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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 RICHARD ANTHONY WILFORD,

Case No.: 2:24-CV-01470-DDP-GJS

10 Petitioner,

11 vs.

**OBJECTIONS TO REPORT AND
RECOMMENDATION**

12 JAMES ENGLEMAN,

Respondent.

13 Richard Wilford, by and through the undersigned counsel, respectfully submits these
14 objections to the Magistrate Judge’s Report and Recommendation in this matter. (ECF 13).

15 **I. The Magistrate Judge Erred in Concluding Wilford Lacked a Protected Liberty**
16 **Interest in Remaining on Home Confinement**

17 The Magistrate Judge concluded that there is no protected liberty interest in home
18 confinement, principally relying on the Ninth Circuit’s decision in *Reeb v. Thomas*, 636 F.3d
19 1224 (9th Cir. 2011) (ECF 13 at pp. 13-20). The Court should reject this, and hold that home
20 confinement is different from institutional confinement. A protected liberty interest exists in
21 home confinement—once placed on home confinement. Accordingly, procedural due process
22 must be afforded before removal from home confinement may occur.
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24 First, a majority of circuit courts have held that prisoners have a right to due process
25 before being removed from conditions comparable to the Bureau of Prisons’ home confinement
26 program. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 886-90 (1st Cir. 2010) (holding that
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1 inmates had a liberty interest in an Electronic Supervision Program that allowed inmate to
2 complete their sentences outside of prison); *Paige v. Hudson*, 341 F.3d 642, 643-44 (7th Cir.
3 2003) (holding that "being removed from a home-detention program into jail is a sufficiently
4 large incremental reduction in freedom to be classified as a deprivation of liberty"); *Kim v.*
5 *Hurston*, 182 F.3d 113, 117-18 (2d Cir. 1999) (holding that an inmate on a work release program
6 "enjoyed a liberty interest, the loss of which imposed a sufficiently 'serious hardship' to require
7 compliance with at least minimal procedural due process"). As one district court put it, there is a
8 "constitutionally-significant difference between living at home, even with restrictions, and
9 serving a sentence in *institutional confinement*." *McBride v. Cahoone*, 820 F. Supp. 2d 623, 631
10 (E.D. Pa. 2011)(emphasis in original). Indeed, one court in Oregon found that a prisoner's
11 removal from transitional release implicated a protected liberty interest and thus procedural due
12 process protections citing the Supreme Court's decision in *Young v. Harper*, 520 U.S. 143, 147-
13 53 (1997). *Bristol v. Peters*, No. 3:17-cv-00788-SB, 2018 U.S. Dist. LEXIS 200436, at *13 (D.
14 Or. Nov. 27, 2018). In *Young* the Supreme Court held that a pre-parolee was entitled to due
15 process before his pre-parolee status was revoked, nothing that as a pre-parolee the prisoner "was
16 released from prison before the expiration of his sentence. He kept his own residence; he sought,
17 obtained, and maintained a job; and he lived a life generally free of the incidents of
18 imprisonment." *Id.* at 148.

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There is no functional difference between Wilford's status on home confinement and that
of a pre-parolee. Indeed, the Respondent has not refuted any of Wilford's allegations about the
level of freedom afforded to him on home confinement.

Moreover, the fact that BOP may have broad statutory authority over home confinement
does not, somehow, eviscerate Wilford's *constitutional* rights. As the *Bristol* court noted, a

1 “liberty interest in continued release under *Morrissey* and *Young* is [not] diminished by [BOP’s]
2 regulatory authority to revoke release” *Bristol v. Peters*, No. 3:17-cv-00788-SB, 2018 U.S. Dist.
3 LEXIS 200436, at *13 (D. Or. Nov. 27, 2018)(alterations added).

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5 The Ninth Circuit’s decision in *Reeb* is not to the contrary. As the Magistrate Judge
6 recognized, *Reeb* was not about home confinement. Moreover, *Reeb* relegated its discussion of
7 due process to a footnote, and did not even address *Morrissey* or *Young* in the footnote. *Reeb*, 636
8 F.3d at 1228 n.4. With all due respect to the Magistrate Judge, *Reeb* does not carry the
9 persuasive force suggested.

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11 Taking someone from home and putting them back in prison without any process is
12 unconstitutional. That is what the BOP did to Wilford. The Court should find that Wilford had a
13 protected liberty interest in remaining on home confinement, once placed, and therefore could
14 not be removed without procedural due process.

15 **II. An Improperly Requested Remedy Does Not Deprive The Court Of Affording A**
16 **Lawful Remedy; Remedies Are Not “Jurisdictional”**

17 The Magistrate Judge suggests that the Court lacks “jurisdiction” to order his return to
18 home confinement. (ECF 13 at p. 10). Wilford respectfully disagrees.

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20 The Magistrate Judge recognized that the Court has subject matter jurisdiction over the §
21 2241 petition itself. (ECF 13 at pp.7-9). That is the only “jurisdictional” legal issue in the case.
22 The matter of remedies is not jurisdictional under § 2241 because an improper remedy does not
23 “deprive[] a court of all authority to hear a case.” *Harrow v. DOD*, 601 U.S. 480, 484
24 (2024)(alteration added).

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26 Perhaps the Magistrate Judge meant to say the Court does not have statutory authority to
27 order Wilford’s return to home confinement. But even then, that does not square well with 28

1 U.S.C. § 2243 which grants the Court broad authority to “dispose of the matter as law and justice
2 require.” 28 U.S.C. § 2243. According to the Ninth Circuit, “[t]he court's remedy 'should put the
3 defendant back in the position he would have been" if the violation had never occurred. *Johnson*
4 *v. Uribe*, 700 F.3d 413, 425 (9th Cir. 2012) (quoting *Chioino v. Kernan*, 581 F.3d 1182, 1184
5 (9th Cir. 2009)). Accordingly, the Court should find that it has the authority to order Wilford’s
6 return to home confinement.
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8 But assuming *arguendo* the Court believes it cannot afford this specific relief, it *can*
9 order that the writ of habeas corpus issue and Wilford be *discharged* from Bureau of Prisons
10 custody unless Wilford is placed back on home confinement, and that any future attempt to
11 remove him from same be consistent with due process requirements. We know the Court can
12 afford this relief because that is precisely what the Tenth Circuit ordered in *Young*, which was
13 later affirmed by the Supreme Court:
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15 We therefore reverse the decision of the district court and remand with
16 instructions to issue the writ of habeas corpus unless Mr. Harper is reinstated to
17 the Program by the State of Oklahoma. After reinstatement, any attempt to
18 remove Mr. Harper from the Program must, of course, comply with the
19 procedures mandated by this opinion.

19 *Harper v. Young*, 64 F.3d 563, 567 (10th Cir. 1995). Issuing a conditional writ in this manner
20 does not cause the Court to order Wilford’s return to home confinement; instead, it places that
21 decision squarely within the BOP’s discretion. If Respondent chooses not to return Wilford to
22 home confinement, there will be a consequence—Wilford’s discharge from custody.
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24 Finally, a request for an improper remedy in the petition is not fatal, provided some form
25 of relief can be given. *Rodriguez v. Serv. Empl. Int'l*, 755 F. Supp. 2d 1033, 1054 (N.D. Cal.
26 2010). Accordingly, the Court should find that it is free to fashion an appropriate remedy
27 regardless of the specific remedies in Wilford’s Petition.
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Respectfully submitted,

/s/ Brandon Sample