No. 25-1876

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MICHAEL ROMANO,

Plaintiff-Appellant,

v.

WARDEN, FCI FAIRTON,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of New Jersey (Civ. No. 1:23-cv-02919-CPO)

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure (FRAP) 26.1, *Amici Curiae* American Civil Liberties Union and American Civil Liberties Union of New Jersey disclose that they have no parent corporations and that no publicly held corporations hold 10% or more of its stock.

Dated: August 11, 2025

/s/ Allison Frankel
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

INTEREST OF AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in our nation's Constitution and civil rights laws. The American Civil Liberties Union of New Jersey ("ACLU-NJ") is a state affiliate of the ACLU whose mission is to preserve, advance, and extend the individual rights and liberties guaranteed to every New Jerseyan by the State and Federal Constitutions in courts, in legislative bodies, and in our communities.

Since their founding, both organizations have regularly appeared as counsel and as *amicus curiae* in this nation's courts and in this Circuit on a variety of civil-rights issues. The ACLU and ACLU-NJ regularly engage in litigation and advocacy to uphold the due process rights of people involved in the criminal legal system, such as those conditionally released from prison. For example, the ACLU has litigated multiple Freedom of Information Act requests to obtain records regarding people placed on home confinement pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and those who were later revoked from that placement. *See* ACLU, *American Civil Liberties Union v. Federal Bureau of Prisons (CARES Act FOIA)*, https://www.acludc.org/en/cases/american-civil-liberties-union-v-federal-bureau-prisons-cares-act-foia (last visited July 30, 2025); Complaint, *American Civil Liberties Union v. Federal Bureau of Prisons*, No. 1:24-

cv-00699 (D.D.C filed Mar. 11, 2024), ECF No. 1. ACLU and ACLU-NJ appeared as *amici curiae* in the district court in this matter, ECF No. 56, and ACLU appeared as *amicus curiae* in *Wilford v. Engleman*, a similar case challenging home confinement revocation absent due process. No. 24-cv-1470 (C.D. Cal. Nov. 17, 2024), ECF No. 21-3. The parties have consented to the filing of this brief.[1]

SUMMARY OF ARGUMENT

Under the ruling below, the federal Bureau of Prisons ("BOP") could remove people from conditional release in their homes and reincarcerate them in a way that is "unfair, unjust, and done without any process," Dist. Ct. Op. at 16, ECF no. 69, and federal courts would be powerless to even *consider* whether BOP's conduct was unlawful. This is precisely what happened to Michael Romano.

Despite its obvious abhorrence of BOP's conduct, the district court believed it was constrained to hold that Mr. Romano's challenge to unconstitutional revocation of his home confinement was not cognizable by petition for habeas corpus under 28 U.S.C. § 2241. The court's understanding was wrong. The Supreme Court has confirmed that habeas is "the specific instrument" to challenge unlawful revocation of conditional release. *Preiser v. Rodriguez*, 411 U.S. 475, 486 (1973).

[1] Under FRAP 29(a)(4)(E), the undersigned counsel certifies that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae* made a monetary contribution intended to fund the preparation or submission of this brief.

This is so where relief shortens the length of *confinement* in *prison*, even if it does not impact the overall length of legal *custody*. Thus, in both *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), and *Young v. Harper*, 520 U.S. 143 (1997), the Supreme Court adjudicated habeas petitions challenging remands from conditional release into prison without due process.

The home confinement from which Mr. Romano was reincarcerated is materially indistinguishable from the conditional release circumstances in *Morrissey* and *Young*. Although petitioners in all three cases remained in legal custody with their freedom contingent on compliance with strict conditions, all lived at home and enjoyed "many of the core values of unqualified liberty"; thus their "condition [was] very different from that of confinement in a prison." *Morrissey*, 408 U.S. at 482.

Further, this Circuit has twice held that revocation from community-based custody into prison is subject to challenge via § 2241, because such claims do not challenge a "garden variety prison transfer." *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 241- 44 (3d Cir. 2005); *Vasquez v. Strada*, 684 F.3d 431, 433 (3d Cir. 2012). That precedent should have ended any question as to the district court's jurisdiction here.

Unfortunately, the district court felt it was bound by its reading of another decision of this Court, *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012). That panel wrongly construed *Woodall*, using language that appeared to graft onto § 2241 an

additional jurisdictional requirement that the challenge be based on an inconsistency with the sentencing judge's recommendation. But that requirement appears absolutely nowhere in *Woodall*'s jurisdictional discussion.

Cardona presented a very different case from *Woodall*/*Vasquez* and this case, one of a "garden variety prison transfer" to a different unit within the same prison. Lack of jurisdiction over Mr. Cardona's claim could have been based on that fact alone. Because the *Cardona* Court was obliged to apply *Woodall* as written, this Court should harmonize the decisions by restating *Woodall*'s holding and limiting *Cardona*'s additional requirement to its facts. Since Mr. Romano challenges revocation from home into prison—not a "garden-variety prison transfer"—*Woodall*/*Vasquez* govern and his petition is plainly cognizable under § 2241.

Such a result is consistent with the need to construe § 2241 broadly, in line with its historical purpose to constrain executive detention. As shown below, BOP has ripped others from their homes absent any alleged wrongdoing or for minor alleged rule violations, without a whisper of due process protections. Without clarification by this Court that *Preiser*, *Morrissey*, *Young*, *Woodall*, and *Vasquez* – and not *Cardona*'s distorted reading of *Woodall* – control this case, people like Mr. Romano will be left in a legal black hole, with executive overreach wholly shielded from judicial review.

The district court also declined jurisdiction on the basis that BOP's statutory

discretion over CARES Act home confinement placement decisions bars review. But this case is not about judicial review of CARES Act placement decisions in the *first instance*; rather, it concerns judicial review of revocation of such placement *once granted*. The law is clear that the serious consequences of the latter situation mandate habeas jurisdiction.

This Court should reverse and hold that Mr. Romano's challenge to revocation from home confinement into prison is cognizable under § 2241.

ARGUMENT

I. Section 2241 Jurisdiction Is Available to Challenge Revocation from Home Confinement into Prison.

A. The Supreme Court has Established Habeas as the Appropriate Mechanism to Challenge Unlawful Revocation from Custody at Home into Custody in Prison.

The Supreme Court has ruled that federal courts have habeas jurisdiction over cases—precisely like Mr. Romano's—where the government revoked custody at home and ordered reincarceration. As the Court explained, where a petitioner contends "that his parole was unlawfully revoked, causing him to be reincarcerated in prison . . . habeas corpus has been accepted as the specific instrument to obtain release from such confinement." *Preiser*, 411 U.S. at 486 (citing *Morrissey*, 408 U.S. 471); *see also Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001) ("federal prisoners challenging some aspect of the execution of their sentence, such as denial of parole, may proceed under Section 2241"). This is so where relief "shorten[s] the length of

[the petitioner's] actual *confinement* in *prison*" even if they will remain in *custody* in the *community* upon release. *See Preiser*, 411 U.S. at 487 (emphasis added).

The *Preiser* Court's reliance on *Morrissey v. Brewer* and the Court's subsequent decision in *Young v. Harper* are conclusive on the issue of this Court's § 2241 jurisdiction here. They also completely undercut the district court's reasoning that it lacked jurisdiction because home confinement constitutes legal "custody" and remand from home confinement to prison is "no different, in jurisdictional terms," than transfer "from one prison to another." *See* Dist. Ct. Op. at 12-13.[2] The Supreme Court rejected these very arguments in *Morrissey* and *Young*.

In *Morrissey*, petitioners filed habeas petitions challenging parole revocation without due process. The lower court had held that "parole is only 'a correctional device authorizing service of sentence outside the penitentiary', the parolee is still 'in custody'" of the corrections department, and courts should not "interfere with disciplinary matters properly under the control of state prison authorities." *Morrissey*, 408 U.S. at 474-75 (quoting *Morrissey v. Brewer*, 443 F.2d 942, 947 (8th Cir. 1971)). The Supreme Court reversed and adjudicated the habeas petition. The Court explained that while a person on parole remains in legal custody and can retain

[2] The district court noted that *Morrissey* and *Young* were state cases that could not proceed under § 2241. Dist. Ct. Op. at 11. What matters here is that the Supreme Court exercised habeas corpus jurisdiction. The specific *type* of habeas petition—§ 2241 (federal prisoners) or § 2254 (state prisoners)—is immaterial. *See Coady*, 251 F.3d at 484-85 (explaining when petitions under §§ 2241 and 2254 are appropriate).

his liberty only "as long as he substantially abides by the conditions of his parole," they enjoy "many of the core values of unqualified liberty." *Id.* at 479, 482. They may "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.* at 482. Further, they rely on "at least an implicit promise that parole will be revoked only if [they] fail[] to live up to the parole conditions" and "[parole's] termination inflicts a 'grievous loss' on the parolee and often on others." *Id.* In short, experience on parole is "very different from that of confinement in a prison." *Id.* Thus, the Court held that parolees have a protected liberty interest that cannot be revoked without due process. *Id.*

In *Young*, the movant filed a habeas petition challenging revocation of preparole without the protections required by *Morrissey*. Oklahoma had instituted the preparole program to reduce prison overcrowding by releasing certain prisoners to the community under strict conditions. The government contended that *Morrissey* was inapplicable because, unlike parolees, the preparolee in *Young* "remained within the custody of the Department of Corrections" and his reimprisonment "was nothing more than a 'transfe[r] to a higher degree of confinement[.]'" *Young*, 520 U.S. at 148-150. A unanimous Court easily rejected this "nonexistent distinction," *id.* at 150, explaining that—like the parolee in *Morrissey*—the preparolee 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. The Court thus granted the habeas petition and restored the movant to preparole.

B. Mr. Romano's Home Confinement Is Indistinguishable from Other Forms of Conditional Release for Purposes of § 2241 Jurisdiction.

There is no material difference between Mr. Romano's home confinement release, parole release in *Morrissey*, and preparole release in *Young*. If habeas jurisdiction was appropriate in those cases, it necessarily is appropriate here.

People on home confinement may participate in a wide array of activities open to people who have not been convicted of crimes: they can live at home, seek and maintain gainful employment, eat their own food, pick up their kids from school, and otherwise reintegrate into their community.[3] The district court here acknowledged this overarching fact: "the experience of serving a sentence at home differs dramatically from incarceration in a prison." Dist. Ct. Op. at 13 n.11. Some conditions, such as electronic monitoring, were not at issue in *Morrissey* or *Young*, but given "technological advancements" in the decades since those decisions, *Tompkins v. Pullen*, No. 3:22-cv-00339, 2022 WL 3212368, at *10 (D. Conn. Aug.

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

9, 2022), and a general shift toward punitive supervision, such restrictions are now commonplace for people on supervision, be it preparole, parole, or home confinement.[4] Moreover, like parolees and preparolees, those on home confinement rely on an "implicit promise" that they will remain at home as long as they comply with conditions of release. *See Young*, 520 U.S. at 147-48.[5] Further, revocation is an

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[4] *See* Columbia Univ. Just. Lab, *Too Big to Succeed: The Impact of the Growth of Community Corrections and What Should Be Done About It* 5 (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://assets.aclu.org/live/uploads/publications/embargoed_hrw_aclu_revoked_parole_and_probation_report_002.pdf (discussing punitive shift in supervision).

[5] This promise has been communicated through governing statutes, rules, BOP policies, and statements by senior BOP officials. *See, e.g.*, 18 U.S.C. § 3624(c)(1) (home confinement is intended to be served during "the final months of [the individual's] term"); U.S. Dep't of Just., Fed. Bureau of Prisons, Memorandum for Christopher H. Schroeder, Assistant Att'y Gen., Off. of Legal Couns., from Kenneth Hyle, Gen. Couns., Re: Views Regarding OLC Opinion, "Home Confinement of Federal Prisoners After the COVID-19 Emergency" 5 (Dec. 10, 2021), https://www.aclu.org/sites/default/files/field_document/bop_cares_memo_12.10.21.pdf (people on home confinement generally "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."); *Hearing on Examining Best Practices for Incarceration and Detention During COVID-19 Before the U.S. Senate Committee on the Judiciary*, 116th Cong. 6 (2020) (Statement of Michael D. Carvajal, Dir., and Dr. Jefferey Allen, Med. Dir., Fed. Bureau of Prisons), https://www.judiciary.senate.gov/imo/media/doc/Carvajal-Allen%20Joint%20Testimony.pdf (CARES Act home confinement placement intended "for service of the remainder of their sentences"); Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 88 Fed. Reg. 19830, 19840 (Apr. 4, 2023) (to be codified at 28 C.F.R. pt. 0) https://www.govinfo.gov/content/pkg/FR-2023-04-04/pdf/2023-07063.pdf (people

"immediate disaster," *Wolff v. McDonnell*, 418 U.S. 539, 561 (1974), tearing people away from their jobs, homes, caregiving obligations, and community ties.

Unsurprisingly then, multiple courts have held that challenges to revocation from home confinement to prison are cognizable via § 2241. *See Kuzmenko v. Phillips*, No. 2:25-cv-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025) (relying on *Young* to hold that habeas was available because while relief "may not ultimately change the length of [petitioner's] custody," it "would constitute an immediate or earlier relief from confinement"); *Martin v. Phillips*, No. 2:25-cv-00687, 2025 WL 732829, at * 3 (E.D. Cal. Mar. 7, 2025) (same); *Touizer v. Att'y Gen. of the U.S.*, No. 20-cv-25169, 2021 WL 371593, at *3 (S.D. Fla. Feb. 3, 2021), *aff'd*, 21-10761, 2021 WL 3829618 (11th Cir. Aug. 27, 2021) (challenge to home confinement revocation "cognizable under § 2241" because it "challenge[s] the execution" of [petitioner's] sentence"); *Mason v. Alatary*, No. 9:23-cv-193, 2024 WL 3950643, at *3 (N.D.N.Y. Aug. 27, 2024) (similar).[6] As one court put it, "home

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already on CARES Act home confinement can remain there after the Act's expiration, and may only be remanded to prison "[i]n the event [the person] violates the conditions of supervision").

[6] Numerous other courts have adjudicated habeas petitions challenging unconstitutional home confinement revocation without discussing jurisdiction. *See Freeman v. Pullen*, 658 F. Supp. 3d 53 (D. Conn. 2023) (granting habeas relief); *Wesa v. Engleman*, No. 2:25-cv-0341, 2025 WL 1675536, at *1 (C.D. Cal. May 23, 2025) (granting release pending disposition of habeas petition); Order, *Cardoza v. Pullen*, No. 3:22-cv-00591 (D. Conn. Aug. 22, 2022), ECF No. 39 (similar); Order, *Daniels v. Martinez*, No. 1:22-cv-00918 (E.D.N.Y. Feb. 23, 2022) (similar); Order, *Lallave v. Martinez*, No. 1:22-cv-00791 (E.D.N.Y. Feb. 11, 2022) (similar); Order,

confinement within one's community unquestionably is more analogous to parole and to pre-parole than it is to confinement within a prison." *Tompkins*, 2022 WL 3212368, at *10.

C. This Court's Precedents Establish That § 2241 Jurisdiction Exists to Challenge the "Execution" of Mr. Romano's Sentence.

Given the clear indistinguishable precedents of *Preiser*, *Morrissey*, and *Young*, it is unsurprising that this Court and courts within this Circuit have repeatedly held that § 2241 habeas jurisdiction exists to challenge BOP's failure to let people to serve their sentence in the community, including on home confinement. *See Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235 (3d Cir. 2005) (habeas jurisdiction found to challenge BOP regulations limiting placement in community confinement); *Vasquez v. Strada*, 684 F. 3d 431 (3d Cir. 2012) (habeas jurisdiction found to challenge BOP's decision not to allow petitioner maximum time in community placement); *Al Haj v. LSCI-Allenwood Warden*, No. 1:24-cv-1193, 2025 WL 1115751, at *3 (M.D. Pa. Apr. 15, 2025) (habeas jurisdiction found over challenge to BOP's barring transfer to prerelease custody); *Reynolds v. Finley*, No. 1:21-cv-1251, 2022 WL 36225, at *2 (M.D. Pa. Jan. 4, 2022) (habeas jurisdiction found over challenge to denial of home confinement); *Gottstein v. Finley*, No. 3:20-cv-0935, 2020 WL 3078028, at *3 (M.D. Pa. June 10, 2020) (habeas jurisdiction found over challenge to denial of transfer to

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Wiggins v. Stover, No. 3:23-cv-00842 (D. Conn. July 27, 2023), ECF No. 19 (similar).

home confinement); *contra Tetterton v. Warden, FCI Fort Dix*, No. 1:23-cv-1394, 2023 WL 4045086, at *2-3 (D.N.J. June 16, 2023). The key element of such challenges is that the petition must challenge the "execution" of the sentence. *Woodall*, 432 F.3d at 241.

Despite this consistent precedent, the district court here ruled that it was constrained by its reading of this Court's decision in the very different case of *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012), to find jurisdiction lacking under § 2241. In fairness to the district court, *Cardona* used broader language than necessary to support the lack of § 2241 jurisdiction in that case— language which could be construed as distorting the controlling opinion in *Woodall* and adding a jurisdictional requirement not found there. However, because of the differing factual circumstances of *Woodall* and *Vasquez*, on the one hand, and *Cardona* on the other hand, the cases can be harmonized, consistent with *Preiser*, *Morrissey*, and *Young*, while finding jurisdiction here.

i. There Is No Requirement That Every Habeas Challenge to "Execution" of Sentence Allege That BOP's Conduct Conflicts with the Sentencing Recommendation.

The *Woodall* court's unanimous[7] finding of habeas jurisdiction over a challenge to BOP's regulations limiting a prisoner's placement in community

[7] Judge Fuentes dissented as to the validity of BOP's regulations, but "agree[ed] with the majority that the District Court had jurisdiction in this case under 28 U.S.C. § 2241." 432 F.3d at 251.

confinement was based on the answer to a single question: whether "what is at issue here is the 'execution' of Woodall's sentence." 432 F.3d at 241. In answering that question in the affirmative, this Court defined "execution" as to "put into effect" or "carry out," *Id.* at 243. The Court concluded that Woodall's situation clearly fell within that definition, using language directly applicable here:

> Carrying out a sentence through detention in a CCC [Community Corrections Center] is very different from carrying out a sentence in an ordinary penal institution. More specifically, in finding that Woodall's action was properly brought under § 2241, we determine that placement in a CCC represents more than a simple transfer. Woodall's petition crosses the line beyond a challenge to, for example, a garden variety prison transfer.

Id.

Unlike *Woodall* or this case, *Cardona* concerned a "garden variety prison transfer" to a Special Management Unit for disciplinary infractions within the petitioner's prison. That alone should have been sufficient to distinguish *Woodall* and hold that habeas jurisdiction was lacking – and the *Cardona* panel did highlight that fact in its jurisdictional discussion. 681 F.3d at 536. However, at several points in its opinion, the *Cardona* panel seemed to link *Woodall*'s jurisdictional decision to the fact that there, BOP's conduct "conflicted with express statements in the applicable sentencing judgment." *Id.* at 536, 537 (indicating that "to challenge the execution of his sentence under § 2241, Cardona would need to allege that BOP's conduct was somehow inconsistent" with the sentencing judgment).

The problem with *Cardona*'s reading of *Woodall* is that *Woodall* absolutely does not stand for the broad proposition that a habeas petition must allege an inconsistency with the sentencing recommendation to invoke § 2241 jurisdiction. The opinion in *Woodall* is neatly divided into discussions of jurisdiction, 432 F.3d at 241-44, and the merits, *id.* at 244-52. Nowhere in the jurisdictional discussion is there even a hint that BOP's inconsistency with the sentencing recommendation is relevant to the issue of what challenges to "execution" of a sentence entail. Rather, the *Woodall* Court expressly adopted the approach of *Coady v. Vaughn* and other circuits to hold that "execution" of a sentence for purposes of § 2241 jurisdiction includes "the manner of their imprisonment" such as denial of parole. *Id.* at 242.[8] Nowhere did the *Woodall* Court tie habeas jurisdiction to the sentencing judge's recommendation.

The sentencing judge's recommendation *was* relevant, however, to the *merits* question in *Woodall*, i.e., whether BOP's application of its regulations that limited community confinement properly considered statutory factors, including the sentencing recommendation. Thus, at several points in its discussion of the merits,

[8] For example, the *Woodall* Court cited with approval the Second Circuit's view that there is habeas jurisdiction over matters such as "the administration of parole, . . . prison disciplinary actions, prison transfers, type of detention and prison conditions," *Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001), and the Tenth Circuit's assuming habeas jurisdiction over a prisoner transfer case, *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000), none of which implicated a sentencing judge's recommendation. *Woodall*, 432 F.3d at 242.

and *only* in that discussion, the *Woodall* court stressed the singular importance of the sentencing recommendation. *See, e.g.*, *id.* at 244 ("most importantly, any statement by the sentencing court concerning a placement"); *id.* at 247, 251. None of this had anything to do with the jurisdictional issue.

The *Cardona* panel also relied on *McGee v. Martinez*, 627 F.3d 933 (3d Cir. 2010), ostensibly for the proposition that a conflict with the terms imposed by the sentencing court may be relevant to § 2241 jurisdiction. *Cardona*, 681 F.3d at 536. Like *Cardona* itself, *McGee* is decidedly different from Mr. Romano's case, as it addressed a restriction on the petitioner's commissary spending, not remand from home into prison. Indeed, although the *McGee* panel appeared to rely on conflicts between BOP's handling of the petitioner's money and the sentencing judge's restitution order, it expressly recognized that it was the difference between prison confinement and community confinement that triggered habeas jurisdiction in *Woodall*: "That qualitative difference was sufficient to mark Woodall's challenge as one that went to the 'execution' of his sentence, and that was thus cognizable under § 2241." *McGee*, 627 F.3d at 936.

Any doubts as to whether § 2241 jurisdiction properly lies in this case, without the need to allege an inconsistency between BOP conduct and the sentencing recommendation, is dispelled by the Court's unanimous decision in *Vasquez v. Strada*, 684 F.3d at 433. There, the petitioner challenged a limitation on his

community confinement, absent any inconsistency with the sentencing court's recommendation. Nevertheless, citing *Woodall*, this Court held that the petitioner "may resort to federal habeas corpus to challenge a decision to limit his [community confinement] placement." *Id.* Although *Vasquez* was decided before *Cardona*, a quirk of timing resulted in its not obtaining precedential status until a day after *Cardona* was issued, despite the Government's plea that *Vasquez* would be of "significant" value to petitioners, the government, and the courts.[9]

ii. The Court Should Harmonize Any Discrepancies Between *Woodall*, *Vasquez*, and *Cardona* so as to Apply *Woodall*'s Actual Holding to Cases Such as Mr. Romano's and Limit *Cardona* to Its Facts

It is impossible to say whether issuance of *Vasquez* as precedent before *Cardona* would have altered the language used in *Cardona*. However, it is clear that no panel of this Court is empowered to overrule a prior decision of this Court. 3d Cir. I.O.P. 9.1. While *Cardona* does not purport to overrule *Woodall*—or, for that matter, even disagree with it—the *Cardona* panel's misreading of *Woodall*'s jurisdictional holding suggests the need for clarification by this Court, which has the duty "to harmonize [its] decisions where it is possible to do so." *Int'l Bhd. of Elec.*

[9] *Vasquez* was issued on June 1, 2012, 18 days before *Cardona*, but was originally filed as a non-precedential opinion. Doc. No. 003110916790. The Government filed a motion asking the Court to designate the opinion as precedential. Doc. No. 003110919478. This Court granted the motion, and re-filed *Vasquez* as precedential on June 20, 2012, Doc. No. 003110933704, one day after *Cardona* was issued.

Workers, Loc. 803, AFL-CIO v. Nat'l Lab. Rels. Bd., 826 F.2d 1283, 1293 n.17 (3d Cir. 1987). This is particularly so where the same judge sat on the panels of some of the decisions in question. *Id.* at 1293.[10]

Harmonizing *Woodall* and *Cardona* is straightforward, given the obvious factual differences between the cases. *Woodall* is clearly the governing case, as it was first decided, and the *Woodall* panel expressly set out to define "execution" of sentence as the equivalent of "carrying out" a sentence, and to illustrate its application it in the specific context of a challenge to revocation from custody at home to custody in prison. *Woodall*, 432 F.3d at 241-44. The Court unequivocally explained that it was the significant differences between community confinement and prison confinement that "cross[ed] the line" into § 2241 jurisdiction. *Id.* at 243.

Cardona, on the other hand, did not purport to set forth a new standard, but rather purported to follow and apply *Woodall*. Under these circumstances, its mischaracterization of *Woodall* cannot supersede the original's actual holding. Thus, to harmonize *Woodall*, *Vasquez*, and *Cardona* this Court should do what the *Cardona* Court indicated it intended to do, and apply *Woodall*.

This does not mean, however, that this Court must rule that the result in *Cardona* was incorrect. Mr. Cardona would not have met *Woodall*'s jurisdictional

[10] Judge Smith was on the panel of both *Vasquez* and *McGee*, and authored the opinion in *Cardona*.

holding even had the *Cardona* Court characterized it accurately, because Mr. Cardona was challenging a "garden variety prison transfer," i.e., transfer to a different unit in the same prison. Under these very different circumstances, *Cardona* may be construed as the Court's clarification that, in cases concerning "garden variety" prison transfers, the Court may look for something more for habeas jurisdiction: an inconsistency between the challenged BOP practice and the sentencing recommendation. But holding that § 2241 jurisdiction *may* be based on such inconsistency is not the same as holding that it *must* be so in every case. In short, this Court can harmonize the jurisdictional issue in these cases by recognizing that (1) *Woodall*'s definition of "execution" of sentence for purposes of habeas jurisdiction in cases such as Mr. Romano's does not require an allegation of inconsistency with the sentencing recommendation and (2) *Cardona* discussed the sort of additional allegations that may be necessary for § 2241 jurisdiction in "garden variety prison transfer" cases.

D. This Court Should Construe § 2241 Broadly Consistent with Its Historic Purpose to Constrain Executive Detention.

As set forth above, *amici* submit that Supreme Court precedent and this Court's prior decisions provide ample basis for finding § 2241 jurisdiction here. If more is needed, this Court should construe § 2241's jurisdiction broadly consistent with its historic purpose. "The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a

vital instrument to secure that freedom." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). In particular, "[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention" since nobody "should be imprisoned . . . save by the judgment of his peers or by the law of the land." *Rasul v. Bush*, 542 U.S. 466, 474 (2004).

Moreover, habeas "is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *see also Boumediene*, 553 U.S. at 779 ("common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope [has] changed depending upon the circumstances."). Accordingly, the Court should err on the side of making the Writ available to challenge imprisonment without due process in cases of the sort at bar.

As the district court itself recognized, "if § 2241 does not provide jurisdiction . . . a petitioner in Mr. Romano's position is left without any forum to vindicate a serious constitutional wrong." Dist. Ct. Op. at 13 n.11. This is legally, constitutionally, and morally untenable.

E. BOP's Statutory Discretion Does Not Bar Jurisdiction.

The district court also erroneously held that it could not review Mr. Romano's habeas petition because BOP has "statutory discretion" over CARES Act home

confinement placement decisions. Dist. Ct. Op. at 13-14; 16. But BOP's initial placement determinations under the CARES Act are not at issue here. Rather, this case is about—where BOP has already granted such placement—the Court's authority to consider whether BOP revoked it unlawfully.[11]

This is a fundamentally different question. As the Supreme Court explained, "[t]he differences between an initial grant of parole and the revocation of the conditional liberty of the parolee are well recognized." *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 10 (1979). This is 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.* (citation omitted). Further, irrespective of BOP's discretion, "judicial review remains available for allegations that BOP action violates the United States Constitution[.]" *Dababneh v. Warden Loretto FCI*, 792 F. App'x 149, 151 (3d Cir. 2019). Thus, BOP's statutory discretion does not bar review here.

[11] Three of the four cases cited by the trial court concerned *denial* of home confinement *applications*—not at issue here. *Davey v. N'Diaye*, No. 1:22-cv-2254, 2023 WL 2570221, at *7 (D.N.J. Mar. 20, 2023); *Perri v. Warden of FCI Fort Dix*, No. 1:20-cv-13711, 2023 WL 314312, at *3 (D.N.J. Jan. 19, 2023); *Reynolds*, 2022 WL 36225, at *2. Only *Tetterton v. Warden*, FCI Fort Dix, 2023 WL 4045086, at *2-3, concerned a challenge to revocation.

II. Denying § 2241 Relief Permits Untenable Results: Revocations Shielded from Judicial Review.

Unfortunately, Mr. Romano's is not an isolated case. BOP has repeatedly removed people from their homes, jobs, and communities, remanding them to prison without *any* process, based on minor technicalities or absent any alleged wrongdoing at all. In each case described below, the court exercised § 2241 jurisdiction to consider whether revocation was unconstitutional. It is critical that such conduct be subject to judicial review.

A. BOP Has Revoked Home Confinement Without Due Process Absent Any Alleged Violation.

i. Richard Wilford

In June 2023, BOP released Richard Wilford from prison to home confinement,[12] where he spent nearly two months at home reconnecting with his loved ones.[13] Suddenly in August 2023—absent any alleged wrongdoing—U.S. Marshalls abruptly arrested him, revoked his home confinement, and remanded him to prison.[14] BOP provided no reason for the revocation and did not afford Mr. Wilford any opportunity to explain that he had not violated any home confinement

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[12] *Wilford v. Engleman*, No. 2:24-cv-01470, 2024 WL 3973063, at *1 (C.D. Cal. June 27, 2024), *report and recommendation adopted*, 2025 WL 1456190 (C.D. Cal. May 16, 2025).

[13] Pet. for Writ of Habeas Corpus, *Wilford v. Engleman*, No. 2:24-cv-1470, at 6-8 (C.D. Cal. filed Feb. 22, 2024), ECF No. 1.

[14] *Wilford*, 2024 WL 3973063, at *1.

rule and that reimprisonment was unwarranted. Nearly two years later, Mr. Wilford remains in prison.[15]

ii. Vera Kuzmenko

Vera Kuzmenko was released to home confinement in January 2025 and began living at home with her daughter.[16] It is undisputed that Ms. Kuzmenko had not "violated any terms of her home confinement[.]"[17] Nonetheless, about a month after her release, Ms. Kuzmenko was abruptly arrested when she reported to her supervising reentry center as requested.[18] According to the district court, her arrest involved a "troubling exchange" in which U.S. Marshals "told her that they did not know why they were instructed to arrest her."[19] She never received an official explanation.[20] Her counsel was informally advised that the arrest stemmed from a BOP directive requiring the re-imprisonment of people on home confinement who had active immigration detainers, even if they were doing well on home confinement ("the immigration detainer policy").[21] The district court expressed it was "deeply concerned" by BOP's failure to provide a reason for her reimprisonment and

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[15] Fed. Bureau of Prisons, *Find an Inmate*, https://www.bop.gov/mobile/find_inmate/byname.jsp (last visited Aug. 8, 2025).
[16] *Kuzmenko*, 2025 WL 779743, at *1.
[17] *Id.* at *5.
[18] *Id.* at *2.
[19] *Id.*
[20] *Id.*
[21] *Id.*

described the unexplained detention as "not only chilling, but also flatly inconsistent with any notion of due process."[22] The court granted preliminary injunctive relief restoring Ms. Kuzmenko to home confinement.[23]

iii. Dumitru Martin

Dumitru Martin was released to home confinement in August 2024,[24] where he lived at home attending to his "serious medical issues."[25] He "had no disciplinary violations during" his approximately six months at home.[26] Nevertheless, in February 2025, BOP abruptly revoked Mr. Martin's home confinement and reimprisoned him—a lawful U.S. resident—under BOP's immigration detainer policy.[27] Mr. Martin never received any written documentation of this decision[28] or an opportunity to contest his reimprisonment.[29] The district court noted that Mr. Martin "is harmed every day he is improperly incarcerated rather than on prerelease custody" and granted preliminary injunctive relief restoring him to home confinement.[30]

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[22] *Id.* at *5.
[23] *Id.* at *7.
[24] *Martin*, 2025 WL 732829, at *1.
[25] *Id.* at *1-6.
[26] *Id.* at *1
[27] *Id.* at *2 & n.2.
[28] *Id.* at *2.
[29] Pet. for Writ of Habeas Corpus, *Martin v. Phillips*, No. 2:25-cv-00687 at 2 (E. D. Cal. filed Feb. 25, 2025), ECF No. 1-1.
[30] *Martin*, 2025 WL 732829, at *6-7.

B. BOP Has Revoked Home Confinement Without Due Process for Minor Alleged Technical Violations.

i. Eva Cardoza

Eva Cardoza, a 45-year-old mother, spent over a year on home confinement.[31] During that time, she was the primary caregiver for her ailing mother, fiancé—who suffers from heart disease, diabetes, strokes, and is in remission for lung cancer—and five children, including an adult son with disabilities.[32] More than a year later, BOP abruptly reimprisoned Ms. Cardoza based on a single positive test for marijuana.[33] BOP never provided her notice or an opportunity to contest the allegation or offer mitigating evidence to explain why revocation was unwarranted.[34]

As the district court recognized, Ms. Cardoza's family had developed a "unique dependence" on her during home confinement, and her reincarceration resulted in "a dire, urgent situation."[35] Her fiancé, already seriously ill, was diagnosed with colon cancer[36] and had to forgo necessary surgeries and critical hospital care because no one else could care for their children.[37] Her teenage daughter was assaulted while Ms. Cardoza was reincarcerated and, without her

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[31] Am. Pet. for Writ of Habeas Corpus at 1, *Cardoza v. Pullen*, No. 3:22-cv-00591 (D. Conn. filed Aug. 17, 2022), ECF No. 33 [hereinafter "*Cardoza* Petition"].
[32] *Id.* at 12-13.
[33] Marijuana is legal for adult use in her supervising state of New York. *Id.* at 13-15.
[34] *Id.* at 15.
[35] Order, *Cardoza v. Pullen*, No. 3:22-cv-00591 (D. Conn. Aug. 22, 2022), ECF No. 39 [hereinafter "*Cardoza* Order"].
[36] *Cardoza* Petition at 12-13.
[37] *Cardoza* Order.

mother there to support her, began to self-harm.[38] Ms. Cardoza's mother, who lives alone and has diabetes, was left without a reliable caregiver.[39] Ms. Cardoza's own mental and physical health also worsened in prison.[40] The district court granted her request for release pending adjudication of her habeas petition challenging her unlawful revocation, recognizing she had "raise[d] a substantial claim of a violation of her procedural due process rights."[41]

ii. Virginia Lallave

Virginia Lallave, a 35-year-old mother, was released to home confinement in June 2020.[42] While at home, she was the primary caretaker for her ten-month old baby and eight-year-old daughter.[43] She also served as a home health aide for her father, who suffers from renal failure, and worked in construction and maintenance.[44]

Ms. Lallave successfully served over 19 months on home confinement. Then in February 2022—with "limited investigation and process"—BOP suddenly reimprisoned her for a single positive marijuana test.[45] Ms. Lallave never received

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[38] *Id.*
[39] *Cardoza* Petition at 18.
[40] *Cardoza* Order.
[41] *Id.*
[42] Pet. for Writ of Habeas Corpus at 4, *Lallave v. Martinez*, No. 1:22-cv-00791 (E.D.N.Y. filed Feb. 11, 2022), ECF No. 1 [hereinafter "*Lallave* Petition"].
[43] *Id.* at 5.
[44] Mem. & Order at 2, *Lallave v. Martinez*, No. 1:22-cv-00791 (E.D.N.Y. Oct. 13, 2022), ECF No. 42 [hereinafter "*Lallave* Mem. & Order"].
[45] *Id.* at 2-3.

notice that she would be reincarcerated, or a chance to contest the allegations and explain why reimprisoning her was unwarranted.[46] The district court granted her motion for release pending the adjudication of her habeas petition, recognizing "the irreparable harm that incarceration would cause to her family and employment."[47]

iii. Nordia Tompkins

Nordia Tompkins was released to home confinement around June 2020.[48] At home, she reunited with her children, enrolled in cosmetology school, and secured employment.[49] She also successfully petitioned for one of her children to be returned to her from foster care.[50] As the district court noted, she "was able to resume a fairly normal life[.]"[51]

After nearly a year on home confinement, Ms. Tompkins informed her supervising reentry center staff that her phone was not working, and she needed to stop at an AT&T store before returning home.[52] Despite this advance notice, the reentry center deemed her stop an infraction.[53] Ms. Tompkins was abruptly arrested and returned to prison,[54] absent any notice or opportunity to contest the allegation or

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[46] *Lallave* Petition at 7-8.
[47] *Lallave* Mem. & Order at 3.
[48] *Tompkins*, 2022 WL 3212368, at *1.
[49] *Id.* at *1, *10.
[50] *Id.* at *1.
[51] *Id.* at *10.
[52] *Id.* at *2.
[53] *Id.*
[54] *Id.* at *2-3.

explain why reimprisonment was inappropriate.[55] The district court ruled that BOP violated her due process rights.[56]

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Mr. Romano is not alone. Rather, his case exemplifies the broader dangers of executive branch overreach. To be sure, courts may agree or disagree on the merits of whether given revocations were lawful. But it is critical that the courthouse doors stay open to at least *consider* whether BOP has wrongfully uprooted people from their homes and remanded them to federal prison. The alternative is a legal black hole of unchecked executive power—the "core" abuse that habeas corpus was designed to redress. *See Rasul*, 542 U.S. at 474.

CONCLUSION

The Court should reverse and hold that Mr. Romano's habeas corpus petition is cognizable under 28 U.S.C. § 2241.

Date: August 11, 2025

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[55] *Id.* at *14.
[56] *Id.*

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COMBINED CERTIFICATIONS

In accordance with applicable Federal and Local Rules, I certify as follows:

1. I am a member in good standing of the Bar of this Court.
2. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 6,425 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). In making this certification, I have relied on the word count of the word-processing system used to prepare the brief.
3. 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 this brief has been prepared in 14-point Times New Roman, a proportionally spaced typeface, using Microsoft Word word-processing software.
4. The text of the electronic brief is identical to the text in the paper copies. The electronic file containing the brief was scanned for viruses using Carbon Black Cloud, Version 4.0.0.1292, and no virus was detected.

Dated: New York, New York
August 11, 2025

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Allison Frankel

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

On this date, I caused a true and correct copy of the foregoing Brief of *Amici Curiae* in Support of Plaintiffs-Appellants to be served upon all counsel of record via the Court's ECF system, in accordance with 3d Cir. L.A.R. Misc. 113.4.

Dated: New York, New York
August 11, 2025

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