No. 25-1876

IN THE

United States Court of Appeals

for the Third Circuit

MICHAEL ROMANO,

Appellant,

v.

WARDEN, FCI FAIRTON,

Appellee.

On Appeal from the United States District Court for the District of New Jersey, Civ. No. 23-2919
(Hon. Christine P. O'Hearn, U.S. District Judge)

APPELLANT'S OPENING BRIEF AND APPENDIX – VOLUME I of II (pgs. 1-19)

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Introduction

Appellant Michael Romano is a federal inmate. He is serving a 20-year sentence imposed after a jury convicted him of conspiracy to commit wire fraud and money laundering. In June 2022, the Federal Bureau of Prisons (BOP) released him from prison to serve the rest of his federal sentence on home confinement. This placement was authorized by the CARES Act, comprehensive pandemic relief legislation passed at the beginning of the COVID-19 pandemic. Among other things, the CARES Act eliminated the BOP's limitation on only placing inmates on home confinement for the shorter of 10 percent or the last six months of their sentence under 18 U.S.C. § 3624(c)(2), if the Attorney General made a finding that "emergency conditions will materially affect the functioning of the Bureau." Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 12003(b)(2) (2020). Under this authority, the BOP released more than 12,000 inmates to home confinement.

Mr. Romano moved back home with his sister and brother-in-law, reconnected with close family and friends, saw his mother and fiancée nearly every day, visited his father's grave, got health insurance and

began to see doctors, renewed his drivers' license and got permission to drive, applied for jobs, purchased clothes, a cell phone plan, and a computer, and joined a gym. He also complied with every condition of his supervision. Then, 27 days after he arrived home, without explanation, he was suddenly called and told to come to the halfway house that supervised his home confinement. The next morning, the United States Marshals picked him up and returned him to a federal prison.

There was no change in circumstances, Mr. Romano committed no violation, and he received no notice, hearing, or accurate explanation for years. As it turned out, several prosecutors from his underlying criminal case were upset that the BOP had placed Mr. Romano on home confinement and they pressured the BOP to revoke him. But Mr. Romano was told he was returned to prison because he had not completed 50 percent of his sentence. Once he passed the 50 percent threshold a few months later, BOP staff at his prison submitted another application for home confinement, and it was denied. Mr. Romano moved to appeal the revocation and denial but still was not given

accurate information about the BOP's actions.

Mr. Romano filed a petition for habeas corpus under 28 U.S.C. § 2241, arguing that his revocation violated his procedural and substantive due process rights. The government's defense of the revocation was troubling—it offered shifting explanations for Mr. Romano's revocation, including in various declarations submitted to the District Court. It also raised uniformly untenable legal positions. It argued that legal process was only available to inmates on home confinement who were alleged to have committed new violations, not to those without violations like Mr. Romano. Civ. No. 23-2919, ECF No. 31 (D.N.J.). It then asserted the only process it could offer Mr. Romano was a sham hearing with no possibility of returning him to his lawful placement on home confinement. *Id.* at ECF No. 54-1, at 30. The District Court expressed serious concerns about the BOP's candor and conduct, but ultimately dismissed Mr. Romano's petition for lack of jurisdiction.

Mr. Romano raises a single issue on appeal: whether courts have jurisdiction under 28 U.S.C. § 2241 to hear challenges to the BOP's

revocation of home confinement. They do because Mr. Romano challenges (1) revocation from home into prison, which is in the "core" of habeas, and (2) the "execution" of his sentence. *See Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235 (3d Cir. 2005). The District Court wrongly relied on a subsequent opinion, *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012), even though *Woodall* is controlling.

This Court should, therefore, reverse the District Court's dismissal of Mr. Romano's habeas petition and hold it has jurisdiction to hear Mr. Romano's claim.

Statement of Subject Matter and Appellate Jurisdiction

The District Court had subject-matter jurisdiction under 28 U.S.C. § 2241; U.S. Const., Art. I, § 9, cl. 2 (Suspension Clause).

Mr. Romano exhausted his administrative remedies. Appx89-98.[1] Venue was proper in the District of New Jersey because, at the time he filed his petition, Mr. Romano was an inmate at the federal prison at

[1] "Appx" refers to the accompanying appendix filed with the opening brief.

FCI Fairton. 28 U.S.C. § 1391(b); 28 U.S.C. § 2243; *Rumsfeld v. Padilla,* 542 U.S. 426, 435 (2004); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 446 (3d Cir. 2021).

The District Court entered its final order dismissing Mr. Romano's petition on April 24, 2025, but then issued an Amended Opinion (Op.) on June 30, 2025, which was entered on July 21, 2025. Appx3-19. Mr. Romano filed a notice of appeal on May 5, 2025. Appx1; Fed. R. App. P. 4(a)(1)(B).

This Court has appellate jurisdiction under 28 U.S.C. §§ 1291 and 2253(a).

Statement of Related Cases

Mr. Romano is unaware of any cases pending before this Court or the District Court which are related to the instant appeal.

Statement of the Issue

I. Whether the district court had jurisdiction under 28 U.S.C. § 2241 to hear a constitutional challenge to the unlawful revocation of a BOP inmate's home confinement.

Preservation of Issue and Standard of Review:

- Mr. Romano pleaded, in his Amended Complaint, that the District Court had jurisdiction, and he supported this claim with legal authority. Appx32.

- The government moved to dismiss the petition, Civ. No. 23-2919, ECF No. 54. Mr. Romano responded. ECF No. 66.

- This Court exercises plenary review over dismissal of a § 2241 petition for lack of subject-matter jurisdiction. *United States v. Friedland,* 83 F.3d 1531, 1542 (3d Cir. 1996); *United States ex rel. Atkinson v. Pa. Shipbuilding Co.,* 473 F.3d 506, 514 (3d Cir. 2007) (review of dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) is plenary).

Statement of the Case

A. Factual history

Mr. Romano's § 2241 petition alleged facts which this Court is required to assume are true in reviewing a ruling on a motion to dismiss. In addition, the government produced and admitted information in discovery and throughout the litigation in the District Court and that too should be considered in ruling on the motion to dismiss. Finally, although the District Court dismissed Mr. Romano's petition and then held that his motion for summary judgment was moot, it also made significant factual findings about the case that are entitled to deference.

In 2014, Michael Romano was sentenced to serve 240 months in prison after a jury in the Eastern District of New York convicted him of conspiracy to commit mail fraud and money laundering. Crim. No. 09-168 (E.D.N.Y.). Mr. Romano had led a telemarketing scheme that ended in 2008, which had sold investors coins that were worth substantially less than advertised. Appx4 (Op. at 2). Mr. Romano self-surrendered to a BOP institution on April 26, 2014. Appx111. He has had a "spotless

institutional record, with positive reports from BOP staff" describing that he had "devoted his time to helping others." Appx5 (Op. at 3 & n.2); *see also* Appx156 (BOP Recidivism and Risk Assessment indicating negative scores for risk under all measures).

Mr. Romano was in BOP custody when the COVID-19 pandemic was declared in the United States. Public health authorities moved quickly to understand the virus and it was clear that prisons, like other congregate care institutions, were powder kegs of viral transmission. As relevant here, within two weeks of the declaration of the pandemic, Congress extended the BOP's authority to release federal inmates to home confinement, removing any time limitations from 18 U.S.C. § 3624 (previously capped at the lesser of 10 percent or six months). *See* Appx164-65 (excerpt of CARES Act). The BOP thereafter circulated internal guidance memoranda but never implemented any regulation governing how to conduct its expanded home confinement authority. *See, e.g.*, Appx170-74, 184-89, 207-09, 245-51. The BOP also informally created a Home Confinement Committee out of its Central Office's Correctional Programs Division to review certain cases "when need

arose." Appx131-32, 485. The Committee did not have formal meetings, communicated over phone and email, did not issue written decisions, and staff "usually called" the institution to inform them of the Committee's decision. Appx305, 485. In total, the BOP placed over 12,000 inmates on home confinement under the CARES Act. Appx144 (Ex. 11 to Amended Petition (declaration describing BOP data received through FOIA litigation regarding CARES Act placements)).

In February 2022, BOP staff at FCI Fairton reviewed Mr. Romano's case, his time in custody, and other relevant factors, including vulnerability to COVID-19. Appx305. BOP staff found that Mr. Romano satisfied all of the criteria for placement and recommended he be placed on home confinement. Appx424-25. Mr. Romano had completed approximately 48 percent of his sentence, Appx323, which meant his case was not prioritized for placement, but was also not prohibited, Appx138-39. The prosecuting Assistant United States Attorneys ("prosecutors") and victims of his offense were notified of his potential release to home confinement. The victims received communication through the BOP's victim notification system (VNS),

which "provides a requesting victim and/or witness of a serious crime with information on the *release from a Bureau institution* of the inmate . . . ." 28 C.F.R. § 551.150 (emphasis added); *see also* 28 C.F.R. § 551.151(d); BOP Program Statement 1490.06.[2] The prosecutors and victims registered their opposition to that placement through the prosecutors' emails with staff at FCI Fairton and with Northeast Regional Counsel for the BOP. Appx330-33. Regional Counsel told the prosecutors he took their concerns seriously but that "Wardens will most likely continue to rely on the current guidance *in order to avoid the appearance of being unduly influenced in their decision making*." Appx333 (emphasis added). Several emails between Regional Counsel and staff at FCI Fairton were exchanged on the same days that the prosecutors communicated their objections. Appx296-97. The prosecutors' opposition was also documented on Mr. Romano's transfer

[2] A BOP Program Statement is "an interpretative statement of position circulated within [the] agency that serves to provide administrative guidance in applying a then existing published rule." *Cook v. Wiley,* 208 F.3d 1314, 1317 (11th Cir. 2000). P.S. 1490.06 is available at https://www.bop.gov/policy/progstat/7320_001_CN-1.pdf and also at Appx429-57.

referral, which was reviewed by the Warden and four staff people at FCI Fairton, and also the head of the halfway house. Appx328-29 (BP-210 referral form).

Notwithstanding some opposition, the BOP continued the process to place Mr. Romano on home confinement. Mr. Romano signed contracts establishing his understanding of release conditions, how to comply with them, and what conduct could result in disciplinary action and possible revocation. Appx106-09 (BP-460 (conditions of home detention); BP-434 (community based program agreement); BP-548 (home confinement and community control agreement)). BOP staff also told Mr. Romano not to violate the conditions lest he be returned to custody. Appx101. His home confinement would be supervised by the non-profit organization, CORE Brooklyn House Residential Reentry Center, and he would also have some contact with the United States Probation Office for the Eastern District of New York. *See* Appx104.[3]

On June 22, 2022, Mr. Romano was released from FCI Fairton

[3] *See* Halfway House Resident Handbook, *available at* https://www.nyep.uscourts.gov/reentry/Brooklyn%20House%20Resident%20Hanbdook.pdf.

and picked up by his brother and fiancée. He stopped by Brooklyn House and then went to his sister's home where his mother, siblings and their spouses, his nieces, and their children were present to greet him. Appx101. He moved in with his sister and brother in law in their home in Levittown, New York. *Id.* Mr. Romano followed every rule of home confinement and worked quickly to reenter the community and restart his life. He applied for identification documents, health insurance, and employment, saw his first doctor and set up more doctor's appointments, opened a bank account, got a cell phone plan, purchased clothes and a computer, and joined a gym. Appx101-02. Most importantly, he reconnected with family and close friends, particularly his then 84-year old mother and his fiancée. On July 17, 2022, he visited his father's grave with his fiancée. Appx102.

On July 18, 2022, Mr. Romano was unexpectedly told to report to Brooklyn House. It was early Monday morning and he typically reported to the halfway house on Fridays. When he showed up, no one would tell him anything and he was held there overnight. The next morning, United States Marshals picked Mr. Romano up and

transferred him to the Metropolitan Detention Center (MDC) in Brooklyn, the closest federal holding center, where he spent 23 days. For the first week until he was assigned to a unit at the Brooklyn MDC, his family could not find or communicate with him and they were distraught. Appx102. Ultimately, on August 10, 2022, Mr. Romano was returned to the federal prison at FCI Fairton, where he had been designated prior to his placement on home confinement in June. *Id.* He never had any opportunity to appear before a neutral decisionmaker to contest his revocation and explain why he should be allowed to remain at home, nor did he know why he had been revoked. Appx104.

It turns out that prosecutors had kept complaining about Mr. Romano's release until they got some action. In addition to the prosecutors voicing their opposition to staff at FCI Fairton and Regional Counsel, they had raised objections to Mr. Romano's release with their former colleague who now worked at the Office of the Deputy Attorney General (ODAG). They had first contacted him in April 2022 to complain about Mr. Romano's "early" release to home confinement, expressing "hop[e] that perhaps the AG is reconsidering these

guidelines allowing the release of so many white collar defendants extremely early." Appx341. They contacted him again on July 11, 2022. Appx336. This time, the ODAG colleague contacted the BOP to inquire about Mr. Romano's case. Appx335. That inquiry set off a flurry of emails and meetings which proceeded at a rapid pace. Appx305-33; *see, e.g.*, Appx305 (pushing to review Mr. Romano's case quickly and asking when the next Home Confinement Committee meeting would take place because "ODAG will ask").

Mr. Romano was not given this information about the reason for his return. Instead, the BOP misrepresented to him why and under what circumstances his home confinement was revoked. He was told it was because he had not yet served 50 percent of his sentence—which was "inaccurate."[4] Appx6 (Op. 4 & n.3). Staff at FCI Fairton told him

[4] It was well-known that an inmate could be placed on home confinement during the COVID-19 pandemic very early into their sentence. ECF No. 17. Moreover, Mr. Romano showed that the BOP placed at least 500 people on home confinement before they had completed either 50 percent of their sentence or 25 percent of their sentence with less than 18 months remaining. Appx143-46 (analyzing data about inmates released to CARES Act home confinement, collected from FOIA litigation with the BOP).

they would put in an application for home confinement again when he had served 50 percent of his sentence, which would be within just two months. Appx103-04. Mr. Romano relied in good faith on these representations. *Id.* Mr. Romano's 50 percent date came and passed, he again signed paperwork for home confinement placement, and he waited. In late December 2022, the BOP issued internal guidance that it would consult the United States Attorney's Office of the prosecuting District before placing inmates on home confinement who had more than five years remaining on their sentences. Appx245-49.[5] The BOP denied him placement on home confinement a few days later. Appx104.

B. Procedural history

On January 3, 2023, the day Mr. Romano learned he was denied placement on home confinement, he immediately started to exhaust the BOP's administrative process. Appx90-91, 104. In February 2023, Mr. Romano filed a pro se petition in the District of New Jersey under 28

[5] It appears that the prosecutors' specific interest in Mr. Romano's case was, at least partially, the genesis for this new guidance. Appx341.

U.S.C. § 2241 challenging his unlawful revocation, as well as the subsequent denial of placement on home confinement. The District Court dismissed the petition without prejudice because Mr. Romano had not yet exhausted his administrative remedies. *Romano v. Warden*, 2023 WL 3303450, at *8 (D.N.J. May 8, 2023).

Mr. Romano exhausted his administrative remedies on April 24, 2023, when he was denied relief at the final stage of BOP review by an Administrator for the National Inmate Appeals. Appx98. He filed another pro se petition under 28 U.S.C. § 2241 which was docketed at Civil Action Number 23-2919. ECF No. 1. The District Court appointed the Office of the Federal Public Defender to represent Mr. Romano, but the government already had a response deadline. ECF No. 4.

The government's first version of the reasons for Mr. Romano's revocation came through an Answer to Mr. Romano's pro se petition. ECF No. 7. The government filed an Answer declaring that Mr. Romano was categorically ineligible for release because he had not served 50 percent of his statutory sentence as the BOP required. Appx7 (District Court's opinion, characterizing ECF No. 7). The government explained

that shortly after Mr. Romano was transferred to home confinement, "it was discovered that the transfer was in error as he had not met the [50%] requirement." Appx399. This was not true. *See also* ECF No. 9, at page 11 (transcript of status conference where government again said "that the return to FCI Fairton, the basis was not meeting the time-served requirement").

The government's second version of Mr. Romano's revocation came three months later, in its Answer to his counseled Amended Petition. *See* ECF Nos. 14-17 (also requesting bail and discovery). In the government's Second Answer, it now revised its explanation of what happened: that it was a "discretionary revocation based on purportedly new victim concerns." Appx7 (District Court's opinion characterizing ECF No. 20). With the same declarant and the Official who had actually decided that Mr. Romano should be revoked as a second declarant, the government explained the BOP had "deemed [Mr. Romano] inappropriate for CARES Act home confinement" because, among other reasons, the victims and prosectors had been "voicing extreme concern." Appx410, 481. Despite the government's assertion, the District Court

found "there [was] no indication in the record of any new victim concerns arising after [Mr. Romano's] release." Appx7 (Op. at 5 & n.6). None of the reasons the government supplied in its Second Answer showed any misconduct, change in circumstances, or even information that was not known before Mr. Romano's placement on home confinement.

The District Court ordered limited discovery, "finding good cause based on the unusual factual posture," including Mr. Romano's "undisputed compliance with the terms of his home confinement, the abrupt and unexplained revocation of that status, and the lack of contemporaneous procedural safeguards." Appx9 (Op. at 7 & n.9).

The government's third version of Mr. Romano's revocation came through its production of discovery and even after. *See* Op. at 5 ("It was only through discovery—after the Court expressed concerns about the adequacy of the record—that [this] different account emerged."). The government itself argued that *it* had only obtained this information *about its own* decisions through "post-answer discovery." ECF No. 54-1, at 12. A series of emails from July 11 to July 18, 2022 showed that the

revocation was due to pressure from prosecutors. Appx7 (District Court opinion characterizing discovery production). The prosecutors had consistently, over several months, voiced their opposition to Mr. Romano's "release" and their former colleague, now at ODAG, eventually inquired further. It was only then that the Home Confinement Committee moved to retroactively evaluate Mr. Romano for home confinement and revoke his placement. A305-33. Mr. Romano was the only inmate who was ever retroactively evaluated by the Home Confinement Committee after he moved home to serve the rest of his sentence. *See* Appx384 ("After a reasonably diligent search, BOP does not have within its possession, custody, or control information or documents regarding inmates that transferred to home confinement under the CARES Act and were reviewed post-transfer by specifically the Home Confinement Committee."); *see also* Appx137.

Mr. Romano filed another motion for bail, which also provided the Court with a preview of what the government's disclosures had revealed. ECF Nos 42-43; Appx367-88.

The parties then filed cross-motions for summary judgment, ECF

No. 55, with the government additionally filing a motion to dismiss based on a facial challenge to the Court's jurisdiction. ECF No. 54.

C. Decision and order to show cause

On April 24, 2025, the District Court dismissed the case for lack of jurisdiction, and dismissed as moot the cross-motions for summary judgment and Mr. Romano's bail motion. ECF Nos. 69-70. It issued an Amended Opinion which was entered on July 21, 2025. Appx3-19 (ECF No. 83).

The Court determined that the government raised a facial objection because, even if true, the allegations did not set forth a claim over which the Court had jurisdiction. Appx11. The Court concluded that revocation from home confinement is not cognizable under § 2241 because Mr. Romano did not challenge the fact or duration of the sentence or "execution of his sentence in any way that is subject to judicial review as defined by current precedent." Appx12-13 (explaining *Cardona* clarified *Woodall* and meant an execution claim must "allege that the BOP is failing to implement the sentence as it was judicially

imposed"). The Court found that *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Young v. Harper*, 520 U.S. 143 (1997) were "distinguishable in several material respects," including that they were state cases and that parolees were legally released from custody. Appx13-15. The Court also found the case was not meaningfully distinguishable from *Cardona*, in which an inmate contested his referral to a restrictive "Special Management Unit." Appx16. In sum, the Court concluded that revocation of home confinement was a "BOP placement decision" not subject to review. Appx18.

In determining it did not have jurisdiction under this Court's precedent, it expressed concern that, given the narrow scope of other forms of relief, a petitioner in Mr. Romano's position "is left without any forum to vindicate a serious constitutional wrong." Appx15 (Op. at 13 & n.11). It appreciated that "as a practical and human matter, the experience of serving a sentence at home differs dramatically from incarceration in a prison." *Id*. And it found that the cases in the Second Circuit that have recognized a liberty interest in remaining on home confinement "appear[ ] more faithful to the animating principles of the

Suspension Clause" and suggested this Court should "reconsider or modify its approach under the facts of this case." *Id*.

The District Court was also troubled both by Mr. Romano's revocation and the government's conduct. It considered that the "revocation appears to have been unfair, unjust, and done without any process" and that the allegations raised serious concerns "particularly with respect to fairness and transparency." Appx18. It also found that:

> [T]he shifting nature of the BOP's explanations over the past three years—some of which were initially presented to the Court in sworn declarations—has given rise to serious concerns about its candor, particularly in light of the absence of any alleged rule violation or contemporaneous justification in the record.

Appx7.

The Court then reopened the case and issued an Order to Show Cause why sanctions should not be ordered based on statements the government made under oath to the Court. Appx389-91 (Amended Order). The government provided several declarations regarding its statements to the Court, ECF No. 77. In its submission, it included another relevant email about Mr. Romano's revocation that had not been disclosed, Appx477-79, (likely because the communication was

from December 2022 and the government had considered its discovery obligation to extend no further than July 2022, when the BOP revoked Mr. Romano's home confinement). The Court would not remove certain negative language about the government in its Opinion, but otherwise found sanctions were not warranted against the Assistant United States Attorney.[6] ECF Nos. 72-73, 77, 79-80. The Court discharged the Order to Show Cause in a text order, and then issued an Amended Opinion and Amended Order to Show Cause. Appx3-19, 389-91.

This appeal follows.

[6] Mr. Romano's counsel agreed that the named AUSA should not face personal sanctions, but reasserted broader concerns about the impact of the government's conduct on Mr. Romano's liberty. ECF No. 78.

Summary of the Argument

The District Court had jurisdiction to hear Mr. Romano's petition because his due process challenge to the unlawful revocation of his home confinement revocation is a core habeas claim, consistent with the Supreme Court's opinions on revocation from parole, *Morrissey v. Brewer*, 408 U.S. 471 (1972), and from pre-parole, *Young v. Harper*, 520 U.S. 143 (1997). Both cases were brought in habeas and the Court found prison authorities placing inmates at home gave them a liberty interest such that revocation required due process protections.

Jurisdiction regarding a challenge about home confinement is also consistent with this Court's holding in *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 244 (3d Cir. 2018). That challenge about halfway house placement was cognizable under § 2241 as it related to the "execution of a sentence." Like halfway house placement, home confinement is entirely unlike serving a sentence in an ordinary penal institution and thus properly addressed through a petition under 28 U.S.C. § 2241. By contrast, *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012) does not control the inquiry as the District Court found: it is

about the entirely unrelated issue of an inmate contesting the BOP's internal decision to refer him to a special unit for disruptive inmates.

Alternatively, in this rare instance, Mr. Romano's petition was a cognizable § 2241 challenge to the "duration" of his sentence, because his revocation excluded him from the sweeping clemency afforded to every federal inmate still on home confinement at the end of 2024.

Whether Mr. Romano's challenge is framed as core habeas or execution of sentence, and regardless of the strength of the merits, the District Court should at least have been able to consider if reincarcerating Mr. Romano was lawful.

Argument

The District Court had jurisdiction under 28 U.S.C. § 2241 to decide Mr. Romano's claim that the BOP unlawfully revoked his home confinement.

A. Standard of Review

This Court exercises plenary review over a district court's legal conclusions in denying a habeas petition under 28 U.S.C. § 2241. *Reese v. Warden Philadelphia, FDC*, 904 F.3d 244, 246 (3d Cir. 2018).

In this inquiry, courts must accept as true all material allegations set forth in the complaint, and must construe those facts in favor of the nonmoving party. *In re Schering Plough Corp. Intron/Temodar Consumer Class Action*, 678 F.3d 235, 243 (3d Cir. 2012) (discussing how courts, evaluating standing under Rule 12(b)(1), apply the standard of reviewing a complaint pursuant to a Rule 12(b)(6)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Huertas v. Bayer US LLC*, 120 F. 4th 1169, 1174 (3d Cir. 2024) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Habeas Rule 7(b) also allows the District Court to expand the record, and the Court

below considered additional discovery before ordering dismissal. Accordingly, this Court can also consider the petition, undisputed facts, or the court's resolution of disputed facts. *See Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981).

B. Analysis

1. Core habeas

a. Severe restraint on physical liberty is a core concern of traditional habeas

Under 28 U.S.C. § 2241(c)(3), a person may receive habeas relief only if he "is in custody in violation of the Constitution or laws or treaties of the United States." Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Because Mr. Romano was detained at FCI Fairton (in the District of

New Jersey) when he filed his petition and he asserted that his detention there was based on the unlawful revocation of his home confinement, in violation of his Constitutional right to due process, the District Court had jurisdiction over his § 2241 habeas petition.

"Section 2241 codifies traditional habeas corpus relief." *Holland v. Warden Canaan USP*, 998 F.3d 70, 74 (3d Cir. 2021) (looking to history of federal habeas to find limits on successive petitions was not jurisdictional). Habeas corpus is Latin for "that you have the body," Black's Law Dictionary 728 (8th ed. 2004), and the writ of habeas corpus ("the writ") dates back to the English common law and then was enshrined in the U.S. Constitution.[7] While the "traditional function of the writ [was] to secure release from illegal custody," it has "evolved as

[7] The English writ of habeas corpus ad subjiciendum, used to "inquir(e) into illegal detention with a view to an order releasing the petitioner" dates back at least to the 16th Century. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The importance of this writ was recognized by the Founders. Alexander Hamilton described, among other things, "the practice of arbitrary imprisonments, [as being], in all ages, the favorite and most formidable instruments of tyranny." The Federalist No. 84, at 480 (1788) (Clinton Rossiter ed., 1961). The privilege of the writ of habeas corpus is the only explicitly designated privilege in the United States Constitution. U.S. Const. art. I, § 9, cl. 2 (Suspension Clause).

a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction." *Preiser v. Rodriguez*, 411 U.S. 475, 483-86 (1973); *accord United States v. Ross*, 801 F.3d 374, 379 (3d Cir. 2015) (citing Supreme Court cases expanding the writ to encompass harms and remedies other than immediate discharge from physical confinement and concluding that the term "custody" in federal habeas statutes is "designed to preserve the writ of habeas corpus as a remedy for *severe restraints on individual liberty*") (quoting *Hensley v. Mun. Court, San Jose Milpitas Judicial Dist.,* 411 U.S. 345, 351 (1973) (emphasis added by *Ross*)).

That is, the writ protects against severe restraints on individual liberty, not just technical release from custody. Any executive action that can lengthen a sentence and goes to "the fact or duration of the prisoner's custody," *Preiser*, 411 U.S. at 486 – such as the administration of parole, computation of a prisoner's sentence by prison officials, or prison disciplinary actions – generally falls into this category of severe restraints on individual liberty. *Accord Jones v.*

Hendrix, 599 U.S. 465, 475-76 (2023) (describing "manner-of-detention-challenges" to unlawful administrative proceedings, such as unlawfully being denied parole or good time credits, as cognizable under 28 U.S.C. § 2241). Likewise, habeas may be appropriate even if a person is not seeking total release. *See Trump v. J.G.G.*, 604 U.S. ---, 145 S. Ct. 1003 (2025) (challenges to removal to a third country under the Alien Enemies Act must be brought in habeas); *Nance v. Ward*, 597 U.S. 159, 167 (2022) (capital prisoner may seek "to overturn his death sentence" in habeas by "analog[y]" to seeking release); *see also Wilkinson v. Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring) (opining that § 2243 contains "broader remedial language to permit relief short of release," and citing, as an example, relief ordering a "quantum change in the level of custody," such as release from incarceration to parole (internal citation omitted)).

Mr. Romano's claim easily falls within the category of core habeas, which is cognizable under 28 U.S.C. § 2241. The fact that Mr. Romano technically remains in BOP custody whether physically in a BOP institution or placed on home confinement is not dispositive of the

jurisdictional question. His petition was not required to seek absolute release from all forms of custody. His revocation from home confinement back to prison was a "severe restraint[ ] on [his] individual liberty." *Ross*, 801 F.3d at 379. And, because the only remedy Mr. Romano seeks is a speedier release back home, the "sole federal remedy is a writ of habeas corpus." *Preiser*, 411 U.S. at 486.

b. A liberty interest attaches to a person under a criminal justice sentence who is living at home

The merits decisions in the habeas cases of *Morrissey v. Brewer,* 408 U.S. 471 (1972) and *Young v. Harper*, 520 U.S. 143 (1997) demonstrate that habeas is the proper vehicle to challenge removal from home placement at the end of a prison sentence. Where a court considers the merits of a claim, it has determined it has jurisdiction over the subject matter. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (explaining courts generally maintain "an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party").

In *Morrissey*, the Supreme Court held that individuals on parole under an Iowa statute who remained "in the legal custody of the warden or superintendent" and could be reincarcerated "at any time," nevertheless had a due process right which called for "some orderly process, however informal" before their parole could be revoked. 408 U.S. 481-82. The Court found that the "nature" of the interest in being in the community on parole was one within the contemplation of the Due Process Clause:

> . . . . Subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life. Though the State properly subjects him to many restrictions not applicable to other citizens, his condition is very different from that of confinement in a prison.
> * * *
> We see, therefore, that the liberty of a parolee, although indeterminate, *includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others*.

Morrissey, 408 U.S. at 481-82 (emphasis added) (footnotes omitted). The Supreme Court later confirmed that habeas corpus is the "specific instrument to obtain release," under myriad circumstances, including when a person's "parole was unlawfully revoked, causing him to be

reincarcerated in prison[.]" *Preiser*, 411 U.S. at 486.

The Supreme Court extended *Morrissey*'s due process protections to a "preparole" program. *See Young*, 520 U.S. at 147. Preparole Conditional Supervision Program was a temporary program created to ease prison overcrowding in Oklahoma. *See Harper v. Young*, 64 F.3d 563, 565 (10th Cir. 1995). Like parolees, the pre-parolee "kept his own residence; he sought, obtained, and maintained a job; and he lived a life generally free of the incidents of imprisonment.'" *Id.* at 147-48. Further, like the parolee, the pre-parolee's liberty was conditioned upon compliance with conditions such as regular reporting and abstinence from alcohol. *Id.* (citing *Morrissey*, 408 U.S. at 478). Thus, the Court held, preparole "was sufficiently like parole that a person in the program was entitled to the procedural protections set forth in [*Morrissey*] before he could be removed from it." *Id.* at 144-45. And the ground that Harper was denied parole was not a lawful reason to revoke him from preparole. *Harper*, 64 F.3d at 567.

c. Home confinement is like parole and pre-parole.

Home confinement is nothing like the ordinary incidents of prison life: despite its name, it represents freedom from confinement.[8] Indeed, "the liberty associated with a life outside the walls of a penal facility dwarfs that available to an inmate." *Harper*, 64 F.3d at 566.

A person on home confinement can wake up when he wants, go to the bathroom when he wants, walk to the kitchen and prepare his own food when he wants, and spend time with friends and family when he wants. He can shut a door to his own bedroom when he wants and have real privacy. He has autonomy over his medical care, can seek community

[8] In addition to the subjective experience, home confinement is also a separate program from anything else administered by the BOP. It falls under "pre-release custody" and 18 U.S.C. § 3624 is the only authority under which the BOP can place people on home confinement. By comparison, inmates can also be placed in a halfway house through § 3621 which authorizes the BOP "*at any time* . . . [to] direct the transfer of a prisoner from one penal or correctional facility to another." (emphasis added). By statute and program statement, home confinement is administered in cooperation with the United States Probation Office in the District of release, with supervision by outside contractors permitted. 18 U.S.C. § 3624(c)(4); BOP Program Statement 7320.01 (last modified Aug. 2016). Its goals are adjustment and re-entry into the community. 18 U.S.C. § 3624.

employment, earn a living wage, attend religious services, and enjoy countless other freedoms that most civilians do not even contemplate. Placement on home confinement, like on parole (*Morrissey*) or pre-parole (*Young*) is legally and factually unlike prison. Indeed, in the federal system, home confinement looks most like the former federal parole.

Moreover, home confinement shares another key component with parole and pre-parole: the implicit promise that program participants will remain at home absent significant infractions. Indeed, "[i]mplicit in the system's concern with parole violations is the notion that the parolee is entitled to retain his liberty as long as he substantially abides by the conditions of his parole." *Morrissey*, 408 U.S. at 477, 479; *see also Young*, 520 U.S. at 148; *Pa. Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 365 (1998) (explaining early release from institutional custody is granted "in return for the parolee's assurance that he will comply with the . . . conditions of his release," and "only because it is able to condition [release] upon compliance"). This implicit promise is part of the constellation of factors that establish the nature of this conditional

liberty, liberty which is entitled to the protections of the Due Process Clause.

Here, Mr. Romano was told by BOP and halfway house staff that he would not return to prison unless he violated the terms of release. Appx101. The statutes, regulations, and policy statements governing home confinement, Appx210-63, public communications from BOP leadership, Appx176-83, and the agreements the BOP requires people to sign when they commence home confinement, Appx106-09, also support this implicit promise. All of these provide ample evidence that Mr. Romano reasonably expected that he would not be returned to prison without cause.

This Court can accordingly conclude that the BOP's home confinement program bears the same "essential" features as the programs at issue in *Morrissey* and *Young*. The "nature" of this interest triggered due process protections before the government could take it away.[9] The nature of the interest in remaining home and its revocation,

[9] Other district courts have reached the merits of such claims and determined that federal inmates possess a liberty interest in home confinement that cannot be revoked without the due process protections

returning Mr. Romano to prison without due process, also established jurisdiction for the District Court to hear the claim on the merits.

The District Court below disputed the significance of *Morrisey* and *Young*, because both involved claims by *state* prisoners and were not brought pursuant to 28 U.S.C. § 2241. *See* Appx13-14. But that distinction is of no consequence. The cases were brought by people in custody to challenge their unlawful revocation from home placements and return to prison in violation of the federal Constitution. Both cases illustrate the core exercise of habeas jurisdiction – when the Executive severely restrains a protected federal liberty interest – and whether a petition is specifically brought under § 2241 or § 2254 is irrelevant to

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of *Morrissey*. *See, e.g.*, *Mason v. Alatary*, 2024 WL 3950643, at *6-10 (N.D.N.Y. Aug. 27, 2024) (non-precedential); *Kuzmenko v. Phillips*, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025) (non-precedential) (granting a temporary restraining order requiring immediate release of petitioner back to home confinement from custody, as a restoration of the status quo); *Martin v. Phillips*, 2025 WL 732829 (E.D. Cal. Mar. 12, 2025) (non-precedential) (ordering preliminary injunction for Martin to be transferred back to prerelease custody; and restraining respondents "from removing Petitioner from prerelease custody based on his immigration status"). The government appealed *Kuzmenko* and *Martin* and then moved to voluntarily dismiss both appeals. *See* Appeal Nos. 25-3145, 25-3149, ECF Nos. 7, 9 (9th Cir. July 7, 2025).

this issue.[10]

The District Court otherwise rejected *Morrisey* and *Young* because of purported differences between home confinement and parole, describing parole as a "legal release from prison" while home confinement is "merely a 'change in the location where the inmate serves his sentence,'" with the person still remaining in "custody within the meaning of § 3621." DE 69 at 11-12 (citations omitted). This was wrong in several respects. People on parole or pre-parole are also still technically in "custody." *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963). So too for those living in a halfway house and, as discussed below, that placement decision is cognizable under § 2241. *See Vasquez v. Strada*, 684 F.3d 431, 433 (3d Cir. 2012); *Woodall*, 432 F.3d at 241-44. And, importantly, inmates are not in "custody within the meaning of § 3621." *See* Appx14 (Op. at 12). The only authority to place inmates on home confinement is under § 3624. Section 3621 has no time limitation

[10] Indeed, the main difference between state and federal prisoners challenging the "execution" of their sentence is that state prisoners must proceed under the more specific rule, 28 U.S.C. § 2254, and also apply for a certificate of appealability. *See Coady v. Vaughn*, 215 F.3d 480, 484-85 (3d Cir. 2001).

on placement and the BOP could have placed Mr. Romano in a halfway house under § 3621 at any time, including during the course of the litigation.

This Court has recognized that similar challenges to parole revocation proceedings (which take a person from technical custody served at home to actual custody in a prison) are cognizable under § 2241. *See Callwood v. Enos*, 230 F.3d 627, 632-34 (3d Cir. 2000); *United States v. Kennedy*, 851 F.2d 689, 690 (3d Cir. 1988) (finding claim that parole commission impermissibly relied on immunized testimony to increase petitioner's minimum sentence must be brought in § 2241 petition); *cf. Bennett v. Soto*, 850 F.2d 161, 162–63 (3d Cir. 1988), *superseded by statute on other grounds as recognized by, Callwood,* 230 F.3d 627 (holding that Section 2255 does not encompass the power to entertain federal prisoner's claim of wrongful revocation of parole). It follows that revocations from other forms of conditional prison release into the community—like home confinement—are equally cognizable in habeas.

Mr. Romano's § 2241 petition alleging a colorable constitutional

violation, that the BOP violated his due process rights in revoking his home confinement, provides sufficient fact and law for this Court to find it has jurisdiction. *Cf. Gillette v. Warden Golden Grove Adult Correctional Facility*, 109 F.4th 145, 152 (3d Cir. 2024) ("True jurisdictional limitations are set by the Constitution and by Congress, not by rules of procedure or judge-made doctrine.").

2. This Court's 2241 jurisprudence gave the District Court jurisdiction over Mr. Romano's claim

In addition to traditional core habeas claims, this Court recognizes certain challenges to the "execution of a sentence" to be cognizable under § 2241. *McGee v. Martinez*, 627 F.3d 933, 935 (3d Cir. 2010) (citing *Leamer v. Fauver*, 288 F.3d 532, 542 (3d Cir. 2002) and *Coady v. Vaughn*, 215 F.3d 480, 485 (3d Cir. 2001)); *Woodall*, 432 F.3d at 242. Under this Circuit's precedent, § 2241 jurisdiction turns on "whether granting the petition would 'necessarily imply' a change to the fact, duration, or execution of the petitioner's sentence." *McGee*, 627 F.3d at

936.[11]

This Court has already recognized that § 2241 claims are cognizable for similar deprivations like limitations to halfway house placement. *See Vasquez*, 684 F.3d at 433 (challenging the BOP's decision to limit halfway house placement to 151 to 180 days, not the full 12 months available under the Second Chance Act) (citing *Woodall*, 432 F.3d 235).[12] In *Woodall*, a federal prisoner challenged the validity of a BOP regulation limiting placement in community confinement to the lesser of ten percent of the total sentence or six months. This Court found that the regulation was not a permissible construction of

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[11] A challenge to the manner of detention or execution of a sentence is not an attack on "the conditions of the prisoner's confinement," which normally must proceed through a civil rights action. *See Leamer,* 288 F.3d at 542; *Bell v. Wolfish*, 441 U.S. 520, 526, n.6 (1979) (leaving for "another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement"); *but see Hope v. Warden York County Prison*, 972 F.3d 310, 324-25 (3d Cir. 2020) (finding claim about unconstitutional conditions of confinement in immigration detention facilities in March 2020 was cognizable under 28 U.S.C. § 2241 where the relief sought was release from the detention facility).

[12] As in *Woodall*, the terms halfway house, RRM, and community confinement center ("CCC") are used interchangeably here to describe community confinement facilities. *See* 432 F.3d at 240 n.4.

Congress's directives to consider certain factors in placing inmates in community confinement. *Woodall*, 432 F.3d at 244 (citing 18 U.S.C. § 3621(b)).

The government in *Woodall* argued there was no habeas jurisdiction under § 2241 because Woodall brought a challenge to the "'conditions' of his confinement or a routine prison transfer[.]" *Id.* at 241. This Court disagreed. It found that Woodall had challenged the "execution of his sentence" because detention in a CCC is qualitatively different from confinement in an "ordinary penal institution," and so, "Woodall's petition crosses the line beyond a challenge to, for example, a garden variety prison transfer." *Id.* at 243 (defining execution, as to "'put into effect' or 'carry out'" (citing Webster's Third New International Dictionary 794 (1993)).

For the same reasons recognized in *Woodall*, Mr. Romano's challenge to the home confinement decision is a cognizable challenge to the execution of his sentence under § 2241. Carrying out a sentence through home confinement is, like CCC, "very different from carrying out a sentence in an ordinary penal institution," and "represents more

than a simple transfer." *Id.* at 243. Indeed, it was because Mr. Romano's *release from a penal institution* triggered the Victim Notification System, and the victims and prosecutors objected to his placement on home confinement, that Mr. Romano's case was even brought back to the attention of the BOP. *See* Appx306, 365, 387. It simply defies fact and law to consider what the prosecutors called Mr. Romano's "release" home from a penal institution to be a "simple transfer." *See* Appx365.

Woodall also recognized that CCCs "satisfy different goals from other types of confinement," because they are used "at the end of a prison sentence to 'afford the prisoner a reasonable opportunity to adjust to and prepare for … re-entry into the community.'" *Id.* at 243 (citing 18 U.S.C. § 3624). So too for home confinement, which is one of the two forms of "pre-release custody" set forth in 18 U.S.C. § 3624(c). And Mr. Romano quickly re-entered his community and established his life at home. He sought out health insurance, made his own doctors' appointments, applied for employment that would pay a living wage, visited his father's gravesite, purchased a computer and clothes, joined a gym, and spent substantial time with family, including his frail

mother and his fiancée. Appx101-02. In sum, the liberty interest in remaining on home confinement is even stronger than in placement in other community settings.

Unsurprisingly then, this Court has already recognized, in an unpublished opinion, that *Woodall* confers jurisdiction on § 2241 challenges to home confinement *placement* decisions. *See Hussain v. Warden Allenwood FCI*, No. 22-1604, 2023 WL 2643619, *2 (3d Cir. Mar. 27, 2023) (non-precedential). Hussain claimed that the BOP had "deemed him ineligible for home confinement and rehabilitative programs based on erroneous or unconstitutional criteria." The *Hussain* panel determined these placement decisions were "challenges to the execution of his sentence" and the "benefits [if he prevailed] could impact the duration of his time in prison." *Id.* District Courts, in turn, in the very same courthouse in which Mr. Romano's petition was dismissed for lack of jurisdiction, have followed *Woodall, Vasquez*, and *Hussain*, found jurisdiction to decide home confinement placement issues, and proceeded to the merits of the case. *See, e.g.*, *Kowalewski v. Warden, FCI Fort Dix,* 2024 WL 3964289, *4 (D.N.J. Aug. 27, 2024)

(Bumb, C.J.).

Nevertheless, the District Court below found that jurisdiction to hear Mr. Romano's challenge to the BOP's unlawful revocation of his home confinement was foreclosed by this Court's decision in *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012). Appx11-16. Cardona had challenged his placement in a Special Management Unit ("SMU"), a restrictive program at a federal penitentiary intended for inmates in disruptive groups with a history of disciplinary infractions. The district court in *Cardona* found, and this Court affirmed, that it did not have jurisdiction over such a claim because it was not about the "execution" of Cardona's sentence. 681 F.3d at 537.

Despite *Woodall*'s clearly applicable reasoning and *Cardona's* inapposite challenge to placement in a restrictive disciplinary program, the District Court below concluded that *Cardona* foreclosed "the possibility that a § 2241 petition can be used to challenge a BOP placement decision that neither contradicts the sentencing judgment nor affects the length of custody." Appx12, 16, 18 (finding that *Cardona* clarified *Woodall's* holding and concluding that Mr. Romano's case is

not "meaningfully distinguishable from *Cardona*").[13] It relied on language from *Cardona* distinguishing itself from *Woodall*, where the BOP conduct had conflicted with express statements in the applicable sentencing judgment. Appx3 (citing *Cardona*, 681 F.3d at 536-37).

But nothing in *Woodall* suggested that § 2241 jurisdiction turned on a contradiction with the sentencing court. And this Court has since recognized § 2241 jurisdiction to challenge a limit to halfway house placement, even where there was no conflict with the judge's sentencing judgment. *See Vasquez*, 684 F.3d at 433; *see also Moncrieffe v. Yost*, 367 F. App'x 286, 288-89 (3d Cir. 2010) (non-precedential). Moreover, this Court continues to cite *Woodall*—albeit often in non-precedential opinions—for the proposition that the key jurisdictional question is placement outside, as opposed to inside, of a prison, rather than

[13] *Jones v. Hendrix*, a Supreme Court case from 2023, calls into question the continuing validity of *Cardona's* limitation that "execution of sentence" can only be a contradiction with the sentencing court. Discussing habeas jurisdiction under 28 U.S.C. § 2241, the Court described a cognizable challenge to "the legality of [ ] detention" as encompassing more than a criminal sentence, for example an illegal "administrative sanction affecting the conditions of his detention." 599 U.S. at 475 (citing, generally, *Samak v. Warden, FCC Coleman-Medium*, 766 F.3d 1271, 1285 (11th Cir. 2014) (Pryor, J., concurring)).

whether the BOP action conflicts with the sentencing judgment. *See McGee*, 627 F.3d at 935-36; *see also e.g.*, *Hussain*, 2023 WL 2643619, at *2; *Viola v. Warden Lewisburg USP*, 825 F. App'x 63, 64 (3d Cir. 2020) (non-precedential); *Mabry v. Warden Allenwood FCI Low*, 747 F. App'x 918, 919 (3d Cir. 2019) (non-precedential); *McCall v. Ebbert*, 384 F. App'x 55, 57-58 (3d Cir. 2010) (non-precedential); *Zapata v. United States*, 264 F. App'x 242, 243 (3d Cir. 2008) (non-precedential); *Ganim v. Fed. Bureau of Prisons*, 235 F. App'x 882, 883 (3d Cir. 2007) (non-precedential).

These cases make clear that *Woodall* drew a line at the prison walls. A challenge to a placement decision outside of a prison is cognizable under § 2241, while a challenge to a placement decision within a prison or between two prisons is not. *See, e.g.*, *Hussain*, 2023 WL 2643619, at *2. Mr. Romano's revocation was not a "garden variety transfer," and so, unlike in many of these cases that lack jurisdiction, the BOP "*did* … cross the line that *Woodall* crossed." *See Ganim*, 235 F. App'x at 883.

Insofar as language in *Cardona* might be read to rewrite or

conflict with *Woodall*'s reasoning, the earlier decision, *Woodall*, controls. *See United States v. Rivera*, 365 F.3d 213, 213 (3d Cir. 2004) (Opinion of the Panel sur Denial of Rehearing en banc) ("This Circuit has long held that if its cases conflict, the earlier is the controlling authority and the latter is ineffective as precedents."); *see also Al Haj v. LSCI-Allenwood Warden*, 2025 WL 1115751 (M.D. Pa. Apr. 15, 2025) (citing this Court's precedent and internal operating procedure and finding the jurisdictional question was already decided by *Woodall*, and could not be overruled by the subsequent panel decision in *Cardona*).

A straightforward application of *Woodall* dictates that the District Court had jurisdiction to hear Mr. Romano's § 2241 petition challenging the revocation of his home confinement. Home confinement shares all of the features of a halfway house -- and involves significantly more liberty -- that made such a placement decision implicate the "execution" of a sentence and, thus, subject to § 2241 jurisdiction.

3. The revocation directly affected the *duration* of Mr. Romano's sentence by excluding him from the sweeping commutation extended to every person still on home confinement under the CARES Act in December 2024.

The revocation of Mr. Romano's home confinement affected not just the *execution* but the *duration* of his sentence—but for the government's unlawful termination of Mr. Romano's home confinement, his sentence would have ended earlier, because it would have been commuted. *See* DE 55-1 at 14 n.1; DE 66 at 6-8, DE 68 at 11 n.3.

On December 12, 2024, then-President Joe Biden commuted the sentences of imprisonment of every person—nearly 1,500 individuals—who was still on home confinement after placement there under the CARES Act during the COVID-19 pandemic.[14] *See* DE 69 at 6 n.8

[14] *See* Statement from President Joe Biden on Providing Clemency for Nearly 1,500 Individuals on Home Confinement and Pardons for 39 Individuals Convicted of Non-Violent Crimes (Dec. 12, 2024) ("These commutation recipients, who were placed on home confinement during the COVID pandemic, have successfully reintegrated into their families and communities and have shown that they deserve a second chance."), available at https://www.whitehouse.gov/briefingroom/statements-releases/2024/12/12/statement-from-president-joe-biden-onproviding-clemency-for-nearly-1500-individuals-on-home-confinement-and-pardonsfor-39-individuals-convicted-of-non-violent-crimes/.

(noting clemency was granted to "every individual" still on home confinement, "without exception"). Had Mr. Romano remained on home confinement, he indisputably would have been among those nearly-1,500 people and would have started his term of supervised release. The government complained below that this was "entirely speculative" or "hypothetical," *see* ECF No. 65 at 7-8, but the District Court disagreed, acknowledging that "[g]iven the uniformity of the commutations, it appears highly likely that Mr. Romano would have received clemency had he remained on home confinement." Appx8 (Op. at 6 n.8).

The government's decision to revoke Mr. Romano's home confinement, therefore, deprived him of an all-but guaranteed commutation, thereby extending the duration of his underlying sentence. Thus, for this additional exceedingly rare historic clemency grant, this Court can also find the revocation had a straightforward effect on the *duration* of Mr. Romano's sentence.

Conclusion

For the foregoing reasons, Appellant Michael Romano asks this Court to hold that the District Court had jurisdiction under 28 U.S.C. § 2241 to hear his claim that the BOP's revocation of his home confinement was a severe restraint on his individual liberty and also cognizable as a review of the "execution of his sentence" under the controlling decision in *Woodall*. He respectfully requests that this Court vacate the Order granting the Warden's Motion to Dismiss, and remand the case for the District Court to consider Mr. Romano's challenge to the revocation of his home confinement without due process.

Respectfully submitted,

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Certificate of Counsel, Compliance, and Service

Alison Brill hereby certifies as follows:

1. I am an Assistant Federal Public Defender, and I am admitted to practice before the United States Court of Appeals for the Third Circuit.

2. I caused an electronic copy of the Brief and Appendix to be filed today, August 4, 2025. Seven copies of the Brief and four copies of the Appendix will also be sent today by United States First Class Mail.

3. I also caused a copy of the Brief and Appendix to be served today, August 4, 2025, upon the United States by the Notice of Docketing Activity generated by the Third Circuit's electronic filing system upon:

John F. Basiak, Jr., Esq.
Assistant United States Attorney
John.Basiak@usdoj.gov

4. The text of the electronic brief is identical to that in the paper copies.

5. The brief has been scanned with Trend Micro Apex One Antivirus and no virus was detected.

6. The brief complies with the type-volume limitations contained in the Fed. R. App. P. 32(a)(7)(B)(i), as it contains 9,313 words.

The foregoing is true and correct to the best of my knowledge and information. I am aware that if any of the foregoing is willfully false, I am subject to sanctions.

Respectfully submitted,

s/ *Alison Brill*
Alison Brill
Assistant Federal Public Defender

Date: August 4, 2025
Camden, New Jersey