

October 1, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Dear Attorney General Garland:

We write to ask that you use the Justice Department's authority and influence to keep people sent to home confinement pursuant to the CARES Act home with their families. In particular, we urge you to direct the U.S. Attorneys to support compassionate release for people on CARES Act home confinement.

According to press reports, President Biden is considering using his executive clemency authority to commute the sentences of some people on home confinement. A memo sent September 10, 2021 from the Bureau of Prisons to all residential reentry center contract providers and subsequent correspondence with the Office of Pardon Attorney confirmed that the administration currently is limiting expedited clemency consideration to people on home confinement who have between 18 and 48 months remaining on sentences for nonviolent drug offenses.

Our organizations strongly believe that everyone on CARES Act home confinement deserves to remain at home. Starting in February, we began urging the White House and Justice Department in formal and informal communications to use existing authorities to accomplish this goal. After experiencing months of silence and inaction, we were pleased to learn that the White House is considering clemency for some individuals.

We have urged and will continue to press the President to extend clemency to everyone on CARES Act home confinement. You also have the power to prevent the needless suffering and harm that will be caused by separating thousands of families for no public safety or rehabilitative purpose.

Many people on CARES Act home confinement, especially those who do not meet the administration's current expedited clemency criteria, are filing motions for compassionate release. Our organizations are helping some of them in this effort. The Department of Justice should issue guidance to U.S. Attorneys to support or, at a minimum, not oppose these motions. The Department of Justice should also consider filing motions for individuals on home confinement who reside in judicial districts—like those in the Eleventh Circuit—where courts have interpreted the compassionate release statute to bar defense-initiated motions.

These individuals were transferred to home confinement in the middle of a global pandemic and pursuant to an act of Congress. The Bureau of Prisons selected them because they met criteria designed to identify individuals whose release would in no way compromise public safety.

People on CARES Act home confinement were convicted of nonviolent crimes. While incarcerated, they abided by prison rules and served their sentences in low or minimum security facilities. Many had served significant portions of their sentences and they scored minimal risk under the PATTERN risk assessment tool, further underscoring the BOPs judgment that they pose little threat to public safety or to reoffend.

While home, they successfully reintegrated into their families and communities and have complied with the strict terms of supervision. Many of them have been home for over a year. Some have started families while others are pursuing higher education. Almost all of them are working and paying taxes. Their families, employers, employees, and friends and neighbors depend on them.

The unique circumstances of these people—thriving and contributing so much while demonstrating over a significant period of time their ability to comply with every restriction on their liberty and term of supervision—presents extraordinary and compelling reasons for release.

The Department need not worry that supporting compassionate release for people on CARES Act home confinement will open the floodgates or undermine any of the Department's current litigation positions. These cases present an unusual circumstance that is not likely to recur with frequency. Indeed, the Department's support for these motions will demonstrate its commitment to more rational and humane administration of justice, in line with this Administration's commitment to reform. Moreover, we believe you and the Department not only have the authority to prevent the unnecessary separation of families, we believe you have a moral responsibility to do so where, as here, it is so clear that this can be done without risk to public safety.

We stand ready to meet with you and your staff to make the case in person on behalf of the people on CARES Act home confinement who are facing incarceration, and to offer you any assistance in your work to keep them home.

Sincerely,

FAMM

Federal Public and Community Defenders

National Association of Criminal Defense Lawyers

Washington Lawyers' Committee for Civil Rights and Urban Affairs