

No. 25-4404

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

RICHARD ANTHONY WILFORD,

Petitioner-Appellant,

v.

JAMES ENGLEMAN,

Respondent-Appellee.

On Appeal from the United States District Court
for the Central District of California, Los Angeles
No. 2:24-cv-01470-DDP-GJS
Hon. Dean D. Pregerson, Presiding

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INTRODUCTION

This appeal concerns a fundamental constitutional principle: once the government releases a person from prison into the community, it may not arbitrarily revoke that liberty and return him to prison without due process of law.

The Bureau of Prisons (“BOP”) approved Petitioner Wilford for placement on home confinement under the CARES Act on May 9, 2023. (1-ER¹-7.) He was released from prison and transferred to home confinement approximately one month later. *Id.* While living in the community, Wilford complied with every condition imposed upon him. He was never accused of violating any rule, condition, or program requirement. (1-ER-8.) To the contrary, BOP officials reported that he was adjusting well, complying with supervision, meeting with his case manager, participating in required programming, and satisfying all reporting obligations. (1-FER²-13, 15.)

Nevertheless, on August 2, 2023, BOP abruptly revoked Wilford's home confinement and returned him to prison. BOP provided no notice. It alleged no violation. It afforded no hearing. It offered no opportunity to be heard. (1-ER-7.) Wilford is currently incarcerated in Milan FCI. *See* BOP Inmate Locator Search:

¹ “ER” refers to Appellant’s Excerpt of Record.

² “FER” refers to Appellant’s Further Excerpts of Record.

Richard Wilford, Federal Bureau of Prisons, <https://perma.cc/Y2LN-REZT> (last visited June 11, 2026).

The government now attempts to justify Wilford's reincarceration by claiming that BOP mistakenly released him to home confinement in the first place. But this claim—raised for the first time after the Magistrate Judge's recommendation—is contradicted by the government's own records. Those records, also obtained after the Magistrate Judge's recommendation, confirm that BOP recognized Wilford was properly placed on home confinement, and that he was only revoked because a U.S. Attorney disagreed with BOP's decision to release him and insisted on his revocation.

Revocation absent any alleged violation, and without notice or an opportunity to be heard, directly contravenes the Supreme Court's decisions in *Morrissey v. Brewer* and *Young v. Harper*. In *Morrissey*, the Supreme Court held that a person conditionally released from prison into the community possesses a protected liberty interest that cannot be revoked without an alleged violation, notice, and an opportunity to be heard. 408 U.S. 471 (1972). In *Young*, the Court applied that same principle to a program materially indistinguishable from the one at issue here. 520 U.S. 143 (1997). Those decisions recognize a constitutional reality that the government cannot avoid through labels: a person living in the community enjoys a

liberty fundamentally different from confinement behind prison walls, and the government may not extinguish that liberty without due process.

Because BOP revoked Wilford's home confinement without an alleged violation or the procedures required by *Morrissey* and *Young*, the judgment should be reversed and Wilford restored to home confinement.

WILFORD'S REVOCATION

Throughout its brief, the government claims that BOP mistakenly transferred Wilford to home confinement beyond the proper CARES Act time period. But the government's own records demonstrate that this is not what actually happened.

Rather, those records reveal that BOP repeatedly concluded Wilford properly qualified for CARES Act home confinement. The Warden approved his placement. (1-FER-8.) BOP officials responsible for community placements confirmed that his referral was timely received and that he met the applicable CARES Act criteria. (1-FER-15) (“[I]t was determined Mr. Wilford met the criteria[.]”); *id.* at 13 (“RRM office received referral on 05/10/2023 (cutoff was 05/11/23) . . . Based on the criteria provided under CARES Act—he met the criteria.”)

Even when prosecutors objected to Wilford's transfer after the fact, BOP again reviewed the matter and expressly reaffirmed that Wilford properly qualified for home confinement and was successfully complying with all of his conditions. (1-FER-15.)

The problem, from BOP's perspective, was not Wilford's conduct. It was that a prosecutor disagreed with BOP's decision.

More than a month after Wilford entered home confinement, United States Attorney Erek Barron and Assistant United States Attorney John Sippel demanded that BOP reconsider the placement. (1-FER-7.) Their objection was not based on any misconduct while on home confinement. Rather, it was based principally upon their disagreement with BOP's assessment of Wilford's suitability for community placement and their claim—with which BOP disagreed—that he was not eligible. *Id.*

BOP initially rejected that request. On July 25, 2023, Dana DiGiacomo—the BOP official responsible for overseeing community placements—responded that Wilford had been reviewed, met CARES Act criteria, and was successfully complying with home confinement rules. (1-FER-15.) She further explained that Wilford would be returned to prison “if [he] does not follow the rules and regulations of home confinement or his community-based placement agreement[.]” *Id.*

That should have ended the matter. It confirmed both that Wilford had been properly placed and that he had done nothing to warrant revocation.

Instead, prosecutors continued to press BOP officials to reverse course. Internal BOP communications reveal that the United States Attorney was “very disappointed” with BOP's response and sought additional intervention. (1-FER-14.)

Days later, DiGiacomo wrote an email to another BOP employee stating that the “[t]he US Attorney is extremely upset about his release[.]” (1-FER-13.) Those same communications simultaneously reaffirmed that Wilford met CARES Act criteria and was complying with the conditions of home confinement. *Id.* Yet after a meeting involving prosecutors, BOP leadership abruptly reversed course and agreed to return Wilford to prison. *Id.*

The following day, Wilford was reincarcerated. (1-ER-7.)

Thus, this case does not involve a mistaken release, a disciplinary violation, misconduct while on release, or any determination that Wilford failed to comply with the conditions of home confinement. Rather, the record demonstrates that BOP approved Wilford’s placement, repeatedly confirmed that the placement was proper, acknowledged that he was successfully complying with all conditions, and then returned him to prison because prosecutors repeatedly objected to his presence in the community.

Months after the Magistrate Judge issued the Report and Recommendation denying relief and after Wilford filed objections in response, Wilford’s counsel—for the first time—received the above-mentioned documents establishing why Wilford was actually returned to prison.³ Upon receiving the documents, Wilford’s counsel

³ Wilford received these documents from another lawyer for another habeas petitioner in New Jersey. (1-FER-3.)

filed them with the District Court. (1-FER-3–4.) Several months after that, the District Court adopted the Magistrate Judge’s recommendation in a cursory order containing no mention of this new evidence. (1-ER-4–5.)

ARGUMENT

I. SECTION 2241 PROVIDES JURISDICTION TO REVIEW THE REVOCATION OF HOME CONFINEMENT AND REINCARCERATION IN PRISON.

A. Supreme Court and Ninth Circuit Precedent Establish Jurisdiction Here.

The court below correctly held that it had jurisdiction to review Wilford’s claim. (1-ER-14.)⁴ The government’s jurisdictional argument rests on a premise that the Supreme Court has repeatedly rejected: that revoking community-based custody and returning a person to prison is merely an internal correctional classification decision beyond the reach of habeas corpus. It is not.

Wilford was released from prison and permitted to live in the community on BOP-approved home confinement. Nearly two months later, BOP removed him from his home and returned him to a federal prison. He now seeks restoration to the community-based custody status he previously possessed. That claim falls squarely within the traditional core of habeas corpus.

⁴ Respondent-Appellee did not file a cross-appeal challenging jurisdiction. Petitioner-Appellant nevertheless addresses this argument given it is jurisdictional.

Indeed, since the government filed its answering brief, the Office of the Solicitor General has abandoned the very jurisdictional position advanced here. In *Maxwell v. Thomas*, the Solicitor General recently acknowledged that § 2241 is available to challenge BOP decisions concerning release from prison to home confinement because such claims concern the “place or manner” of confinement or “reduce the level of custody.” Resp’t’s Br. in Opp. at 7–8, *Maxwell v. Thomas*, No. 25-5930 (U.S. Apr. 16, 2026), *cert. granted*, 2026 WL 1513325 (U.S. June 1, 2026) (citing, *inter alia*, *Jones v. Hendrix*, 599 U.S. 465, 475 (2023); *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 243 (3d Cir. 2005)). The following month, the United States Attorney’s Office in an Eighth Circuit case about transfer from prison onto prerelease custody withdrew its prior jurisdictional argument because of the Government’s position in *Maxwell*. See Rule 28(j) Letter, *Osorio-Calderon v. Warden*, No. 25-3090 (8th Cir. filed May 12, 2026).

The Solicitor General’s revised position accords with longstanding Supreme Court precedent. In *Preiser v. Rodriguez*, the Court explained that habeas corpus is the appropriate vehicle where a prisoner seeks release from physical confinement. 411 U.S. 475, 486–87 (1973). More specifically, the Court recognized that “habeas corpus has been accepted as the specific instrument to obtain release” from confinement where a petitioner contends “that parole was unlawfully revoked, causing him to be reincarcerated in prison.” *Id.* at 486 (citing *Morrissey*, 408 U.S.

471).⁵ Habeas is available 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 id.* at 487 (emphasis added).

That is precisely this case. Wilford challenges the government’s decision to revoke his previously granted community placement and return him to prison. He seeks restoration to the status he enjoyed before that revocation occurred. Under *Preiser*, that claim is paradigmatically habeas in nature.

Morrissey and *Young* remove any doubt. In *Morrissey v. Brewer*, the Supreme Court reversed the appellate court’s determination that parole revocation was immune from judicial review because parolees remained ““in custody”” of correctional authorities. 408 U.S. at 474–75 (citing *Morrissey v. Brewer*, 443 F.2d 942, 947 (8th Cir. 1971)). Although parolees technically remained “in custody,” the Court explained that their liberty was “very different from that of confinement in a prison.” *Id.* at 482. Accordingly, the Court entertained the habeas challenge and held that due process protections applied to revocation of parole. *Id.*

The Supreme Court reached the same conclusion in *Young v. Harper*. There, the State argued that habeas relief was unavailable because the preparolee “remained

⁵ *See also Jones*, 599 U.S. at 475 (holding that Section 2241 is available to challenge “being detained in a place or manner not authorized by the sentence”); *Wilkinson v. Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring) (“[P]ermissible habeas relief . . . includes ordering a ‘quantum change in the level of custody,’ . . . such as release from incarceration to parole.”) (internal citation omitted).

within the custody” of the corrections department and his return to prison was merely a “transfer to a higher degree of confinement[.]” 520 U.S. at 148–50 (cleaned up). The Court rejected that characterization, held that preparole was materially indistinguishable from parole, and affirmed habeas relief, restoring the petitioner to community custody. *Id.* at 148–53.

The government's position here is indistinguishable from the arguments rejected in *Morrissey* and *Young*. And, just as in those cases, it fails: Like the parolee in *Morrissey* and the preparolee in *Young*, Wilford remained technically in government custody while living in the community but enjoyed “many of the core values of unqualified liberty[.]” *Morrissey*, 408 U.S. at 482; *see infra* Section II(B). Like those petitioners, he was removed from community custody and returned to prison. And like those petitioners, he seeks restoration to the status he previously possessed before the government revoked it. If habeas jurisdiction existed in *Morrissey* and *Young*, it necessarily exists here.

Nor does *Pinson v. Carvajal* assist the government. *Pinson* involved challenges to prison conditions during the COVID-19 pandemic, including claims concerning medical care and institutional practices within prison walls. 69 F.4th 1059, 1065–66 (9th Cir. 2023). This Court held that habeas relief was unavailable because the petitioners challenged conditions of confinement and release was not “*legally required*” to remedy those conditions. *Id.* at 1072. Wilford’s claim is

fundamentally different. He challenges no prison condition. He does not seek improved treatment inside prison. He seeks release from prison and restoration to the community-based custody status that BOP previously granted him. Thus, “release is *legally required*” to remedy his claim. *See id.*

Indeed, *Pinson* itself recognized that “a Section 2241 petition may be utilized . . . to challenge the manner, location, or conditions of a sentence’s execution” or to contend that “the revocation of parole and return to detention was unlawful.” *Id.* at 1063, 1070. And it specified that habeas remains available where a person challenges confinement in a penal institution rather than a community-based placement. *Id.* at 1068 (citing *Woodall*, 432 F.3d at 243).⁶

The distinction is dispositive. A person living at home under community supervision is not merely occupying a different wing of the prison system. He is living outside prison walls, maintaining family relationships, seeking employment, participating in community life, and enjoying the very forms of liberty that *Morrissey* and *Young* recognized as constitutionally significant. Returning such a person to prison is not a routine transfer. It is a profound deprivation of liberty.

Because Wilford challenges his reincarceration from community custody to prison confinement, § 2241 jurisdiction plainly exists.

⁶ The government’s position regarding *Woodall* (Gov’t’s Answering Br. at 15) is inconsistent with the Solicitor General’s brief in *Maxwell*. *See* Resp’t’s Br. in Opp. at 8, *Maxwell v. Thomas*, No. 25-5930.

B. The Weight of Authority Confirms that Habeas Jurisdiction Exists.

Appellate courts across the country have repeatedly held that claims seeking release from prison into community-based forms of custody fall squarely within the traditional scope of the writ. Those cases involve a variety of conditional-release programs, including intensive electronic supervision, *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 870, 872–74 (1st Cir. 2010); furlough, *Plyler v. Moore*, 129 F.3d 728, 733 (4th Cir. 1997); placement in a community corrections center, *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 241–43 (3d Cir. 2005); and preparole release, *Boutwell v. Keating*, 399 F.3d 1203, 1209–10 (10th Cir. 2005). Although the programs differ in name, they share the same “essence” that matters here: each involves release from prison into the community before completion of sentence. *See Young*, 520 U.S. at 147 (quoting *Morrissey*, 408 U.S. at 477).

Moreover, numerous district courts have held that habeas jurisdiction exists when BOP revokes home confinement and returns a person to prison. Most notably, multiple courts in this Circuit have relied on *Young* to conclude that revocation from home confinement into prison is cognizable under § 2241 because, while relief “may not ultimately change the length of [petitioner’s] custody,” it “would constitute an immediate or earlier relief from *confinement*[.]” *Kuzmenko v. Phillips*, No. 2:25-cv-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025) (emphasis added); *Martin v. Phillips*, No. 2:25-cv-00687, 2025 WL 732829, at *3 (E.D. Cal. Mar. 7, 2025)

(similar). Those courts correctly recognized that the relevant question is not whether the petitioner remains in legal custody, but whether he seeks relief from confinement in prison. Wilford does.

Other courts have reached the same conclusion. *See Adepoju v. Scales*, 782 F. Supp. 3d 306, 314–15 (E.D. Va. 2025) (finding habeas available where petitioner alleged that BOP unlawfully reincarcerated him after placement in prerelease custody); *Mateo v. Warden, FCI Danbury*, No. 25-cv-00814, 2025 WL 2625263, at *4 (D. Conn. Sept. 11, 2025) (same); *Mason v. Alatary*, No. 9:23-cv-193, 2024 WL 3950643, at *3 (N.D.N.Y. Aug. 27, 2024) (same). Numerous additional courts have adjudicated challenges to home-confinement revocations under § 2241 without questioning jurisdiction at all.⁷

These decisions are unsurprising. Wilford does not challenge a routine internal prison classification or conditions of confinement within a correctional institution. He challenges the government’s decision to remove him from community custody

⁷ *See Freeman v. Pullen*, 658 F. Supp. 3d 53, 57 (D. Conn. 2023) (granting habeas relief); *Wesa v. Engleman*, No. 2:25-cv-03413, 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, *Wiggins v. Stover*, No. 3:23-cv-00842 (D. Conn. July 27, 2023), ECF No. 19 (similar).

and return him to prison. That is precisely the type of liberty deprivation that habeas corpus has historically been used to remedy.

In short, Supreme Court precedent, Ninth Circuit precedent, the position now taken by the Solicitor General, and the decisions of numerous courts across the country all point in the same direction. A person who alleges that the government unlawfully revoked his community placement and returned him to prison may seek relief under § 2241. Wilford's petition therefore falls comfortably within the established boundaries of federal habeas jurisdiction.

C. BOP's Remaining Jurisdictional Arguments Lack Merit.

Unable to reconcile its position with *Preiser*, *Morrissey*, *Young*, *Pinson*, and the weight of authority from other courts, BOP falls back on a series of secondary arguments. None withstands scrutiny.

First, BOP misreads both *Reeb* and *Rodriguez*. Those cases state the unremarkable proposition that courts generally may not review discretionary prison-management decisions or alleged violations of internal BOP program statements. But both decisions also expressly recognize that a court “does have jurisdiction to decide whether the Bureau of Prisons acted contrary to established federal law [or] violated the Constitution.” *Rodriguez v. Copenhaver*, 823 F.3d 1238, 1242 (9th Cir. 2016); *Reeb v. Thomas*, 636 F.3d 1224, 1228 (9th Cir. 2011).

That is precisely what Wilford alleges. Wilford does not ask this Court to second-guess a routine discretionary placement decision. He contends that BOP violated the Due Process Clause when it revoked an already-granted community placement and returned him to prison without notice, without a hearing, and without any allegation of misconduct. Whatever limits *Reeb* and *Rodriguez* place on review of ordinary prison administration, neither case insulates constitutional violations from judicial scrutiny.

Second, the district court decisions relied upon by BOP do not support its position. Indeed, *Touizer* cuts the other way. There, the court held that a challenge to the “allegedly wrongful revocation of [petitioner’s] home confinement” challenged “the execution” of his sentence and therefore was “cognizable under § 2241.” *Touizer v. Att’y Gen. of the United States*, No. 20-cv-25169, 2021 WL 371593, at *3 (S.D. Fla. Feb. 3, 2021), *aff’d*, 2021 WL 3829618 (11th Cir. Aug. 27, 2021).⁸

The remaining cases cited by BOP are unpersuasive. *Triplett v. FCI Herlong, Warden*, No. 22-cv-0083, 2023 WL 2760829 (E.D. Cal. Apr. 3, 2023); *Tetterton v. Warden, FCI Fort Dix*, No. 23-cv-1394, 2023 WL 4045086 (D.N.J. June 16, 2023); and *Romano v. Warden, FCI Fairton*, No. 23-cv-1052, 2023 WL 3303450, (D.N.J. May 8, 2023) were unpublished pro se decisions that did not grapple with the

⁸ The court erroneously denied relief on the *merits*. See Appellant’s Opening Br. at 22–23.

controlling Supreme Court authorities discussed above. None analyzed *Preiser*, *Morrissey*, or *Young*, and none addressed the distinction between confinement in prison and community custody recognized by those decisions.⁹ Their cursory analyses cannot overcome controlling Supreme Court precedent.

Third, BOP's policy concerns are misplaced. Wilford is not asking this Court to "open the floodgates" to habeas review of every routine prison transfer or day-to-day correctional decision. *See* Gov't's Answering Br. at 9. This case concerns a fundamentally different circumstance: the government's decision to remove a person from community custody and return him to prison.

The distinction is critical. *Morrissey*, *Young*, and *Woodall* all recognize that release into the community implicates liberty interests categorically different from those implicated by ordinary prison administration. Thus, a ruling in Wilford's favor would merely reaffirm the longstanding principle that when the government releases a person into the community and later revokes that liberty, judicial review remains available.

In any event, BOP's floodgates concern is entirely speculative. The population potentially affected by CARES Act revocations is exceedingly small. Indeed,

⁹ The petitioner in *Romano* subsequently obtained counsel and the jurisdictional question is now on appeal in the Third Circuit. *See Romano v. Warden, FCI Fairton*, 779 F. Supp. 3d 498 (D.N.J. 2025), *appeal submitted*, No. 25-1876 (3d Cir. Apr. 20, 2026).

President Biden commuted the sentences of all people on CARES Act home confinement who were in the community in December 2024.¹⁰

Finally, even if there were uncertainty concerning the precise boundaries of § 2241—and there is not—that uncertainty should be resolved in favor of jurisdiction. The writ of habeas corpus occupies a unique place in our constitutional structure. As the Supreme Court has explained, “[t]he 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). 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).

II. BOP REVOKED WILFORD’S HOME CONFINEMENT ABSENT DUE PROCESS.

A. BOP Revoked Wilford’s Home Confinement Because Prosecutors Demanded It.

The government’s merits argument begins with a false premise. Throughout its brief, the government now attempts to justify Wilford’s reincarceration by arguing

¹⁰ *FACT SHEET: President Biden Announces Clemency for Nearly 1,500 Americans*, The American Presidency Project (Dec. 12, 2024), <https://perma.cc/VRL7-5YZC>. Wilford was not commuted because he was incarcerated pursuant to the challenged revocation.

that BOP mistakenly released him to home confinement after CARES Act authority allegedly expired. From that premise, the government spends pages discussing cases involving erroneous releases and the government’s authority to correct mistakes.

But the record demonstrates that this justification—raised for the first time after the Magistrate Judge’s recommendation—is not why Wilford was returned to prison. Indeed, the government’s own records establish precisely the opposite. BOP repeatedly concluded that Wilford properly qualified for CARES Act home confinement. (1-FER-15.) (“[I]t was determined Mr. Wilford met the criteria[.]”); *id.* at 13 (“RRM office received referral on 05/10/2023 (cutoff was 05/11/23) . . . Based on the criteria provided under CARES Act—he met the criteria.”).

The record therefore forecloses the government’s current assertion that Wilford’s placement was revoked because BOP discovered it had acted unlawfully or outside its authority.

What the record actually shows is repeated and escalating pressure from the United States Attorney’s Office. Their objection was not based on any misconduct while Wilford was on home confinement. Rather, it rested largely on their disagreement with BOP’s original decision and their view that Wilford should never have been released. (1-FER-11) (“Wilford should not have been released to home confinement.”); *id.* at 14 (“I am very disappointed in the email response from” the

BOP Administrator); *id.* at 13 (“The US Attorney is extremely upset about his release[.]”).

Notably absent from the record is any allegation that Wilford violated a condition of home confinement. Equally absent is any contemporaneous statement by BOP that it was correcting an erroneous placement decision. The documents instead reveal an agency that repeatedly concluded Wilford properly qualified for home confinement, repeatedly acknowledged that he was complying with all conditions, and then capitulated to prosecutorial pressure.¹¹

That distinction matters. The government’s mistaken-release cases are irrelevant because BOP did not conclude that his original placement was unauthorized. Rather, the contemporaneous record establishes that BOP itself consistently determined that Wilford met CARES Act criteria. Thus, the government’s extensive discussion of erroneous-release jurisprudence is beside the point.

This case is not about BOP correcting a mistake. It is about BOP revoking an already-granted community placement despite Wilford’s full compliance with its conditions. And it is that action—which deprived Wilford of an established liberty

¹¹ To the extent the Court believes there is a factual dispute regarding the basis for Wilford’s revocation, and that the resolution of that factual dispute may affect the resolution of the legal issues, then it should remand to the district court for fact-finding.

interest and returned him to prison—that triggers the protections of the Due Process Clause.

B. People Conditionally Released from Prison into the Community Possess a Protected Liberty Interest.

The Supreme Court’s decisions in *Morrissey* and *Young* control this case. More than fifty years ago, the Court recognized that a person conditionally released from prison into the community acquires a liberty interest protected by the Due Process Clause. *Morrissey*, 408 U.S. at 482. Although such individuals remain technically in government “custody” and are subject to significant restrictions, they nevertheless enjoy “many of the core values of unqualified liberty.” *Id.* Because that liberty is “valuable,” the government may not revoke it without due process of law, including an alleged violation, notice, and an opportunity to be heard. *Id.* at 482–89; *see* Appellant’s Opening Br. at 6–7.

The Court has applied that principle consistently across different forms of conditional release. *Morrissey* held that parole may not be revoked absent due process protections. 408 U.S. at 482. *Gagnon v. Scarpelli* extended the same principle to probation. 411 U.S. 778, 782 (1973). And in *Young v. Harper*, the Court held that a preparole program triggered the same constitutional protections because it was “sufficiently like parole” in all material respects. 520 U.S. at 144–45.

The common thread running through these decisions is straightforward. Once the government releases a person from prison and permits him to live in the

community subject to conditions, the resulting liberty interest cannot be extinguished arbitrarily. The Constitution requires an alleged violation and procedural safeguards before that liberty may be revoked.

Home confinement is materially indistinguishable from the conditional-release programs considered in *Morrissey* and *Young*. Like the parolee in *Morrissey* and the preparolee in *Young*, Wilford lived outside prison walls, resided at home, interacted with family and friends, sought employment, participated in community life, and remained subject to supervision and conditions imposed by correctional authorities. Indeed, the Supreme Court identified precisely those characteristics as the reason conditional release differs fundamentally from incarceration and therefore gives rise to a protected liberty interest. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 147–48. *See* Appellant’s Opening Br. at 8–11.

Accordingly, numerous courts have concluded that the reasoning of *Morrissey* and *Young* applies to analogous forms of community-based custody, including home confinement and other prerelease programs. *See* Appellant’s Opening Br. at 11–15 (collecting authorities). BOP offers no persuasive basis for departing from that consensus.

C. BOP Mischaracterizes the Nature of Wilford's Claim.

Much of BOP’s brief attacks positions Wilford does not advance. Wilford does not dispute that he remained legally in BOP custody while on home confinement.

He does not dispute that BOP possessed discretion to grant or deny CARES Act home confinement in the first instance. Nor does he dispute that in routine circumstances, BOP has discretion to transfer prisoners among prisons. And Wilford does not contend that the CARES Act itself created a liberty interest. *See* Appellant’s Opening Br. at 9 & n.5. None of those propositions resolves the question presented here.

Wilford's claim concerns what happened after BOP exercised its discretion and released him into the community.

The government’s brief repeatedly conflates two distinct issues: (1) whether BOP had discretion to place Wilford on home confinement in the first instance; and (2) whether BOP could later revoke that already-granted placement without due process. The Supreme Court has long recognized that those are fundamentally different questions.

As *Greenholtz* explained, “The differences between an initial grant of parole and the revocation of the conditional liberty of the parolee are well recognized.” *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 10 (1979). A person may have no constitutional entitlement to be released on CARES Act home confinement initially. But once the government grants that release and permits the individual to establish a life in the community, a protected liberty interest arises. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 148–52.

That is precisely Wilford’s argument. He contends that after BOP approved his placement, released him from prison, and allowed him to live successfully in the community, the Due Process Clause prohibited BOP from revoking that liberty without an alleged violation and constitutionally adequate procedures.

Reeb is therefore beside the point. *Reeb* concerned removal from a prison-based program that remained entirely within BOP’s discretionary control and involved only the possibility of future sentence reduction. 636 F.3d at 1226–29. The petitioner in *Reeb* had never been released from prison and never acquired the liberty interest recognized in *Morrissey* and *Young*. See Appellant’s Opening Br. at 16–19.

Wilford did. The Constitution protects that liberty regardless of whether BOP retains broad statutory authority over prison administration generally. Once BOP released Wilford into the community, the question ceased to be one of administrative discretion and became one of constitutional due process.

D. BOP’s Attempted Distinctions Between Home Confinement and Parole Are Legally Irrelevant.

The government’s argument is not new. In *Young v. Harper*, the government similarly argued that the conditional-release program at issue was insufficiently similar to parole to trigger the due process protections recognized in *Morrissey*. 520 U.S. at 148–52. The government emphasized various differences between preparole and parole and argued that “reincarceration of a preparolee was nothing more than a

transfer to a higher degree of confinement . . . which, like transfers within the prison setting, involved no liberty interest.” *Id.* at 148–50 (cleaned up).

The Supreme Court rejected that argument. The Court explained that neither the “phantom differences” nor the “actual differences” between the two programs altered the constitutional analysis, *id.* at 149, 152, because the “essence” of both programs was the same: “‘release from prison, before the completion of sentence, on the condition that the prisoner abide by certain rules[.]’” *Id.* at 147 (quoting *Morrissey*, 408 U.S. at 477). Although participants remained subject to restrictions and supervision, they nevertheless enjoyed the substantial freedoms associated with life in the community. *Id.* at 147–48.

The same is true here. Like parole in *Morrissey* and preparole in *Young*, CARES Act home confinement removes a person from prison and permits him to reside in the community under specified conditions. While on home confinement, individuals live outside prison walls, maintain family relationships, seek employment, participate in community life, and enjoy many of the freedoms unavailable to incarcerated people. The liberty interest recognized in *Morrissey* and *Young* therefore applies with equal force here.

Unable to distinguish the fundamental nature of home confinement, the government points to a series of peripheral differences. Just as in *Young*, none survives scrutiny. First, the government emphasizes that ordinary home confinement

under 18 U.S.C. § 3624(c) is generally limited in duration. But neither *Morrissey* nor *Young* suggested that the duration of a conditional-release program determines whether a liberty interest exists. Constitutional protection arises because a person has been released into the community, not because of how long that release may last.

Indeed, the petitioner in *Young* had only “served 15 years of a life sentence for two murders” when he was released to preparole. 520 U.S. at 145. Other courts have likewise recognized protected liberty interests in community placements despite years remaining on the underlying sentence at the time of revocation. *See, e.g., Mason*, 2024 WL 3950643, at *1 (four years remaining at time of revocation); *Morrissey*, 408 U.S. at 472–73 (petitioners respectively had about five and seven years remaining); *Anderson v. Recore*, 446 F.3d 324, 326 (2d Cir. 2006) (ten years remaining). The relevant question is not how much time remains on the sentence, but whether the government has released the person from prison and allowed him to establish a life in the community. The government unquestionably did so here. And it is irrelevant that Wilford—like the movant in *Young*—was on home confinement for months as opposed to years prior to his revocation. *See Young*, 520 U.S. at 146 (“He spent five apparently uneventful months outside the penitentiary.”).

Moreover, the CARES Act itself expanded the otherwise applicable time limits on home confinement. *See Coronavirus Aid, Relief, and Economic Security Act* (“CARES Act”), Pub. L. No. 116-136, § 12003(b)(2), 134 Stat 281, 516 (2020).

(allowing the Attorney General to “lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18[.]”). Congress therefore understood that some individuals would spend substantial periods in the community before completion of their sentences.

Second, the government emphasizes that the CARES Act was enacted as a temporary emergency measure. *Young* forecloses that argument as well. The preparole program in *Young* was itself a temporary overcrowding measure that existed only when prison populations exceeded a specified threshold. 520 U.S. at 145. Yet the Supreme Court held that the temporary nature of the program had no bearing on whether participants possessed a protected liberty interest once released. *Id.* at 149.

The same principle applies here. Whatever motivated Congress to expand home confinement authority during the COVID-19 pandemic, individuals who were actually released from prison experienced the same fundamental liberty recognized in *Morrissey* and *Young*. The Constitution protects that liberty once granted.

Indeed, Congress expanded authority under 18 U.S.C. § 3624(c), a prerelease statute designed to facilitate reintegration into the community. It did not expand BOP’s furlough authority under 18 U.S.C. § 3622. That distinction is telling. Furloughs contemplate a temporary absence from prison followed by an expected

return. Home confinement, by contrast, is a step-down placement intended to help individuals successfully transition back into society.

The government’s own statements confirm as much. The CARES Act Final Rule explained that “the typical purpose of home confinement is to allow inmates to readjust to life in the community” and that “[r]emoval from the community of those already making progress in home confinement would frustrate this goal[.]” 88 Fed. Reg. 19830-01, 19835 (Apr. 4, 2023). BOP likewise recognized that “the benefit of home confinement is to adjust to life back in the community[.]” U.S. Dep’t of Just., Fed. Bureau of Prisons, Memorandum for Christopher H. Schroeder, Assistant Att’y Gen., Office of Legal Counsel, from Kenneth Hyle, Gen. Couns., Re: Views Regarding OLC Opinion, *Home Confinement of Federal Prisoners After the COVID-19 Emergency*, at 5 (Dec. 10, 2021), <https://perma.cc/Y59A-8QTB>.

Third, the government argues that BOP possesses unfettered discretion to return home-confinement participants to prison for any reason or no reason at all. *Young* rejected that argument too.

There, the government similarly claimed authority to reincarcerate preparole participants at will. The Supreme Court described that contention as “illusory” because “written rules and conditions of [the preparolee’s] release identify no such absolute discretion, and [the government] point[s] to nothing to support their contention.” *Young*, 520 U.S. at 151 n.3.

The same is true here. BOP policies, practices, and program statements consistently contemplate revocation in response to *violations* of program conditions. *See* U.S. Dep’t of Just., Fed. Bureau of Prisons, *Home Confinement Program Statement*, at 6–7 (Sept. 6, 1995), <https://perma.cc/QWT6-NSHV> (“[M]ajor violations [] could result in the inmate’s termination from the program.”); Appellant’s Opening Br. at 9–10. BOP informed Wilford that he would remain on home confinement for the balance of his sentence. (1-ER-7.) BOP never informed him that he could be returned to prison despite full compliance. *Id.* And when prosecutors demanded Wilford’s reincarceration, BOP itself initially responded that he would be returned to prison if he violated the conditions of his placement—not merely because someone objected to his release. (1-FER-15.)

Fourth, BOP’s baffling attempt to distinguish cases based on the existence of factual disputes over whether the petitioner violated a conditional release rule fails. *See* Gov’t’s Answering Br. at 32–33; 35–37. Those cases are directly relevant because each held that the petitioner had a liberty interest in their already-granted conditional release, which could not be revoked absent notice or opportunity to be heard. *See* Appellant’s Opening Br. at 11–15.¹² The fact that Wilford was not accused

¹² BOP also misquotes *Kim v. Hurston*. That Court did not state that the work-release program was “the final phase [of her *sentence*] in which [the inmate] participated,” making it ‘virtually indistinguishable’ from parole/preparole, Gov’t’s Answering Br. at 34–35 (citing *Kim v. Hurston*, 182 F.3d 113, 118 (2d Cir. 1999)) (emphasis added), but rather that the final phase *of the work release program* was virtually

of any wrongdoing—and thus there is no factual dispute over whether he violated his home confinement terms—only makes his revocation even *more* egregious. It also makes his case directly analogous to *Young*, where the government likewise revoked conditional release absent any alleged violation. *See* 520 U.S. at 146 (“He spent five apparently uneventful months outside the penitentiary.”).

Finally, the government’s repeated references to the expiration of the CARES Act miss the point entirely. This case concerns the revocation of a placement that had already been granted. Courts routinely restore individuals to previously existing forms of conditional release when revocations are found unlawful, regardless of whether those programs remain available to new participants. *See, e.g., John v. U.S. Parole Comm’n*, 122 F.3d 1278, 1283–86 (9th Cir. 1997) (holding federal parole revocation violated due process and remanding for new hearing that could result in petitioner being “restored [to] parole” even though Congress abolished federal parole and thus people cannot be placed on federal parole for crimes committed today). That is precisely what occurred in *Young*, where the Supreme Court affirmed restoration to preparole even though the Court plainly could not have authorized the movant’s *initial* placement on a *state* preparole program, and even though the

indistinguishable from parole/preparole. *See Kim*, 182 F.3d at 118 (“The work release program in which Kim participated, at least the final phase in which she lived at home and worked at a job . . . is virtually indistinguishable from either traditional parole or the Oklahoma program considered in *Young*.”). The petitioner was placed on work release after “serving part of” her 18–54 month sentence. *Id.* at 115.

“[p]rogram appear[ed] to be different” by the time case reached final review. 520 U.S. at 153 n.5.

The same principle governs here. The expiration of CARES Act authority may affect future placements on CARES Act home confinement. It does not eliminate this Court’s authority to remedy an unconstitutional revocation of an existing placement.

Ultimately, the government’s argument suffers from the same flaw as the argument rejected in *Young*. It focuses on labels, administrative details, and peripheral distinctions while ignoring the constitutional reality. Wilford was released from prison, lived successfully in the community, and enjoyed the liberty associated with community life. Once that liberty was granted, BOP could not revoke it without due process of law.

E. BOP Revoked Wilford's Home Confinement Without Due Process.

Once it is recognized that Wilford possessed a protected liberty interest in remaining on home confinement, the due process violation is clear.

The material facts are undisputed. Wilford was released from prison and placed on home confinement. He complied with the conditions of that placement. BOP acknowledged that he was complying with those conditions. BOP did not accuse him of violating any rule.

Yet BOP returned him to prison. And it did so without any alleged violation, without notice, without a hearing, and without any opportunity to be heard.

That procedure—or more accurately, the complete absence of procedure—directly contravenes *Morrissey* and *Young*. See *Morrissey*, 408 U.S. at 481–89; *Young*, 520 U.S. at 147–52; *supra* Section II(B).

BOP cannot avoid that conclusion by invoking its general authority to make placement decisions under 18 U.S.C. § 3621(b). The issue is not whether BOP possessed discretion to grant CARES Act home confinement in the first instance. It unquestionably did. The issue is whether BOP could revoke an already-granted community placement and return Wilford to prison without due process.

The Supreme Court has long recognized that those are different questions. See *Greenholtz*, 442 U.S. at 10 (“The differences between an initial grant of parole and the revocation of the conditional liberty of the parolee are well recognized.”). This Court therefore need not decide what process might be required for routine prison transfers, classification decisions, or initial placement determinations. This case concerns only the revocation of a community-based placement after BOP had already exercised its discretion and released Wilford from prison.

The appropriate remedy for revoking Wilford’s home confinement without due process is restoration of the status quo ante. As in *Young*, Wilford must be returned to the conditional-release status from which he was unlawfully removed.

Any future effort to revoke that placement “must, of course, comply with the procedures mandated by” *Morrissey/Young. Harper v. Young*, 64 F.3d 563, 567 (10th Cir. 1995), *aff’d* 520 U.S. 143 (1997).

CONCLUSION

BOP released Wilford from prison and placed him on home confinement after determining that he satisfied the applicable CARES Act criteria. While living in the community, Wilford complied with every condition imposed upon him. He was never accused of violating any rule, condition, or program requirement.

Nevertheless, BOP revoked his home confinement and returned him to prison.

It did so without alleging misconduct. It did so without notice. It did so without a hearing. It did so without affording any opportunity to be heard. The Constitution does not permit the government to grant conditional liberty and then revoke that liberty without due process of law. Under *Morrissey* and *Young*, Wilford possessed a protected liberty interest in remaining on home confinement, and BOP violated the Due Process Clause when it returned him to prison without any alleged violation or the procedural protections those decisions require.

Accordingly, this Court should reverse the judgment below, hold that BOP unlawfully revoked Wilford’s home confinement in violation of the Due Process Clause, and order Wilford restored to home confinement. Alternatively, if the Court concludes that any unresolved factual issues bear upon the disposition of the

constitutional questions presented, it should vacate the judgment and remand for further proceedings.

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

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