervision Program. (AOB 12.) But that case focused on issues of whether a newly passed regulation retroactively applied to those who were already admitted in the program. 607 F.3d at 870. Because their eligibility was retroactively revoked, the inmates were “constitutionally entitled to written notice of the justification [for their revocation] before a hearing takes place.” (AOB 12 (quoting *Gonzalez-Fuentes*, 607 F.3d at 892).) Because they were “not given any explanation until the hearing itself,” they were “deprived . . . of ‘a chance to marshal the facts in [their] defense and to

clarify what the charges are, in fact.” *Gonzalez*, 607 F.3d at 892 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974)).⁷

Similarly, the district court cases petitioner cites are unpersuasive. The inmate in *Wesa v. Engleman*, No. 2:25-CV-3413-WLH-DTB, 2025 WL 2005224 (C.D. Cal. June 6, 2025), was released to a halfway house based on his statutory eligibility for earned good time credits. The inmate in *Kuzmenko v. Phillips*, No. 2:25-CV-663-DJC-AC, 2025 WL 779743 (E.D. Cal. Mar. 10, 2025), was already released to home confinement after she served her full sentence, as was the inmate in *Martin v. Phillips*, No. 2:25-CV-687-DJC-AC, 2025 WL 732829 (E.D. Cal. Mar. 7, 2025).

In each of these cases, prisoners who had been conditionally released were entitled to notice and opportunity to “present a mitigation defense.” *Mason v. Alatary*, No. 9:23-CV-193 (LEK), 2024 WL 3950643 (N.D.N.Y. Aug. 27, 2024); *Borchers v. Belcher*, No. CV 11-1018-PHX-DGC (LOA), 2012 WL 1231742, at *7–8 (D. Ariz. Mar. 9, 2012), *report*

⁷ Petitioner’s out-of-context quotation (AOB 6) from *Douglas v. Buder*, 412 U.S. 430 (1973)), does not help him: that case was about when traffic citation is not considered arrest, whether failing to report a traffic citation during probation is a violation of probation conditions.

and recommendation adopted, 2012 WL 1231032 (D. Ariz. Apr. 12, 2012) (Parole Board changed one of the conditions of parole without a hearing); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019) (whether he was subject to a civil detention instead of remaining out of bond after completing his criminal sentence); *see also Adepoju v. Scales*, 782 F. Supp. 3d 306 (E.D. Va. 2025) (reincarceration was “pursuant to some unnamed ‘executive order’” and government did not provide “any explanation”); *Bristol v. Peters*, No. 3:17-CV-788-SB, 2018 WL 618327 (D. Or. Nov. 27, 2018) (reincarceration due to an alleged violation of condition required a hearing). Petitioner presents no facts for a possible mitigation defense. Indeed, as noted, there are no facts in dispute.

Petitioner relies heavily on two decisions from the same district judge in Connecticut to argue that home confinement is “materially indistinguishable from the parole program considered in *Morrissey*.” (AOB 8; *accord id.* at 9, 15.) *See Tompkins v. Pullen*, No. 3:22-CV-339 (OAW), 2022 WL 3212368 (D. Conn. Aug. 9, 2022), and *Freeman v. Pullen*, 658 F. Supp. 3d 53 (D. Conn. 2023).) Those decisions misapplied the law. In both cases, the court stated that those placed in home

confinement under the CARES Act have a reasonable expectation to stay in home confinement. The court reasoned that home confinement’s “purpose” is allow reentry into society and BOP had a “widespread practice” of not reincarcerating individuals on home confinement. *Tompkins*, 2022 WL 3212368, at *9–11. The court also noted that the inmate had no notice that she could be transferred back to a secure facility without cause and cited statements by BOP officials in a Senate Committee address and a BOP internal memo. *See id.*; *see also Freeman*, 658 F. Supp. 3d at 60–66 (granting § 2241 petition for an inmate on home confinement for because “the undersigned has already held [in an unpublished opinion] that before being reincarcerated, individuals on home confinement are entitled to those protections . . . in *Morrissey*”). None of these cases provides a valid basis for petitioner’s purported liberty interest here.

Instead, as discussed above—and as recognized by the district court—*Reeb* controls this case. (ER-21–22, 25.) Consistent with the decisions above, *Reeb* stated that “inmates do not have a protected liberty interest in either RDAP participation or in the associated discretionary early release benefit.” 636 F.3d at 1228 n.4 (citing

Greenholtz v. Inmates of Neb. 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 (9th Cir. 1997)). Without a protected liberty interest, Reeb did not have a due process claim. *Reeb*, 636 F.3d at 1228 n.4. And that makes sense, because there is nothing to have a hearing about: “[i]f the decisionmaker is not required to base its decisions on objective and defined criteria, but instead can deny the requested relief for any constitutionally permissible reason or no reason at all, the State has not created a constitutionally protected liberty interest.” *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983) (simplified).

ii. BOP’s mistaken transfer did not create a liberty interest

Although petitioner does not rely on these precedents, this Court has held that the government—in limited circumstances—may violate due process by reincarcerating an erroneously released prisoner. *See Johnson v. Williford*, 682 F.2d 868 (9th Cir. 1982). But that precedent would not help him even if he relied on it. Such a violation, however, requires government misconduct that amounts to “more than negligence.” *Id.* at 873. Indeed, the government’s actions must be “so affirmatively improper or grossly negligent that it would be

unequivocally inconsistent with ‘fundamental principles of liberty and justice’ to require a legal sentence to be served in its aftermath.”

United States v. Martinez, 837 F.2d 861, 864 (9th Cir. 1988) (quoting *Green v. Christiansen*, 732 F.2d 1397, 1399 (9th Cir. 1984)).

In *Johnson*, for example, the petitioner was ineligible for parole, but the government nevertheless “encouraged and heightened” the petitioner’s expectation of release on parole through “at least eight separate administrative reviews” spanning two years. *Johnson*, 682 F.2d at 870, 872. This “culminat[ed] in 15 months of parole release” before the government realized its error and returned petitioner to custody. *Id.* The court held the government’s actions justified the petitioner’s expectation that his parole would continue such that the government could be estopped from returning the petitioner to custody. *Id.*

BOP did not foster a similar expectation here, nor were its actions “so affirmatively improper or grossly negligent” as to require

petitioner's placement in home confinement for the remaining seven⁸ years of his sentence. *Id.* at 873. The record indicates that BOP conducted a single administrative review in May 2023 before placing petitioner in home confinement in June 2023, and that BOP quickly rectified its error in August 2023. (SER-25–26, 37–38, 40–42.) BOP did not “encourage and heighten” petitioner’s expectation of a particular custodial placement through multiple rounds of interviews, nor were petitioner’s expectations cemented by having remained in home confinement for an extended period of time. Petitioner could not have spent much longer than a month waiting to be placed in home confinement; and he was in home confinement for fewer than seven weeks. These timescales pale in comparison to the two years of anticipation and fifteen months of parole described in *Johnson*. *See also Martinez*, 837 F.2d at 864 (government’s seven and one-half year delay in incarcerating petitioner “[did] not constitute action so affirmatively

⁸ At the time petitioner returned to a secure facility on August 2, 2023, he had seven years left of his sentence. *See* SER-25–26, 37–38, 40–42 (Sanchez Decl. ¶¶ 5, 6; Exs. B, C).

wrong or inaction so grossly negligent that fundamental fairness [was] violated”).

Moreover, unlike the petitioner in *Johnson*, petitioner here was never released from custody. A release from prison carries with it an expectation of finality that a custodial transfer does not. Petitioner thus could not have had the same expectation of remaining in home confinement as he would have had remaining released on parole. Although petitioner also cites *Ortega v. ICE*, 737 F.3d 435, 439 (6th Cir. 2013), to argue that he “ha[d] a protected liberty interest in their continued placement at home rather than in a prison” (AOB 11), *Ortega* is inapposite. There, immigration officers mistakenly issued a detainer for a U.S. citizen who was serving an 11-day home confinement sentence for driving under the influence. 737 F.3d at 437. As a matter of policy, the local corrections department incarcerated any individual with an immigration detainer. *Id.* The corrections department did not conduct its own investigation of Ortega’s citizenship before taking him to jail. *Id.* As a result, Ortega wound up going to jail when his judicially imposed state sentence was only 11 days of home confinement.

Ortega is very far from this case. *Ortega* was sentenced to 11 days in home confinement for driving under the influence; petitioner was sentenced to almost 30 years in prison for cocaine trafficking. *Ortega* had no reason to think he would be moved into a secure facility without any violation on his part; petitioner has already received a five-year sentence reduction. Petitioner was then mistakenly moved to home confinement under an expired emergency-era tool subject to BOP director's discretion. This "falls within the expected perimeters of the sentence" rather than "present[ing] the type of atypical, significant deprivation . . . which . . . might conceivably create a liberty interest." *Sandin*, 515 U.S. at 485–86. Indeed, the Sixth Circuit in *Ortega* was careful to note "[w]hat process is due will vary from setting to setting." *Ortega*, 737 F.3d at 439. This setting of a temporary home confinement is "worlds apart" from a prisoner who should not have been in prison to begin with but for the immigration officers' factual mistake. (*Cf.* AOB 11 (quoting *Ortega*, 737 F.3d at 439).)

3. *Even if Petitioner Had Some Limited Liberty Interest in Home Confinement, the Flexible Due Process Standard Does Not Demand Morrissey-type Procedures Here*

Finally, even if the Court were to recognize some limited liberty interest in avoiding an abrupt change from home confinement to prison, due process is “flexible” and requires only those “procedural protections as the particular situation demands.” *Morrissey*, 408 U.S. at 481.

Here, BOP’s decision was a placement determination within its statutory authority based on administrative and legal considerations, not an adjudication of alleged misconduct. Any process due would be modest—notice of the basis for the change and an opportunity to seek review through the existing administrative remedy program—and certainly would not require the full panoply of *Morrissey* parole-revocation hearings that petitioner demands. (AOB 23.) Imposing such requirements on routine § 3621 placement decisions would unduly constrain BOP’s congressionally granted discretion without materially improving fairness or accuracy.

VI

CONCLUSION

For the reasons set forth above, this Court should either remand to the district court with instructions to dismiss the petition or affirm the district court's denial of the petition.

DATED: May 1, 2026

Respectfully submitted,

TODD BLANCHE
Acting Attorney General

BILAL A. ESSAYLI
First Assistant United States
Attorney

ALEXANDER B. SCHWAB
Assistant United States Attorney
Acting Chief, Criminal Division

A handwritten signature in black ink, appearing to read "Minjae Kim", with a stylized, cursive script.

MINJAE KIM
Assistant United States Attorney
General Crimes Section

Attorneys for Respondent-Appellee
JAMES ENGLEMAN

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, the government informs the Court of the following related case pending in another circuit:

Romano v. Warden, FCI Fairton, No. 25-1876 (3d Cir.).

CERTIFICATE OF COMPLIANCE

I certify that:

1. This brief complies with the length limits permitted by Ninth Circuit Rule 32-1 because the brief contains 8,406 words, including words manually counted in any visual images and excluding the portions exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word.

DATED: May 1, 2026

A handwritten signature in black ink, appearing to read "Minjae Kim", with a stylized, flowing script.

MINJAE KIM
Attorney for Respondent-Appellee
JAMES ENGLEMAN