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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD ANTHONY WILFORD, Petitioner, v. JAMES ENGLEMAN, Warden, Respondent.	No. 2:24-cv-01470-DDP-GJS RESPONDENT'S RESPONSE TO PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

Respondent James Engleman, Warden of the Federal Correctional Institution at Terminal Island, by and through his counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorney Matthew Tang, hereby responds to Petitioner's Objections to the Report and Recommendation (Doc. No. 16) filed on July 17, 2024.

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For the reasons stated herein and in Respondent's previously filed Answer (Doc. No. 8) and Sur-Reply (Doc. No. 11), Respondent respectfully requests that the Court reject Petitioner's objections to the Report and Recommendation.

Dated: July 25, 2024

Respectfully submitted,

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/s/
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MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner argues that he has a protected liberty interest in home confinement because "home confinement is different from institutional confinement." Doc. No. 16 ("Petitioner's Objections") at 1. He asserts that "being removed from a home-detention program into jail is a sufficiently large incremental reduction in freedom to be classified as a deprivation of liberty." Id. (quoting Paige v. Hudson, 341 F.3d 642, 643 (7th Cir. 2003)).

Even if removal from a home-detention program constitutes a deprivation of liberty, however, Petitioner would have a liberty interest in home confinement only in the sense that all prisoners have a liberty interest in freedom more generally. The question here is not whether Petitioner had a liberty interest in remaining in home confinement, but whether Petitioner had a constitutionally protected liberty interest in remaining in home confinement, i.e., whether some process was required—beyond the process that was already provided when Petitioner was first convicted—before the Bureau of Prisons ("BOP") could alter Petitioner's pre-release custody arrangement.

As one of the cases Petitioner cites acknowledges, "the Due Process Clause does not require process unless, in the individual case, there is a relevant factual dispute between the parties." Gonzalez-Fuentes v. Molina, 607 F.3d 864, 894 (1st Cir. 2010) (quoting Sandin v. Conner, 515 U.S. 472, 503 (1995) (Breyer, J., dissenting)). Absent a factual dispute, a hearing would serve no purpose. Codd v. Velger, 429 U.S. 624, 627 (1977) ("[I]f the hearing mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute . . . which has some

significant bearing on [the underlying deprivation].").
Accordingly, the Supreme Court has held that an informal hearing is required prior to a parole-revocation decision because such a decision "involves a . . . factual question: whether the parolee has in fact acted in violation of one or more conditions of his parole." Morrissey v. Brewer, 408 U.S. 471, 479 (1972). On the other hand, such process is not required for a parole-release decision in part because "there is no set of facts which, if shown, mandate a [parole-release] decision favorable to the individual." Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S. 1, 10 (1979).

Here, the BOP's decision to remove Petitioner from home confinement was purely discretionary and not based on any factual determination. It involved the exercise of the BOP's sole authority to "designate the place of the prisoner's imprisonment," 18 U.S.C. § 3621(b), and did not depend on a finding of misconduct. Because the hearing Petitioner insists he was entitled to would not have resolved any facts relevant to the BOP's decision, Petitioner did not have a due process right to such a hearing. See, e.g., Olim v. Wakinekona, 461 U.S. 238, 249 (1983) ("If the decisionmaker is not required to base its decisions on objective and defined criteria, but instead can deny the requested relief for any constitutionally permissible reason or for no reason at all, the State has not created a constitutionally protected liberty interest." (citation and internal quotation marks omitted)); Reeb v. Thomas, 636 F.3d 1224, 1229 n.4 (9th Cir. 2011) ("discretionary determinations regarding conditions of confinement do not create due process rights" (citing Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976))); Triplett v. FCI Herlong, Warden, No. 2:22-CV-0083 AC P, 2023 WL

2760829, at *3 (E.D. Cal. Apr. 3, 2023), adopted, No. 2:22-CV-0083 WBS AC P, 2023 WL 3467145 (E.D. Cal. May 15, 2023) ("Because the BOP has the discretion to return petitioner to home confinement, to keep him in prison, or to place him in a residential reentry program, petitioner was not deprived of any constitutionally protected liberty interest when the BOP opted to have him returned to prison").

Although the out-of-circuit cases Petitioner cites recognize a deprivation of liberty in various circumstances, none of them address the process required with respect to a purely discretionary decision. Indeed, many of the cases are distinguishable because they either did not involve a due process violation, or because they involved a reliance on facts that the petitioner or plaintiff contended could have been disputed at a hearing. See, e.g., Gonzalez-Fuentes, 607 F.3d at 894-95 (reversing the district court's grant of habeas corpus because "there is no dispute on any issue, factual or legal, that could plausibly secure [the petitioners] their liberty"); Paige, 341 F.3d at 644 (finding no deprivation of liberty); Kim v. Hurston, 182 F.3d 113, 119 (2d Cir. 1999) (ruling that due process required a hearing so that plaintiff could contest the basis for her removal from a work-release program, i.e., a change in her mental health classification); McBride v. Cahoone, 820 F. Supp. 2d 623, 631-32 (E.D. Pa. 2011) (holding that plaintiff was entitled to some process with respect to allegations that he violated the conditions of his electronic monitoring program). Unlike the petitioners and plaintiffs in those cases, Petitioner is not disputing any of the BOP's factual findings or attempting to present new facts relevant to the BOP's decision. Because there is

no factual dispute that a hearing could resolve, Petitioner had no due process right to such a hearing.

Petitioner's analogy to Young v. Harper, 520 U.S. 143 (1997), cited for the first time in his objections, is similarly misplaced because Young did not involve a purely discretionary decision. There, Oklahoma's parole board had revoked an inmate's participation in a preparole conditional release program. Id. at 145-46. The Supreme Court rejected the state officials' assertion that the parole board "had authority to reimprison a preparolee for any reason or for no reason" because they brought up the argument "for the first time in this Court" and "point[ed] to nothing to support their contention." Id. at 151 n.3. Instead, it held that the inmate had a protected liberty interest in the program, basing its decision in large part on its finding that "preparole as it existed at the time of respondent's release was equivalent to parole as understood in Morrissey." Id. at 147. Parole as understood in Morrissey, in turn, could not be revoked for any reason or no reason at all—it required "an appropriate determination that the individual has in fact breached the conditions of parole." Morrissey, 408 U.S. at 483-84.

Here, by contrast, the BOP had authority to change the designation of Petitioner's place of imprisonment for any reason or for no reason at all. See 18 U.S.C. § 3621(b); United States v. Ceballos, 671 F.3d 852, 855 (9th Cir. 2011) ("The Bureau of Prisons has the statutory authority to choose the locations where prisoners serve their sentence."); United States v. Dragna, 746 F.2d 457, 458 (9th Cir. 1984) (per curiam) ("While a [district court] judge has wide discretion in determining the length and type of sentence, the

court has no jurisdiction to select the place where the sentence will be served. Authority to determine place of confinement resides in the executive branch of government and is delegated to the Bureau of Prisons." (citations omitted)). In such circumstances, the informal process required in Morrissey and Young would serve no purpose. Petitioner therefore did not have a constitutionally protected liberty interest in his home confinement.

Morrissey and Young are distinguishable for the additional reason that in both cases, the habeas petitioners attacked the legality or duration of their confinement. Although habeas petitioners may "challenge the manner, location, or conditions of a sentence's execution," Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000), they may only do so if they are also challenging the legality or duration of confinement. See Pinson v. Carvajal, 69 F.4th 1059, 1072-75 (9th Cir. 2023) (rejecting a challenge to the conditions of confinement because it would not legally require release); Rodriguez v. Copenhaver, 823 F.3d 1238, 1240-41 (9th Cir. 2016) (considering a challenge to the location of confinement where a change in the location of confinement to state prison "would shorten [the petitioner's] federal sentence by approximately three years").

Accordingly, courts in this circuit have held that they lack habeas consideration to consider the legality of the BOP's revocation of home confinement, because such revocation only affects the location of confinement, and not the fact or duration of confinement. See Albrecht v. Birkholz, No. CV 23-1587-GW(E), 2023 WL 5417099, at *1 (C.D. Cal. June 23, 2023), adopted, No. CV 23-1587-GW(E), 2023 WL 5409781 (C.D. Cal. Aug. 21, 2023) (holding that

the court lacked jurisdiction to consider Petitioner's challenge to the BOP's revocation of home confinement because Petitioner "does not challenge the fact or duration of his sentence, but only the location where he must serve the custodial part of his sentence"); Triplett, 2023 WL 2760829, at *3 (holding that the BOP's revocation of home confinement does not provide a basis for habeas relief because "[t]he length of custody remains the same whether the time is served in a pri[s]on, a halfway house, or on home confinement"); see also Long v. Hendrix, No. 3:22-CV-01411-MO, 2023 WL 2898871, at *1 (D. Or. Mar. 8, 2023) (rejecting a challenge to the BOP's home confinement eligibility determination because "Petitioner raises no challenge to the legality or duration of his confinement" and "granting him the relief he seeks would not necessarily shorten his sentence"). Because Petitioner's challenge to the location of his confinement would not alter the fact or duration of his confinement, the Court lacks habeas jurisdiction to hear it.

For the reasons stated above, Respondent respectfully requests that the Court reject Petitioner's objections to the Report and Recommendation and issue an order denying the Petition.