STATE OF MINNESOTA

IN SUPREME COURT

A17-1741

Court of Appeals

Gildea, C.J.
Concurring in part, dissenting in part,
Hudson, Chutich, Thissen, JJ.

State of Minnesota, ex rel. Robert A. Young,

Appellant,

vs.

Filed: March 24, 2021
Office of Appellate Courts

Paul Schnell, Commissioner of Corrections,

Respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant State Public Defender, Saint Paul, Minnesota for appellant.

Keith Ellison, Attorney General, Bradley Simon, Assistant Attorney General, Saint Paul, Minnesota, for respondent.

Justin M. Page, Eren Sutherland, Minneapolis, Minnesota, for amicus curiae Mid-Minnesota Legal Aid Minnesota Disability Law Center.

S Y L L A B U S

1. Because the issues appellant presents are capable of repetition but may evade review, his release from prison during his appeal does not require that the appeal be dismissed as moot.

2. Review hearings held by the Department of Corrections are lawful under the Administrative Procedure Act, Minn. Stat. ch. 14 (2020), and Minn. Stat. § 244.05, subd. 2 (2020).

3. The Department of Corrections did not violate appellant's substantive due process rights under the United States Constitution when it revoked appellant's conditional release and extended his reincarceration through review hearings.

4. The Department of Corrections did not violate the rule of law set forth in *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792 (Minn. App. 2008).

5. A claim under the Americans with Disabilities Act, 42 U.S.C. § 12132, cannot be raised in a petition for a writ of habeas corpus.

Affirmed in part and reversed in part.

O P I N I O N

GILDEA, Chief Justice.

The question in this case is whether appellant Robert Young, a Level III predatory offender currently serving the conditional release term of his sentence, is entitled to a writ of habeas corpus. Young seeks reversal of the Department of Corrections's revocation of his conditional release and an order preventing the Department from using his inability to maintain an agent-approved placement due to his epilepsy as a basis for future revocations of his conditional release.

The district court denied Young's petition for a writ of habeas corpus, finding that Young's disability was not the sole reason for his continued incarceration. Young appealed, but because the Department released him shortly after his brief was filed, the

court of appeals held that Young's appeal is moot. *State ex rel. Young v. Roy (Young I)*, No. A17-1741, 2018 WL 2407259, at *3–4 (Minn. App. May 29, 2018), *rev. granted* (Minn. Aug. 21, 2018). We granted Young's petition for review and stayed it pending the resolution of a related case. We then vacated the court of appeals' decision and remanded for reconsideration. The court of appeals again held that Young's claim is moot. *State ex rel. Young v. Schnell (Young II)*, No. A17-1741, 2020 WL 614249, at *3 (Minn. App. Feb. 10, 2020), *rev. granted* (Minn. Apr. 28, 2020). We granted Young's second petition for review.

Because the issues raised in Young's appeal are capable of repetition but may evade review, we reverse the court of appeals' conclusion that this appeal is moot. Reaching the merits of Young's claims, we further hold that: (1) the Department's use of review hearings is lawful; (2) the Department did not violate Young's substantive due process rights when it revoked Young's conditional release and extended his reincarceration through review hearings; (3) the Department did not violate the rule of law set forth in *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792 (Minn. App. 2008); and (4) a claim under the Americans with Disabilities Act, 42 U.S.C. § 12132, cannot be asserted in a habeas petition. We therefore affirm in part and reverse in part the decision of the court of appeals.

FACTS

In 2012, Young was convicted of third-degree criminal sexual conduct in Dakota County and sentenced to 32 months in prison plus a 10-year conditional release term. Young's conditional release term began in 2014 and ends in 2025. Young challenges actions the Department of Corrections took in connection with his conditional release term.

Before turning specifically to those challenges, it is helpful to examine the process and rules applicable to conditional release.

In Minnesota, a prison sentence consists of two terms: a prison term and a supervised release term. Minn. Stat. § 244.101, subd. 1 (2020). Predatory offenders must also complete an additional term of conditional release. *See, e.g.*, Minn. Stat. § 609.3455, subds. 6–7 (2020). The conditional release term for a Level III predatory offender, like Young, is governed by the rules for Intensive Supervised Release ("ISR"), which require in relevant part that an offender reside in agent-approved housing while on release. Minn. Stat. §§ 244.05, subd. 6(a), .15, subd. 3 (2020). If an offender violates the conditions of his or her conditional release, the Department may revoke the offender's release and re-incarcerate the offender "for the appropriate period of time" not to "exceed the period of time remaining in the [offender's] sentence." Minn. Stat. § 244.05, subd. 3(2) (2020).

When an offender violates ISR conditions, the offender's supervising agent from the Department of Corrections investigates the alleged violation and, if grounds exist to begin the revocation process, files a termination report with the Department's Hearings and Release Unit ("Hearings Unit"). Minn. R. 2940.3900 (2019). If the Hearings Unit decides to begin revocation proceedings, that unit notifies the supervising agent and the State Public Defender's Office. Minn. R. 2940.4100 (2019). The supervising agent then gives the offender a copy of the violation report and informs the offender of his right to either admit the violation or request a revocation hearing. Minn. R. 2940.4200 (2019). If the offender requests a revocation hearing, the offender appears before a Hearings Unit officer and may be represented by counsel of choice or a State Public Defender, may present

evidence, and may confront and cross-examine witnesses. *Id.*; Minn. R. 2940.3500, 2940.4300 (2019). If the officer finds that a violation has been proven, the officer has the option to reincarcerate the offender and specify a "projected release date." Minn. R. 2940.0100, subp. 21 (2019) (defining the term "projected release date"); *see also* Minn. R. 2940.3800 (2019) (describing the Department's practice of setting a "release date" after revoking an offender's conditional release). The Department will then either release the offender on the projected release date or hold a review hearing to address the offender's release planning. The Department's procedures for holding review hearings are not included in the Department's rules or policies.

Turning back to the facts before us, Young filed a habeas petition in 2017. Before that time, Young's conditional release had been revoked on five separate occasions. Four of these revocations, including the two revocations being challenged here, followed Young's termination from his residential placement due to his failure to complete the placement's residential programming, a specific condition of Young's release.

Young was first released in October 2014 to RS Eden-Ashland in Ramsey County. A month after his release, RS Eden terminated his placement for failure to complete residential programming and for "sexually abusive behaviors." Based on this termination, Young's agent from the Department filed a violation report that alleged that Young touched another RS Eden client in a sexually inappropriate manner. In the subsequent revocation hearing, the Hearings Unit revoked Young's conditional release and reincarcerated him. Young's predatory offender risk assessment was increased from Level II to Level III before he was released.

Young's second release was in June 2015. He was released to 180 Degrees' residential treatment program. His agent filed a violation report in September 2015, alleging that he had failed to inform her of his residence and activities. Young's release was revoked for 90 days or less.

Young was released a third time in November 2015, again to 180 Degrees. Two months later, his agent filed a violation report alleging that Young failed to complete residential programming. He had been terminated from 180 Degrees because he failed to maintain medication compliance, failed to attend all medical and mental health appointments, failed to spend 40 hours per week working or searching for work, and failed to secure agent-approved housing. At his subsequent revocation hearing, the Hearings Unit officer found these violations "willful and inexcusable" and revoked Young's conditional release for 120 days.

Young was then released to Alpha Human Services in May 2016. The revocations being challenged in this appeal occurred shortly thereafter in July 2016 and September 2016.

In a violation report filed in July 2016, Young's agent alleged that Young violated his release because he failed to complete residential programming at Alpha Human Services. The report stated that Young "isolated himself and refused to engage in treatment." Young's agent discussed Young's behavioral issues, poor attitude, lack of participation in treatment, as well as his self-harm and suicidal ideation. The report details an incident in which Young was hospitalized after he intentionally burned his arms with a lighter and contemplated using his GPS charger to harm himself. Young's agent also

explains how she, along with Young's therapist and supervisor, "confronted [Young] on his poor attitude, lack of participation in treatment, and his preoccupation with getting a transfer to Georgia to live with his brother."[1] In addition to all of these issues, the report detailed that Young "had seizures multiple times per week." Ultimately, the violation alleged was Young's failure to complete the residential programming at Alpha Human Services.

The Hearings Unit held a revocation hearing in July 2016. Young's conditional release was revoked and he was re-incarcerated for 30 days. In August 2016, Young was released from prison for a fifth time to 180 Degrees.

In a violation report filed in September 2016, Young's agent again alleged that Young failed to complete programming. The report noted that "Mr. Young had an extremely difficult adjustment to treatment and as a result, he suffered stress-related seizures, per medical personnel, multiple times per week. His medical issues and suicidal ideation which resulted in many hospital visits, combined with a resistance to participate in group treatment in any way resulted in his termination." In a termination report, Young's case manager from 180 Degrees further explained that "[w]hile in the program [Young's] health was a huge barrier that prevented him from success. [He] was hospitalized on the following dates: 08/15/2016, 08/20/2016, 08/26/2016, 08/27/2016, 08/30/2016, and

[1] At some point after these discussions, Young's brother moved to Alabama. Young requested an interstate transfer to live with him there, but this request was apparently refused by the State of Alabama.

09/06/2016. It is recommended that [Young] be placed in an inpatient institution where his health can be monitored."

But Young's agent from the Department also noted that, as with previous releases, Young had issues maintaining medication compliance and that "although Mr. Young does have medical issues beyond his control, he has minimal seizures while in a jail or prison setting and had far fewer seizures while at 180 Degrees." Finally, Young's agent explained that Young "has had behavioral issues throughout his releases in the community. He all but refused to participate in treatment at Alpha and he continues to deny his offense was anything more than a 'threesome.' " Young's agent said that she was "willing to work with Mr. Young, but would like it noted that the expectation is that Mr. Young needs to make a concerted effort during his release so that his mental health team and agents are not working harder than he is at keeping him in the community."

The Hearings Unit held a revocation hearing in September 2016. Young's agent recommended that Young's conditional release be revoked "until an appropriate placement can be secured that can address his mental health and medical needs." Young's conditional release was revoked for 90 days or less. The Hearings Unit officer made Young's release from re-incarceration contingent upon having an agent-approved housing plan, and Young was informed that "he must avoid conviction of discipline violations while incarcerated or [the Hearings Unit] may extend the [projected release date]."[2]

[2] Young was convicted of six discipline violations during his incarceration, resulting in a total of at least 115 days of segregated confinement and an extension of his projected

Because by December 2016, Young and his team had not yet agreed on an agent-approved release plan, the Hearings Unit held a review hearing. A case manager and social worker discussed possible placements at 180 Degrees and Damascus Way, but the placements were not viable due to Young's medical needs. The case manager and social worker also discussed possible placements at the Frasier House and the Cochran House, but both locations refused to accept Young. The case manager stated that she was waiting for Young's social worker to explore the possibility of a CADI waiver assessment in Anoka County.[3] The Hearings Unit officer noted that Young's "[p]lacement options are extremely limited . . . due to his current medical needs and his Level III Predatory Offender status." The officer extended Young's incarceration for 90 days or less, pending Young's placement in an agent-approved residence.

In March 2017, the Hearings Unit held a second review hearing. Young's agent from the Department stated that Young's team "attempted placement at 180 Degrees, Damascus Way and Alpha Inpatient Services without success" because those placements did not feel they could meet Young's medical needs. She stated that Young's team was still waiting on the CADI waiver process to see what placement options became available. Young testified that the only placement he could find was at Evergreen House in Beltrami County. However, Evergreen House's age limit made him ineligible. Young's attorney

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release date by 39 days. The district court found that Young's time in segregation made it difficult for his agent to work with him to secure agent-approved housing.

[3] Community Access for Disability Inclusion (CADI) is a program that provides home and community-based services to children and adults with disabilities who require the level of care provided in a nursing facility as an alternative to institutionalization.

asserted that placement at RS Eden had not been explored. Young's agent responded that it is not an accepted practice within Dakota County to place Level III predatory offenders at RS Eden. Young's incarceration was extended for an additional 90 days or less.

In July 2017, Young petitioned the district court for a writ of habeas corpus.[4] The district court denied Young's habeas petition without an evidentiary hearing, finding that Young's epilepsy was not the sole reason for the revocation of his conditional release and his continued incarceration. The district court emphasized the violation reports filed by Young's agent in July 2016 and September 2016, noting that Young had an extremely difficult adjustment to treatment, continued to deny the seriousness of his offense, and at times simply refused to engage in treatment. The district court further highlighted the efforts by Young's agent from the Department of Corrections to secure housing on his behalf: "These efforts included attempting to arrange an inter-state transfer for Young to live with his brother in Alabama, approving Young's placement in residential group homes five times, and helping Young secure government benefits." The district court also found that "[s]ince 2014, Young has not made any significant efforts on his own behalf to secure housing. At Young's last review hearing the agent and case manager reviewed their efforts to find housing for Young at halfway houses, private residences, group residential housing, and other supportive programs." Moreover, the court determined that Young's behavioral

[4] After Young filed his petition for a writ of habeas corpus, the Hearings Unit held another review hearing in late July 2017. Young was in segregation in prison due to "his assaultive, abusive behavior and as a result [was] not eligible for release." During the review hearing, Young's case manager reported that the CADI waiver obtained on his behalf had expired during Young's time in segregation. Young's projected release date was extended an additional 60 days.

issues, refusal to participate in his own release planning, and his extensive time in segregated confinement contributed to his extended incarceration. Ultimately, the district court concluded that requiring predatory offenders to have an agent-approved residence was not an unworkable condition of release and does not violate the Americans with Disabilities Act, 42 U.S.C. § 12132.

Young appealed in November 2017 and the Department released Young from prison in December 2017.[5] The court of appeals determined that Young's release from prison rendered his appeal moot. *Young I*, 2018 WL 2407259 at *3.[6]

We granted Young's petition for review but stayed it pending resolution of *State ex rel. Leino v. Roy*, 910 N.W.2d 477 (Minn. App. 2018), *rev. granted* (Minn. June 27, 2018), *dismissed as improvidently granted* (Minn. May 10, 2019). After we dismissed *Leino* as improvidently granted, we continued the stay in Young's appeal pending resolution of *State ex rel. Ford v. Schnell*, 933 N.W.2d 393 (Minn. 2019). When we released our decision in *Ford*, we vacated the court of appeals' decision in Young's appeal and remanded for reconsideration. The court of appeals found Young's appeal still to be moot based on his

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[5] The date of Young's release is not in the record, but the parties stipulated to it during oral argument before the court of appeals. *Young I*, 2018 WL 2407259 at *2.

[6] Since the court of appeals' first opinion, several more events have transpired that are likewise outside the record. Young's release was revoked some time before June 2019, he was released in June 2019, and his release was revoked yet again in September 2019. As of the date of this opinion, Young's release has been revoked seven times. The Department of Corrections moved to supplement the record with details regarding Young's subsequent revocations, which Young opposed. We denied the Department's motion to supplement the record. At oral argument before our court, both parties agreed that Young is currently incarcerated but that his current incarceration is not relevant to mootness because it is due to reasons unrelated to his current petition.

release from incarceration. *Young II*, 2020 WL 614249 at *4. We granted Young's second petition for review.

ANALYSIS

Young presents four substantive arguments in this appeal: (1) the Department's practice of holding review hearings is unlawful; (2) the Department violated his substantive due process rights by impairing his liberty interest in his conditional release date; (3) the Department violated the rule of law set forth in *Marlowe*, 755 N.W.2d 792; and (4) the Department violated the Americans with Disabilities Act, 42 U.S.C. § 12132. In addition to responding to these arguments, the Department contends that Young's appeal is moot because while his appeal was pending, Young was released from prison.

I.

We turn first to the Department's argument that we should dismiss Young's appeal as moot. An appeal must be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible. *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). Mootness is an issue of justiciability, which is an issue of law we review de novo. *Id.* at 4.

As we explained in *Ford*, we do not apply justiciability doctrines "mechanically." 933 N.W.2d at 402. In *Ford*, we held that "the writ of habeas corpus is an appropriate means to challenge future incarceration" as long as the future incarceration is "nonspeculative." *Id*. at 403. Applying that standard, we determined that an offender's release from incarceration did not render his appeal moot because the district court found that he would "ultimately return to prison." *Id.* at 400. We upheld the district court,

reasoning that "the evidence establishes that Ford's return to prison is imminent and almost inevitable, even if it has not yet occurred." *Id.* at 403.

Here, Young was still incarcerated when the district court ruled on his habeas petition so there is no similar finding by the district court. And unlike the petitioner in *Ford*, Young is unable to point to a definitive date in the future when he is likely to have his conditional release revoked. We therefore agree with the court of appeals that Young's appeal is distinguishable from *Ford*. But the court of appeals nonetheless erred in determining that the issues presented by Young's appeal were moot because, as we explain below, those issues are capable of repetition yet likely to evade review.[7]

This mootness exception applies when two elements are satisfied: "[1] there is a reasonable expectation that a complaining party would be subjected to the same action again *and* [2] the duration of the challenged action is too short to be fully litigated." *Dean*, 868 N.W.2d at 5. With respect to the reasonable expectation prong, Young's conditional release has already been revoked seven times. Four of those revocations were due to Young's failure to complete residential programming, and two of those four failures were compounded by complications caused by Young's epilepsy. Moreover, his placement options are extremely limited due to his medical needs and his Level III predatory offender status. These facts create a reasonable expectation that Young's conditional release will be revoked again for his inability to complete residential programming.

[7] Young raises other mootness exceptions, but we need not address them because we find the issues presented by his appeal are capable of repetition yet evading review.

Regarding the second element, whether the duration of the challenged action is too short to be fully litigated, the Department maintains that the revocation of Young's conditional release is properly subject to its broad discretion. We have previously agreed with this proposition. *State v. Schwartz*, 628 N.W.2d 134, 142, n.4 (Minn. 2001) (recognizing the Department's "broad discretion" in making release decisions). Any future challenge by Young, therefore, could easily be mooted by the Department's decision to release him from confinement, rendering the challenged action too short to be fully litigated.

The Department responds that the duration of the challenged activity must, "by its very nature," be too short to be fully litigated. *Hickman v. Missouri*, 144 F.3d 1141, 1143 (8th Cir. 1998). The exception does not apply, says the Department, because the term of an offender's re-incarceration is not, "by its very nature," too short a period to litigate a habeas corpus proceeding. The Department undermines its own position. If the re-incarceration term is subject to the Department's broad discretion, then the term, "by its very nature," could always be shortened by the Department to moot an offender's habeas corpus petition.

Based on this analysis, we hold that the issues Young raises are capable of repetition yet likely to evade review. Accordingly, we will not dismiss this appeal as moot.

Our conclusion that the appeal will proceed requires us to determine whether we should address the merits of Young's claims or send the case back to the court of appeals for resolution. We have already sent Young's claims back to the court of appeals once. Doing so again would not serve judicial economy and might actually "thwart the very

purpose" of a habeas corpus petition. *Ford*, 933 N.W.2d at 406. We therefore choose to address the merits of Young's claims. *See Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 628–29 (Minn. 2012).

II.

Turning to the merits, we consider first Young's contention that the Department's use of review hearings for conditional release violators is unlawful. Young asserts that the Department's practice is unlawful under Minnesota's Administrative Procedure Act ("APA"), Minn. Stat. ch. 14 (2020), because the Department has not adopted administrative rules authorizing and regulating review hearings. Even if the Department had followed the APA rulemaking process, Young argues that Minn. Stat. § 244.05, subd. 2 (2020), prohibits the Department from extending an offender's projected release date using review hearings. Both arguments implicate questions of statutory interpretation that we review de novo. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016).

A.

Young argues that the Department's use of review hearings is unlawful under the APA. Young implicitly argues that the Department's practice of holding review hearings is a "rule" under the APA, and he explicitly argues that "failure to comply with the necessary procedures results in invalidity of the rule." *White Bear Lake Care Ctr., Inc. v. Minn. Dep't of Pub. Welfare*, 319 N.W.2d 7, 9 (Minn. 1982). The Department responds

that it is not required to follow APA rulemaking procedures for review hearings, citing Minn. Stat. § 244.13, subd. 1 (2020). We agree with the Department.

The Legislature delegates rule-making authority regarding conditional release to the Commissioner of the Department of Corrections. Minn. Stat. § 244.05, subd. 2. Although the Commissioner "shall adopt by rule standards and procedures for the revocation of supervised or conditional release, and shall specify the period of revocation for each violation of release," *id*., the Legislature expressly exempted the Commissioner from having to follow the APA rulemaking procedures:

> [t]he adoption and modification of policies and procedures to implement sections 244.05, subdivision 6, and 244.12 to 244.15 are not subject to the rulemaking procedures of [the APA] because these policies and procedures are excluded from the definition of a rule under section 14.03, subdivision 3, paragraph (b), clause (1).

Minn. Stat. § 244.13, subd. 1; *see* Minn. Stat. §§ 244.05, subd. 6 (explaining which offenders must be placed on ISR, providing authority to impose conditions of release, and granting authority to impose sanctions for release violations), 244.12–.15 (relating to intensive community supervision).

Based on the plain language of the statute, we hold that the Department's practice of holding review hearings for offenders on ISR is not a "rule" subject to the APA, and the Department therefore is not required to follow the APA rulemaking process for review hearings.[8]

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[8] For the first time on appeal, Young argued that review hearings do not "relate to ISR" because the offender is no longer in the community. Young forfeited this argument by failing to present it below. *See Ries v. State*, 920 N.W.2d 620, 639–40 (Minn. 2018).

B.

Young also argues that Minn. Stat. § 244.05, subd. 2, requires the Department to "specify the period of revocation for each violation of release" when revoking conditional release. Young asserts that the Department cannot extend an offender's projected release date during review hearings because the revocation period has already been determined. The Department responds that it has broad discretion to establish offenders' release terms. The parties' arguments require us to interpret Minn. Stat. § 244.05, subd. 2.

We interpret statutes to " 'ascertain and effectuate' the Legislature's intent." *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019); Minn. Stat. § 645.16 (2020). We "do not examine different provisions in isolation." *State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011). Rather, we read "words and sentences . . . in light of their context." *Id.* Under the "whole-statute canon," the relevant context includes different sections of the same statute. *See State v. Prigge*, 907 N.W.2d 635, 640 (Minn. 2018).

Here, the relevant context for section 244.05 subdivision 2, includes subdivision 6 of that same statute. *Id.* Minnesota Statutes section 244.05, subdivision 6, provides that the Commissioner "shall impose sanctions as provided in subdivision 3 and section 609.3455." Subdivision 3 of section 244.05, in turn, provides that the Department may "revoke the inmate's supervised release and reimprison` the inmate for the appropriate period of time" not to "exceed the period of time remaining in the inmate's sentence." Additionally, Minn. Stat. § 609.3455, subd. 8(c), specifies that "[i]f the offender fails to

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(Hudson, J., concurring in part and dissenting in part) (collecting cases explaining how forfeiture may occur at each level of the appellate process).

meet any condition of release, the commissioner may revoke the offender's conditional release *and order that the offender serve all or a part of the remaining portion of the conditional release term in prison*." (emphasis added). The plain language of these provisions gives the Department broad discretion when establishing a period of revocation for conditional release violators, and makes clear that the period of revocation may include all of the time remaining on the conditional release term.

The review hearing process the Department followed for Young's revocations is consistent with this authority. In each instance, the Hearings Unit provided a projected release date and held a review hearing to determine whether Young would be in violation of his release conditions immediately upon his release from prison. For instance, when Young's release was revoked for "up to 90 days" in September 2016, the Hearings Unit held a review hearing 80 days later to determine whether Young would have an agent-approved residence in the community upon release. Because Young lacked such a residence, the Hearings Unit extended his incarceration for an additional 90-day period. In other words, the Department used review hearings to determine the "appropriate period of time" for Young's revocation period. Minn. Stat. § 244.05 subd. 3.

In short, the plain language of Minn. Stat. § 244.05, subd. 2, when read in context of the entire statute, does not prohibit the Department from extending the period of an offender's revocation as long as the period of revocation does not exceed the time remaining in the offender's conditional release term. Here, Young's conditional release term does not expire until 2025 and the time periods of his revocations have all been within the time remaining on his sentence.

Based on our analysis above, we hold that the Department's use of review hearings here was lawful under the APA and Minn. Stat. § 244.05, subd. 2.

III.

We turn next to Young's claim that the Department's use of review hearings to extend his incarceration violated his substantive due process rights under the Fourteenth Amendment to the United States Constitution.[9] Young argues that the Department impaired his liberty interest in his conditional release date and in remaining in the community on ISR. We review questions of constitutional interpretation de novo. *State v. Barker*, 705 N.W.2d 768, 771 (Minn. 2005).

As a preliminary matter, the parties dispute whether substantive due process protects Young's asserted liberty interest. The Department argues that substantive due process protects only those liberty interests that the United States Constitution creates. *See Bagley v. Rogerson*, 5 F.3d 325, 328 (8th Cir. 1993) (explaining that state-created liberty interests are "meaningful only in the context of procedural-due-process claims" and that a contrary ruling "would turn every state-law violation into a substantive-due-process claim, a result that would obliterate completely the distinction between state law and the federal Constitution"); *see also Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 229 (1985)

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[9] Young expressly disclaims a procedural due process claim, so we decline to address that theory. Young's brief to our court might be read as making both a "facial" and an "as-applied" substantive due process challenge to review hearings. But to the extent that he argues the former, the argument is forfeited because he failed to raise it below. *State v. Ali*, 895 N.W.2d 237, 246 (Minn. 2017) (holding an argument waived when not presented to the district court); *see also Olson v. One 1999 Lexus*, 924 N.W.2d 594, 607 n.8 (Minn. 2019) (discussing the difference between facial and as-applied due process challenges).

(Powell, J., concurring) (observing that only the U.S. Constitution can create rights that are protected under substantive due process).

The Department asserts that Young's criminal conviction extinguished his constitutional right to live in the community. *See Meachum v. Fano*, 427 U.S. 215, 224 (1976) ("[G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty . . . ."). As a result, the Department contends that Young's interest in living in the community before the expiration of his conditional release term is a state-created conditional liberty interest that substantive due process does not protect. In response, Young cites to procedural due process cases and substantive due process cases about indefinite psychiatric confinement.[10]

We need not decide whether substantive due process protects Young's asserted liberty interest because, as explained below, we ultimately conclude that the Department's actions survive constitutional scrutiny. Accordingly, we will assume, without deciding, that substantive due process protects Young's asserted liberty interest.

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[10] *See Morrissey v. Brewer*, 408 U.S. 471 (1972) (a procedural due process case holding that parolees' interests in remaining on parole required due process before revocation); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (addressing substantive due process in the context of indefinite psychiatric confinement); *Carrillo v. Fabian*, 701 N.W.2d 763, 772–74 (Minn. 2005) (a procedural due process case holding that an inmate serving his prison sentence had a protected liberty interest in his supervised release date); *In re Blodgett*, 510 N.W.2d 910, 914–15 (Minn. 1994) (same); *In re Linehan*, 557 N.W.2d 171, 181 (Minn. 1996) *cert. granted, judgment vacated sub nom. Linehan v. Minnesota*, 522 U.S. 1011 (1997) (same). As noted above, Young does not assert a procedural due process challenge and so those cases are not helpful. The indefinite confinement cases are likewise inapposite because Young's situation also does not involve indefinite confinement; his conditional release term expires in 2025.

Assuming that substantive due process rights apply, we must next consider what level of scrutiny to apply to the Department's decision to revoke Young's conditional release and extend his incarceration using review hearings. Young argues that strict scrutiny or rational basis applies. For its part, the Department contends that the "shocks the conscience" standard governs. *See, e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998); *Mumm v. Mornson*, 708 N.W.2d 475, 487 (Minn. 2006) (applying the standard in an excessive force case).

While Young argues that we should apply strict scrutiny, he does not cite any case where we applied strict scrutiny in a substantive due process challenge to the Department's decision to revoke an offender's conditional release.[11] Our own research has disclosed no case that applies strict scrutiny to a substantive due process challenge of an administrative decision such as the one we have here.

Young does cite, however, a number of cases in which we applied rational basis review to challenges to administrative rules and decisions. *See Jacka v. Coca-Cola Bottling Co.*, 580 N.W.2d 27, 35 (Minn. 1998) (applying rational basis to determine the constitutionality of healthcare regulations); *see also Mfg. Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 243 (Minn. 1984) (applying rational basis to a Minnesota Health Department rule setting a maximum indoor air level of formaldehyde). And we have consistently deferred to the Department's decisions made within the scope of its discretionary authority, a deference reflected in the application of rational basis review.

[11] The cases to which Young cites for this proposition, *see supra* note 10, dealt either with procedural due process or indefinite psychiatric confinement.

See State ex rel. Morrow v. LaFleur, 590 N.W.2d 787, 792 (Minn. 1999) (suggesting that deference is due to the Department regarding whether an inmate is amenable to sex offender treatment), *overruled on other grounds*, *Johnson v. Fabian*, 735 N.W.2d 295, 301 (Minn. 2007); *State v. Schwartz*, 628 N.W.2d 134, 140 (Minn. 2001) (agreeing with the notion that the executive branch has " 'absolute discretion' over the release portion of an offender's sentence"); *Mitchell v. Smith*, 817 N.W.2d 742, 750 (Minn. App. 2012) (applying rational basis review to prisoner's challenge to Department visitation policy). For these reasons, we hold that rational basis review applies to Young's challenge.

Applying rational basis review, we must determine whether (1) the State has a permissible objective in revoking Young's release and in holding review hearings to extend his incarceration; and (2) whether the Department used reasonable means to obtain that objective and whether those means were arbitrary or capricious. *See State v. Holloway*, 916 N.W.2d 338, 344–45 (Minn. 2018). We hold that the Department's actions have a rational basis.

There is no question that the State has permissible objectives here. Those objectives include: rehabilitating sex offenders, *McKune v. Lile*, 536 U.S. 24, 34 (2002); maintaining public safety, *Blodgett*, 510 N.W.2d at 916 (noting the state's "legitimate and compelling" interests in protecting the safety of others); ensuring the health and wellbeing of offenders with mental illnesses, *Addington v. Texas*, 441 U.S. 418, 426 (1979) ("The state has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable because of emotional disorders to care for themselves"); and ensuring the wellbeing of victims, *cf. id.*; *Blodgett*, 510 N.W.2d at 916.

The Department's revocation of Young's conditional release and its extension of his incarceration through the use of review hearings are reasonable means to obtain those objectives and are not arbitrary or capricious. The record is clear that Young had found no potential housing after any of his multiple placements were terminated. If the Department had not reincarcerated Young while his team searched for housing on his behalf, Young would have been left homeless. Even temporary homelessness of a Level III predatory offender could impair the State's interests in maintaining public safety and rehabilitating sexual offenders. The State would also be less capable of providing treatment for Young's medical and mental health issues if he were left homeless. The Department's actions were thus not arbitrary or capricious and were reasonable to obtain permissible objectives. The Department's actions survive rational basis review and we therefore hold that Young's substantive due process rights were not violated.

IV.

We turn next to Young's argument that his petition for a writ of habeas corpus should be granted because the Department violated the rule of law set forth in *Marlowe*, 755 N.W.2d at 792. Whether *Marlowe* was violated is a "legal question . . . subject to de novo review." *Ford*, 933 N.W.2d at 406. And the burden of proof in a habeas petition is on the offender to show the illegality of his detention. *Breeding v. Swenson*, 60 N.W.2d 4, 7 (Minn. 1953). In reviewing a denial of a writ of habeas corpus, we give "great weight" to factual findings made by the district court. *Ford*, 933 N.W.2d at 401. Such findings will not be overturned unless they are clearly erroneous. *Id.* at 406.

When applying the clear error standard of review, we do not overturn the district court's findings merely because we disagree with them, or because we may have reached a different conclusion based on the record. *See, e.g.*, *Prod. Credit Ass'n of Mankato v. Buckentin*, 410 N.W.2d 820, 822 (Minn. 1987); C*ont'l Retail, LLC v. Cnty of Hennepin*, 801 N.W.2d 395, 403 (Minn. 2011). Instead, our inquiry is limited to "examin[ing] the record to see '[i]f there is reasonable evidence' in the record to support the court's findings." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d. 790, 797 (Minn. 2013) (quoting *Fletcher v. St. Paul Pioneer Press*, 589 N.W2d 96, 101 (Minn. 1999)). To determine that a finding is clearly erroneous, we must be "left with the definite and firm conviction that a mistake has been made." *Id.* (citation omitted) (internal quotation marks omitted).[12]

Before addressing Young's arguments that the Department violated the rule from *Marlowe*, we look first to *Marlowe* and our decision in *Ford* applying the rule from *Marlowe*.

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[12] The dissent departs from our well-established standard of review for habeas petitions, s*ee Ford*, 933 N.W.2d at 401, by substituting its judgment for that of the district court. The dissent concludes that the district court clearly erred in several of its findings.

The district court found that Young's revocations were based on his lack of an agent-approved residence, not his epilepsy, that Young was terminated from his residences for a multitude of factors, only one of which was the complication caused by his epilepsy, and that Young's agent made great efforts to find placements for him. The record reveals that some of the attempted placements referenced by the district court were outside of Dakota County.

In concluding that these findings are erroneous, the dissent cherry-picks a few select statements in the Hearings Unit notes and ignores much of the record, including the termination reports filed by Young's agent. As recounted above, *supra* pages 6–7, the termination reports provide reasonable evidence supporting the district court's conclusion

A.

In *Marlowe*, the offender was sentenced in Washington County and was serving the ISR portion of his sentence. 755 N.W.2d at 793. He located housing in Ramsey County where "a bed had been previously approved for him," but the Department refused to approve the placement because it was outside his county of commitment. *Id.* In reviewing the offender's subsequent habeas petition, the court of appeals examined the Department's policies regarding the placement of offenders on supervised release. *Id.* at 795. The court of appeals highlighted Department Policy 203.010 § C.2, which at the time provided in pertinent part:

> If no practical residential placement option can be made in the county where the offender was convicted, the local corrections agency for adult felons in the county of commitment will arrange for housing and supervision. This housing and supervision can occur within any county where it can be established and where the offender can most effectively be provided appropriate correctional programming.

Id. (quoting Minn. DOC, Policy No. 203.010 § C.2(d) (July 3, 2007)). Because the Department limited Marlowe's release planning to Washington County even though "a bed had been previously approved for him" in Ramsey County, and because the Department's own rules required it to supervise Marlowe "within any county where [housing] can be established," the court of appeals held that the Department was required "to develop a plan

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that Young's releases were revoked for numerous reasons. And the Hearings Unit notes, when read as a whole, provide reasonable evidence upon which to conclude that Young's release planning was not restricted to Dakota County.

The dissent is also simply wrong to assume, based on the Department's conduct in *other cases*, that the Department, *in this case*, limited Young's release planning to Dakota County, especially when the district court found otherwise and the record supports the district court's findings.

that can achieve Marlowe's release from prison and placement in a suitable and approved residence, whether in Washington County or in a neighboring county." *Id.* at 797. Critically, *Marlowe*'s rule was premised on the Department's obligation under its own policies and rules, not on statutory or constitutional grounds. *Id.* at 795 (citing Minn. DOC, Policy No. 203.010 § C.2(d) (July 3, 2007)).

We reviewed the application of *Marlowe*'s rule in *Ford*, 933 N.W.2d at 406–07.[13] In *Ford*, we upheld a district court ruling that required the Department to approve Ford's release to a county other than his county of commitment and, if that county refused to supervise him, to provide Department supervision in that county or to modify Ford's conditions of release. *Id.* at 407–08.

The dissent argues that our holding in *Ford* stands for a much larger proposition, concluding that our holding in *Ford* "announced a broad rule." In *Ford*, however, we were merely asked to resolve whether habeas corpus was an appropriate procedural remedy "under the circumstances." *Id.* at 404. We specifically responded to the Department's argument that "habeas relief is not available *for an alleged violation of an internal agency policy*." *Id.* (emphasis added). In rejecting the Department's argument, we did not explicitly adopt *all* of *Marlowe*'s reasoning. *See id.* at 404–05. Rather, we explained that our habeas statute and precedent did not support the Department's narrow view of habeas corpus. *Id.* The dissent is certainly correct that we cited *Marlowe* in that discussion. But in so citing *Marlowe*, we merely emphasized what the district court found to be

[13] The Department did not challenge the rule from *Marlowe* in *Ford* and it does not do so in this case either.

unacceptable conduct on the part of the Department: "Here, *the district court* found that Ford's liberty was restrained by the Department's failure to abide by its own internal policies and judicial precedent." *Id.* at 404 (emphasis added). In so holding, we had no occasion to comment on the scope of the rule in *Marlowe*.

Our analysis in *Ford* was therefore limited to: (1) determining whether habeas relief was an appropriate form of relief "under the circumstances," (2) considering the Department's argument that habeas corpus was not an appropriate remedy for "an alleged violation of an internal agency policy," and (3) applying the rule from a court of appeals decision—*Marlowe*, a case which neither party asked us to overturn—to a case that had "similar" facts. *Id.* at 404–06. *Ford* did not broadly interpret the rule in *Marlowe* to apply to other types of conditions or to occasions in which the Department had not violated its own policies and rules. Accordingly, we disagree with the dissent's characterization of *Ford*.

Not only is the dissent's interpretation of *Ford* inconsistent with *Ford* itself, but it is also inconsistent with our precedent that gives deference to the Department in its supervision of offenders on conditional release. We expressly recognized in *Ford* that the Department has "broad discretion" in making release decisions. 933 N.W.2d at 407–08 n.12 (citing *Schwartz*, 628 N.W.2d at 142, n.4). And in *Schwartz*, we said that the executive branch has " 'absolute discretion' over the release portion of an offender's sentence." 628 N.W.2d at 140. These observations are appropriate given the Legislature's grant of authority to the Department to revoke an offender's release for the remainder of that offender's conditional release term. *See* Minn. Stat. §§ 244.05, subd. 3, 609.3455,

subd. 8(c). In doing so, the Legislature has bestowed upon the executive branch—not the judiciary—broad discretion over an offender's conditional release term. Consistent with this broad discretion granted by the Legislature, our precedent expresses deference to the Department's decisions regarding predatory offenders. *See Morrow*, 590 N.W.2d at 792.

We give deference to the Department in this area for a good reason. Decisions regarding an offender's conditional release must be informed by a number of competing considerations. As the dissent observes, one of these considerations is the importance of reintegrating offenders into the community. *See Morrissey*, 408 U.S. at 477. But the Department must also consider public safety and ensure that predatory offenders on ISR are closely monitored by a supervising agent. For that reason, the Department is statutorily obligated to ensure that Level III predatory offenders are monitored in agent-approved housing while on release. *See* Minn. Stat. §§ 244.05, subd. 6(a), .15, subd. 3 (2020).

Ford is consistent with these principles. We cautioned in *Ford* that the Department's "broad discretion is not unbounded discretion." 933 N.W.2d at 408 n.12. And in delineating between "broad" and "unbounded" discretion, in *Ford,* we drew the bounds of the Department's discretion by prohibiting it from failing to "abid[e] by its own polic[ies]." *Id.*

In sum, the rule of law set forth in *Marlowe* and *Ford* is straightforward: the Department must follow its own rules for releasing offenders into the community. If the Department's failure to follow its own rules related to housing upon release causes an

offender's continued incarceration, the incarceration may constitute illegal restraint that may be remedied by a writ of habeas corpus. *See* Minn. Stat. § 589.01 (2020).[14]

B.

With this context in mind, we turn to Young's arguments and examine whether the Department violated *Marlowe* by failing to follow its own policies.

Young argues that the Department violated the rule from *Marlowe* because the Department conditioned "his release on an impossible condition: that he cease to have seizures." The district court disagreed as a factual matter, finding that "[t]here is no evidence that the [Department] has said it will not release Young from imprisonment until he is seizure free." Instead, the district court noted that the Department had released Young five times notwithstanding his seizures and made extensive efforts to find placements for Young. The record supports the district court's findings. Because the district court's findings are not clearly erroneous, we reject Young's argument that the Department conditioned his release on being seizure-free.

Young also argues that the Department violated *Marlowe* because it restricted his release planning to Dakota County. The Department's policies require an offender's agent to "assist the offender in locating an available and suitable residence both within and

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[14] Our discussion here is limited to the *Marlowe* rule, which, again, was not based upon statutory or constitutional grounds. Notably, we are not presented with an Equal Protection claim under the Fourteenth Amendment and we do not have occasion to decide whether the Department's conduct violated the ADA. Our conclusion in this case does not foreclose the possibility that these or other statutory or constitutional provisions might afford relief to offenders struggling to obtain agent-approved housing due to medical conditions outside of their control.

outside the county of historical ties or county of commitment." Minn. DOC, Policy No. 203.018 § B2 (Apr. 3, 2018). The record establishes that Young's agent did so.

During Young's review hearings, his agent reported exploring placement options in Hennepin County and Young's social worker requested a CADI waiver for a placement in Anoka County.[15] Far from limiting Young's release to his county of commitment (Dakota), then, the record supports the district court's finding that Young's team affirmatively sought out placements in other counties.[16] Young's case simply does not present the same cross-county restriction that was present in *Marlowe* and *Ford*.

In arguing otherwise, Young points to 23 Department-leased ISR houses and suggests that he is similar to the petitioners in *Marlowe* and *Ford* because he has not been released to one of those houses. But unlike *Marlowe* and *Ford*, Young has not proposed a specific residence at which he is eligible for placement. In *Marlowe*, the offender had "a bed . . . previously approved for him" in Ramsey County, 755 N.W.2d at 793, and in *Ford*, the offender had already been accepted to, and was currently residing in, a residential

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[15] As explained above, *supra* note 3, Young's social worker was apparently later able to obtain a CADI waiver on Young's behalf. But because Young was still in segregation at this time due to his "abusive and assaultive behaviors," the CADI waiver lapsed.

[16] Young and the dissent point to two statements in the Hearings Unit notes of his second review hearing: "[Young's agent] reports that the offender is a Dakota County commitment and there are no viable placements within her supervision area" and "[s]he states that there are no known options for placement at this time within Dakota County." But Young takes these statements out of context. The hearing notes state that Young's team "attempted placement at 180 Degrees, Damascus Way and Alpha Inpatient Services," which are Hennepin County placements.

facility in Hennepin County. 933 N.W.2d at 398.[17] Young has not established that he is eligible for placement at any specific residence, and his argument that the Department violated *Marlowe* on this basis therefore fails.

Young next argues that *Marlowe* entitles him to a placement in Department-funded housing. Department Policy 203.018 allows for the use of residency funding for "offenders deemed eligible under" Department Policy 205.130. Minn. DOC, Policy No. 203.018 § C (Apr. 3, 2018). Department Policy 205.130, in turn, states that initial funding lasts only 60 days. Minn. DOC, Policy No. 205.130 § A.2 (Sep. 3, 2019). To be eligible for additional funding, the offender must be in compliance "with release conditions and demonstrat[e] substantial progress toward securing an approvable residence." *Id.* The district court found that Young was not in compliance with his release conditions. The court found that "Young has engaged in self-injurious behavior, threatened to commit suicide, refused to take prescription medication, failed to demonstrate personal responsibility for his medical condition by going to neurology appointments obtained by his case worker, failed to engage in treatment while at residential treatment and failed to personally engage in any meaningful attempt to secure agency-approved housing on his own behalf." Moreover, the court found that "[s]ince 2014, Young has not made any significant efforts on his own

[17] The offender's county of commitment was Blue Earth County. 933 N.W.2d at 397.

behalf to secure housing." The record supports these findings. The Department therefore did not break its own rule by failing to provide department-funded housing.[18]

Young also argues that the Department violated *Marlowe* by failing to contract with ADA-compliant halfway houses. Young does not cite, and we are unable to find, a policy requiring the Department to do so. Instead, Young claims that one of the Department's regulations mandates that the Department require its housing providers to comply with the law. This regulation, however, refers only to the Department's own rules and does not require compliance with federal statutes like the ADA. Minn. R. 2920.0210 (2019) (requiring compliance with "a rule, part, subpart, or item designated 'mandatory' unless waived by the commissioner"). Accordingly, even if the Department did not contract with ADA-compliant halfway houses, this failure does not violate the rule from *Marlowe*.[19]

Finally, Young argues that the Department violated *Marlowe* by failing to modify the terms of his release to allow him to go to an inpatient institution for medical treatment.

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[18] The dissent concludes that "the Department should have made efforts to search for suitable housing for Young within its own ISR housing network." But as we explained above, the Department's rules make clear that, on this record, Young was not entitled to further department-funded housing. Additionally, it is worth noting that Young attached the list of the 23 ISR houses in his *reply brief* to the district court. The Department had no opportunity, then, to provide the evidence demanded by the dissent in its brief to the district court.

[19] We express no view on whether the Department's alleged failure to contract with ADA-compliant residential facilities is a violation of the ADA's integration mandate. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597 (1999) (discussing "unjustified isolation" as an ADA violation). We merely hold that *Marlowe* requires the Department to follow its own rules and, here, the Department has no rule regarding ADA-compliant halfway houses.

But Young does not cite a rule that requires the Department to grant this specific request.[20] Moreover, Young's conditional release terms do not prohibit inpatient treatment, and the record establishes that he was in fact admitted for such treatment on multiple occasions. Accordingly, we hold that the Department did not violate the rule in *Marlowe* for failing to modify the terms of Young's release.

Having considered each of Young's arguments and determined that the Department did not violate its own rules in its treatment of Young, we hold that the Department did not violate *Marlowe*. As the district court found, Young's agent worked extensively to find a housing placement in the community for him. Any delay that resulted was not a product of the Department's disregard for its own rules. Young's situation is unfortunate and his options may be limited due to his unique circumstances, but his predicament does not give rise to a *Marlowe* violation.

V.

Young's final argument is that the Department violated the ADA. Young argues that his conditional release was revoked and his incarceration was extended solely because of his epilepsy. Young also asserts that the Department violated the ADA's integration mandate by failing to administer its conditional release programming in the most integrated setting appropriate. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 591–92 (1999);

[20] Department Policy No. 203.250C (Oct. 16, 2018), arguably applies. But the Department concedes that Young does not need to adhere to that rule, which Young does not dispute. Further, that rule requires Young to follow a specific process for proposing a modification. The record and the briefing indicates he has not done so.

28 C.F.R. § 35.130(d). The Department responds that a habeas petition is not an appropriate vehicle for an ADA claim. We agree with the Department.

Whether an ADA claim may be asserted in a habeas petition is an issue of first impression for our court. While we may turn to persuasive authority from other states when addressing issues of first impression, *see State v. Leonard*, 943 N.W.2d 149, 156–57 (Minn. 2020), such authority is only marginally helpful here.[21] Accordingly, we focus primarily on the principles of habeas corpus relief.

A writ of habeas corpus is an "extraordinary remedy." *State ex rel. Schwanke v. Utecht*, 47 N.W.2d 99, 103 (Minn. 1951). This extraordinary remedy was traditionally limited to resolving jurisdictional issues and violations of constitutional rights. *See State ex rel. Bassett v. Tahash*, 116 N.W.2d 564, 565 (Minn. 1962); *State ex rel. Flynn v. Rigg*, 98 N.W.2d 79, 81 (Minn. 1959). And we have adhered to the principle that "[q]uestions which should be determined . . . through some other regular legal procedure have no place in a habeas corpus proceeding." *State ex rel. Butler v. Swenson*, 66 N.W.2d 1, 4 (Minn. 1954); *see also Schwanke*, 47 N.W2d at 103 (holding that a habeas corpus proceeding is

[21] Our research reveals that appellate courts from at least three states have expressly excluded ADA claims from habeas petitions. *See Yoder v. Walker*, No. 2 CA-HC 2007-0002, 2008 WL 4638927, at *1 (Ariz. Ct. App. Mar. 20, 2008) (holding that ADA claims are "not cognizable bases for a writ of habeas corpus"); *Lagunas v. Williams*, No. 71122, 2017 WL 1438705, at *1 (Nev. Ct. App. Apr. 19, 2017) (holding that an ADA claim "is not properly raised in a petition for a writ of habeas corpus"); *Bloom v. Cline*, No. 110,763, 2014 WL 5347375, at *8 (Kan. Ct. App. Oct. 17, 2014) ("Failure to comply with a statute [referring to the ADA] is not by itself a constitutional claim that falls within the scope of a habeas petition."). Young did not cite, and we were unable to find, a state supreme court decision affirmatively holding otherwise.

not a substitute for appeal); *State ex rel. Adams v. Rigg*, 89 N.W.2d 898, 901 (Minn. 1958) (petitioner "must show not only a statutory violation but also that such violation was so materially prejudicial as to deprive him of a fair trial, and further that the resulting error could not have been corrected by a timely exercise of an existing and available right of appeal").[22] While some of our recent decisions reflect a departure from the traditional view that only jurisdictional and constitutional questions are proper bases for a writ of habeas corpus, *see Ford*, 933 N.W.2d at 405 (collecting cases), those decisions remain consistent with the principle that habeas relief is not available when there exists an adequate alternative remedy at law.

For example, in *Kelsey v. State*, we held that habeas relief was available to a petitioner whose parole was wrongfully denied. 283 N.W.2d 892, 894 (Minn. 1979). The petitioner had no alternative remedy because Minnesota's postconviction statute at the time provided no redress. *Id.* at 894–95. In *State v. Schnagl*, we held that a motion to correct a sentence under Minn. R. Crim. P. 27 was an inappropriate method of challenging the Department's calculation of the length of an offender's release term. 859 N.W.2d 297, 303

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[22] The principle that habeas relief is not available when there is an adequate remedy at law is neither novel nor unique to Minnesota. *See, e.g.*, *Billiter v. Banks*, 988 N.E.2d 556, 557 (Ohio 2013) ("[H]abeas corpus is not available when there is an adequate remedy in the ordinary course of law." (internal quotation marks omitted)); *State ex rel. Haas v. McReynolds*, 643 N.W.2d 771, 775–76 (Wis. 2002) ("[I]f the petitioner has an otherwise adequate remedy that he or she may exercise to obtain the same relief, the writ will not be issued."); *In re Chapman*, 796 S.E.2d 843, 848 (S.C. 2017) ("[H]abeas relief is only available when other remedies, such as [post-conviction relief], are inadequate or unavailable."); *Murray v. Henderson*, 964 P.2d 531, 533 (Colo. 1998) ("[R]elief by way of habeas corpus is not available when other legal remedies exist, such as a motion under Crim. P. 35.").

(Minn. 2015). The petitioner had no other remedy available to him, and we held that habeas relief was appropriate. *Id.* at 302; *see also State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 275 n.4 (Minn. 2016) (applying *Schnagl*'s holding to a factually similar case). And lastly in *Ford*, we held that a writ of habeas corpus is proper to redress the Department's failure to follow its own policies. 933 N.W.2d at 405. Despite representing a broader view of the writ, the holdings from these cases are consistent with the principle that habeas relief is not available when there is some "other regular legal procedure" to remedy the alleged wrong. *State ex rel. Butler*, 66 N.W.2d at 4.

It is for precisely this reason that we must decline Young's invitation to resolve his ADA claim in this petition. Young has alternative legal relief available to him. He may bring a claim under the ADA itself or under the Minnesota Human Rights Act. *See* Minn. Stat. § 363A.01–.44 (2020). Because Young can challenge the Department's allegedly discriminatory treatment in civil litigation, his ADA claim is not properly before us in his habeas petition. We therefore hold that ADA claims cannot be asserted in a petition for a writ of habeas corpus and decline to address the merits of Young's ADA claims.[23]

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[23] In urging us to hold otherwise, Young points to a case involving the federal habeas corpus statute, *Bogovich v. Sandoval*, 189 F.3d 999 (9th Cir. 1999). But cases involving the federal habeas statute are unhelpful here. Federal courts generally disallow ADA claims in habeas petitions. *See Gorrell v. Hastings*, 541 F. Appx. 943, 945 (11th Cir. 2013) (excluding ADA claim challenging "the *circumstances*" of confinement (emphasis added)). But federal courts make an exception for claims challenging the *validity* of confinement to preserve the effectiveness of the federal statute's exhaustion requirement.

The federal statute requires petitioners to first "exhaust[] the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(a). Prisoners have attempted to avoid this exhaustion requirement by labeling their complaints as ADA claims, rather than as habeas petitions. *Bogovich*, 189 F.3d at 1002. Accordingly, federal courts look beyond the "label"

CONCLUSION

For the reasons discussed above, we affirm in part and reverse in part the decision of the court of appeals.

Affirmed in part and reversed in part.

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on the complaint and examine whether, in essence, the nature of the relief sought is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 484, 489 (1973).

If the complaint, in essence, challenges the validity of the confinement, then federal courts not only *allow* but *require* it to be brought under the federal habeas statute. *See Bogovich*, 189 F.3d at 1003 (noting that, in such situations, the writ is a plaintiff's "sole federal remedy"). Failing to require that such challenges be brought under the federal habeas statute would "wholly frustrate explicit congressional intent" because it would allow prisoners to plead around the federal statute's exhaustion requirement. *Preiser*, 411 U.S. at 489–90. Because Minnesota's habeas statute has no such exhaustion requirement, there is no similar reason for allowing ADA claims under Minnesota's habeas corpus statute. *See* Minn. Stat. § 589.01.

C O N C U R R E N C E & D I S S E N T

HUDSON, Justice (concurring in part, dissenting in part).

I agree with the court that Young's appeal meets an exception to mootness and that the Department of Corrections' review hearings are lawful. I disagree, however, with the court's conclusion that Young's two most recent revocations of supervised release and two subsequent extensions of incarceration—the only ones he challenged here—were not *Marlowe* violations.[1] The record clearly demonstrates that Young's supervised release was revoked and extended because his residential treatment facilities could not accommodate his seizures. By requiring Young to have agent-approved housing where none could meet his medical needs, the Department effectively required that Young not have seizures at all; a condition that was impossible for him to fulfill. That is the heart of a *Marlowe* violation. I respectfully dissent.

I.

Nearly every person convicted under our laws has a statutory right to supervised release.[2] *See Carillo v. Fabian*, 701 N.W.2d 763, 773 (Minn. 2005). A registered predatory offender subject to intensive supervised release must, however, meet certain

[1] Because I conclude that the Department of Corrections violated *Marlowe* by revoking Young's release solely due to his epilepsy, I would not reach the Americans with Disabilities Act issue.

[2] The purpose of supervised and conditional release is to "help individuals reintegrate into society as constructive individuals as soon as they are able." *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972).

conditions to maintain that release. *See* Minn. Stat. § 244.05, subd. 6 (2020). But that does not grant the Department unfettered discretion to impose whatever conditions it chooses.

When a condition of release becomes unworkable "due to the circumstances largely outside the control of an offender, the [Department] must consider a restructure or modification of those conditions." *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792, 796−97 (Minn. App. 2008). Significantly, the burden is not entirely on the offender to seek out acceptable housing because the Department's own policies require it "to assist an offender in finding residential placement." *Id.* at 795 (citing Minn. DOC Policy No. 203.010 § C.2).

The Department is required "to abide by its own internal policies *and* judicial precedent." *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 404 (Minn. 2019). In *Ford*, we held that the Department violated the binding precedent of *Marlowe* when it did not fulfill its own "obligation to fashion conditions of release that are workable and not impossible to satisfy." *Id.* at 406 (quoting *Marlowe*, 755 N.W.2d at 793). We were particularly concerned that the Department had repeatedly ignored the "clear holding of *Marlowe*" by denying offenders meaningful access to their statutory right to supervised release. *Id.* at 407 n.11. While the offenders in both *Marlowe* and *Ford* specifically sought relief from a condition confining their residence to a particular county, the respective holdings were not limited to those particular facts. To the contrary, we admonished the Department for "ignor[ing] the clear language and full context of the *Marlowe* decision," and announced a

broad rule requiring the Department to consider alternate conditions whenever those conditions are clearly impossible for the offender to satisfy.[3] *Id.* at 407.

The court's conclusion that Young has not demonstrated a *Marlowe* violation is based primarily on the district court's clearly erroneous factual findings, which were made without an evidentiary hearing. In doing so, the court narrowly reads *Marlowe* and undermines the "grand purpose" of habeas—protecting individuals "from wrongful restraints upon their liberty." *Id.* at 404 (quoting *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

II.

The court concludes that not having seizures was not a condition of Young's release. It does so by summarily deferring to the district court's finding that "[t]here is no evidence that the [Department] has said it will not release Young from imprisonment until he is seizure free." Of course the Department would never outright say so, nor do I suggest that the Department actually intends for that to be a condition. Nevertheless, the simple fact remains that that is precisely the condition the Department is *practically* imposing when it continues to revoke Young's release for lack of agent-approved housing.

This is not a complicated puzzle. Indeed there are only three dots to connect: (1) the DOC required Young to possess agent-approved housing as a condition of his release;

[3] Unless and until the Department either revokes the policy that served as the basis for habeas relief in *Marlowe*, or we explicitly overrule the court of appeals' decision in *Marlowe*, that rule stands as the law of the land. *See Ford*, 933 N.W.2d at 404–05 (recognizing that *Marlowe* is "binding judicial precedent" on the Department of Corrections).

(2) Young could not obtain such housing due to his epilepsy and predatory offender status; and (3) the DOC revoked his release because he could not obtain such housing. These three dots lead straight to a *Marlowe* violation.[4] The court's conclusion to the contrary is based on several errors, each of which I address in turn.

A.

The first error the court commits is improperly looking to Young's prior revocations that have no bearing on his habeas petition here. The court exhaustively recounts Young's past history of non-compliance with treatment regimens, struggles with mental health, and sexual and physical misconduct. But Young's past conduct is not at issue here. The sole focus of his habeas petition is based upon his four most recent review hearings.[5] In several of these hearings, the hearing officer identified that Young's seizures were the *sole* reason for the termination of his housing and subsequent revocation of supervised release.

In particular, at Young's July 14, 2016 hearing, the hearing officer noted that Young's "only violation was that he lost his placement at Alpha [a halfway house] because they could not handle the frequency of his seizures." At this hearing, Young's agent further stated that he "was discharged from Alpha because they are not able to deal with his seizures and [the seizures] interfere with his treatment." The agent also noted that Alpha

[4] Young was revoked for "90 days or less" beginning September 7, 2016. Thus, he should have been released no later than December 6, 2016. Instead, Young remained in custody until December 18, 2017—over a year past his release date.

[5] Young challenges the July 14, 2016 and September 22, 2016 revocations of his supervised release and the December 12, 2016 and March 13, 2017 extensions of his imprisonment for lack of agent-approved housing.

was "willing to take him back if he [could] get his seizures under control." The agent then emphasized that Young "has been honest about his offense, and is willing to do treatment."

Young was then accepted into 180 Degrees (another halfway house), which also eventually terminated him as a client due to his seizures. The September 7, 2016 termination report positively noted that Young was tested multiple times for illicit substances and was negative each time. Young also "had no issues with [his accountability goal] and remained compliant with all aspects of this goal." However, the termination report concluded that Young's "health was a huge barrier that prevented him from success" and the report noted his multiple hospitalizations.

After 180 Degrees terminated Young due to his seizures, the officer at his September 22, 2016 hearing stated that "[a] halfway house placement is not equipped to handle his medical needs" and that Young "does have medical issues beyond his control."

Then at Young's December 12, 2016 hearing, the hearing officer noted that "[p]lacement options are extremely limited to [Young] due to his current medical needs and his Level III Predatory Offender status." Young's agent observed that multiple residences were not viable for him "due to [Young's] medical needs," while others outright refused him due to his Level III Predatory Offender status. Young's agent put it plainly: "[T]here are no other options available at this time."

Finally, at Young's March 13, 2017 hearing, the hearing officer once again affirmed that placement was difficult because of Young's "significant medical issues," in particular his "seizure disorder." The officer reaffirmed that Young's prior housing options denied him placement "due to his medical issues and their inability to meet his medical needs."

Young's case manager was seeking a CADI waiver to assist with potential placement, but Young had not yet been certified as having a disability. Young's agent confirmed that "there are no known options for placement" in Dakota County.[6]

The court identifies statements in Young's termination reports that were submitted to the hearing officer as evidence that Young's revocation was actually due to more than just his epilepsy. *See supra* at 24, n.11. But in doing so, the court effectively concludes that we should not take the hearing officers at their word. *See State v. Stempfley*, 900 N.W.2d 412, 417 n.10 (Minn. 2017). The district court's responsibility—and ours—is to determine why the hearing officers revoked Young's release. It may be that there were other *potential* reasons warranting Young's release revocation;[7] but when the Department by its own clear and unequivocal admission relies on an *actual* impermissible reason, it violates *Marlowe*.

The record of the hearings that Young actually challenges is clear. For at least his July 14, 2016 revocation, Young's housing was terminated solely due to his medical needs,

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[6] The record plainly shows that the Department was in fact restricting its searches at the time to Dakota County, and in this respect Young's case closely mirrors the geographic restrictions we found unlawful in *Ford*. *See* 933 N.W.2d at 406–08. The court asserts that Young "takes these statements out of context" because the hearing officer also identified several attempted placements at facilities located in Hennepin County. First, the court cannot simply ignore this clear statement that is consistent with the Department's recent history of abdicating its obligation to construct workable conditions of release. Second, even under the context as asserted by the court, the record demonstrates that the Department was still only searching a limited geographic area because Dakota and Hennepin Counties are adjacent.

[7] Even the behaviors identified in the violation reports could be explainable by Young's medical conditions. Because the district court did not conduct an evidentiary hearing, we cannot be certain.

and his seizures specifically. And each subsequent revocation rested primarily on the inability of the respective facilities to accommodate his medical needs. By requiring Young to have agent-approved housing when none were suitable to address his medical needs—which the record states were clearly "beyond his control"—the Department functionally placed an impossible condition on his release—that Young cease having seizures. The district court's finding to the contrary was clear error.[8]

B.

The court's second error is its agreement with the district court's finding that Young was not in compliance with his release conditions and did not demonstrate substantial progress towards securing approvable housing. Based on this finding, the district court further found that Young was not eligible for Department-funded housing that could better meet his needs. As previously explained, the only four hearings challenged by Young do not contain any evidence—outside of his inability to not have seizures—that he failed to

[8] The court accuses the dissent of "cherry-picking," but has itself joined in the harvest by selectively reframing our statement regarding the Department of Corrections' "broad discretion" in *Ford*. We emphasized in *Ford* that the "broad discretion" from *Schwartz* "is not unbounded discretion," and that in addition to following its own policies, "the Department must follow judicial precedent." *Ford*, 933 N.W.2d at 407–08 n.12 (quoting *State v. Schwartz*, 628 N.W.2d 134, 142 n.4 (Minn. 2001)). Moreover, this comment—made in a footnote—cited to *Schwartz*, which itself quoted from an Ohio Supreme Court case, *Woods v. Telb*, 733 N.E.2d 1103, 1110 (Ohio 2000); *see Schwartz*, 628 N.W.2d at 140. But both *Schwartz* and *Woods* dealt with the same limited question of whether sanctions imposed by the executive branch due to a violation of release conditions violate the separation of powers. *See* 628 N.W.2d at 139–41; 733 N.E.2d at 1110. This case, as did *Ford* and *Marlowe*, presents a different question: whether the imposition of sanctions can violate self-imposed, binding policy and rules. *Marlowe* held that it can, 755 N.W.2d at 796–97, and we agreed in *Ford* that habeas relief was an appropriate remedy for that violation, 933 N.W.2d at 405.

comply with his release conditions.[9] Essentially, the Department precludes Young from accessing funding that would allow him to secure appropriate housing because he cannot meet his release conditions; conditions he cannot meet because the Department will not release him without approved housing; housing he cannot obtain because none of the housing facilities can adequately address his seizures. This argument is circular and baffling and allows the Department to create quintessentially unworkable conditions.

Similarly, in contrast to the district court's findings, the record shows that Young meaningfully and actively participated in finding housing. He proposed at least two private residences, but both fell through due to circumstances outside his control.[10] And notably in Young's December 12, 2016 hearing, one of the two extensions of imprisonment at issue here, the hearing officer indicated that "all parties are exploring possible housing options." Young's counsel at his March 13, 2017 hearing also noted that RS Eden, located in Ramsey County, had not yet been explored as an option. But Young's agent stated that a Level III Predatory Offender like Young could not be placed there because "it is not an accepted practice within Dakota County Supervision."[11] Young's case manager, to her credit, has actively tried to obtain a CADI waiver to facilitate more housing options for Young.

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[9] In fact, the district court ignored record evidence that Young had become compliant with his medication and treatment plans. Instead, the district court, again without an evidentiary hearing, looked back into Young's past when he was struggling due to his seizures and other mental health challenges.

[10] Young proposed transferring to his brother's residence, but the residence was condemned. When Young identified family in Alabama, Alabama refused the transfer.

[11] As noted above, *see supra* note 6, this geographical restriction mirrors the one that we struck down in *Ford*.

I am not unsympathetic to the Department's difficult position. There are no doubt financial constraints that limit the ability of the Department to maintain or facilitate housing equipped for offenders with disabilities like Young, whose status as a predatory offender precludes many housing options as the numerous hearings in the record demonstrate. But the Department is not powerless given that it inspects and approves the halfway houses with which it contracts. *See* Minn. Stat. § 241.021, subd. 1 (2020); Minn. DOC, Policy No. 205.130 (Sep. 3, 2019). The Department similarly maintains 23 ISR houses throughout Minnesota that provide housing for individuals under intensive supervised release who otherwise lack an independent housing option. Notable by its absence, there is nothing in the record to show that the Department attempted to contact *any* of its ISR houses to assist Young. Indeed, it appears that the Department lacks any comprehensive policy to ensure that its administration of its various housing programs meets the needs of individuals with disabilities like Young.

In any event, the Department's previous attempts to help Young find suitable housing do not relieve it of its obligation *now* to modify the conditions of his release when those conditions are unworkable due solely to his seizures. *See Ford*, 933 N.W.2d at 407 (rejecting "the Department's attempt to parse *Marlowe* into pieces" and emphasizing that "the Department is *required* to 'consider restructuring [the offender's] release plan and . . . seek to develop a plan that can achieve [the offender's] release from prison and placement in a suitable and approved residence.' " (quoting *Marlowe*, 755 N.W.2d at 797)). Today, the court effectively relieves the Department of that obligation.

The court instead suggests that because Young had not identified a specific residence that he was eligible for, he cannot establish a *Marlowe* violation. That, however, completely flips *Marlowe* on its head. When the Department is the one structuring the conditions of release, it must bear the burden to show that those conditions are workable. To suggest otherwise places a disproportionate burden on offenders when those for whom it is most difficult to find appropriate housing will be the ones least able to demonstrate a *Marlowe* violation.

The court proffers a narrow, wooden interpretation of *Marlowe* and *Ford*, and contends that the rule of law set forth in those cases is straightforward. The court suggests that all they stand for is the proposition that the Department must follow its own rules for releasing offenders into the community; and if it does so, habeas relief is not warranted. Thus, the court concludes here, that because the Department did not violate its own rules in its treatment of Young, the Department did not violate *Marlowe.*

But that is *not* the rule of law set forth in *Marlowe* and *Ford.* Without question, the rulings in *Marlowe* and *Ford* relied heavily on the fact that the Department had not followed its own policies and rules for releasing offenders into the community. *Marlowe* and *Ford*, however, stand for a much broader principle, namely: the Department of Corrections has an independent obligation to fashion conditions of release that are workable and not impossible to satisfy. The first paragraph of the *Marlowe* opinion says precisely that; and this directive is repeated throughout the opinion. *Marlowe*, 755 N.W.2d at 793, 796. And in *Ford*, we cited repeatedly to these statements from *Marlowe*. *Ford*, 933 N.W.2d at 406–07. The court thus minimizes *Marlowe* by suggesting that we "merely

emphasized what the district court found to be unacceptable conduct," *supra* at 26, while ignoring the fact that we dedicated all of Section III of the opinion in *Ford* to analyzing the merits of the *Marlowe* violation.[12] *See Ford*, 933 N.W.2d at 405–08.

In sum, the rule of law set forth in *Marlowe* and *Ford* is not that the Department must follow its own rules for releasing offenders—although, of course, it must. Rather, the rule of law set forth in *Marlowe* and *Ford* is that the Department must make reasonable modifications to its housing programs to ensure that *all* offenders—including those with disabilities like Young—have the same opportunities for release to DOC-administered housing. Thus, the Department cannot revoke an offender's release because his disability cannot be accommodated in DOC housing. By this measure, the Department did not comply with *Marlowe* in its treatment of Young.

Here, the record shows that Young both complied with the conditions of his release and made substantial progress towards securing approvable housing.[13] Young was thus eligible for Department-funded housing, which would likely better suit his medical needs. At the very least, the Department should have made efforts to search for suitable housing

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[12] The court is correct that we have not explicitly adopted the reasoning of *Marlowe*, but that is irrelevant to what the Department's legal obligations are under *Marlowe*. The opinion in *Marlowe*, as a court of appeals case that we have not overruled, is "binding judicial precedent." *Ford*, 933 N.W.2d at 404–05.

[13] The court concerningly provides no guidance as to what else and how much more Young should have done. Given the Department's frequent abdication of its legal obligations, *see* 933 N.W.2d at 407 n.11, offenders should have some reasonable guidance as to what must be established in the record to be entitled to habeas relief going forward.

for Young within its own ISR housing network. As before, the district court's findings to the contrary were, based on the record, clear error.

The record, or relative lack thereof, bears one additional comment. The district court should have conducted an evidentiary hearing instead of essentially deferring to the Department's Hearing and Release Unit Findings. *See State v. Schnagl*, 859 N.W.2d 297, 303 n.6 (Minn. 2015) (preferring habeas petitions to be first heard in district courts because appellate courts are "not equipped to take testimony and to examine witnesses in the proceedings that would be required by entertaining original writs of habeas corpus" (quoting *State ex rel. Alexander v. Rigg*, 76 N.W.2d 478, 480 (Minn. 1956))). The petitioner in *Ford* had an evidentiary hearing, which this court relied heavily on in upholding the district court's grant of habeas relief. *See* 933 N.W.2d at 406–07. Young was denied the same opportunity here.

Ultimately, if Young's seizures are the sole basis for the Department's revocation of his release, it must alter the conditions of that release. In light of the record, I would conclude that Young has shown a *Marlowe* violation and is therefore entitled to habeas relief.

CHUTICH, Justice (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Hudson.

THISSEN, Justice (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Hudson.