



## Understanding the Difference Between Home Confinement, Compassionate Release, and Clemency in the Federal Prison System

### Home Confinement

- **What it is:** Home confinement is a process through which the Federal Bureau of Prisons (BOP) selects people in prison to complete the final portion of their sentence at home, rather than in a prison facility or halfway house
  - People do not need to apply to be considered for home confinement, and ultimately the selections are made entirely by the BOP
  - Anyone who believes they are eligible may provide a release plan to their case manager and request to be referred to home confinement
- **How it works:** The BOP is supposed to identify people with lower risk levels and lower needs and place them on home confinement
  - On March 26 and April 3, Attorney General William Barr wrote two memos to the BOP asking it to review every prisoner with coronavirus risk factors and maximize transfers in appropriate circumstances, and describing who should be prioritized for home confinement
  - While people do not have to satisfy every one of these criteria, the BOP is directed to prioritize people based on these factors: verifiable release plan; no detainers; offense history without violence, sex offenses, or terrorism; people housed in camps or low security facilities; people with minimum PATTERN scores; and age and vulnerability to COVID-19, using CDC guidelines. A disciplinary infraction in the past 12 months disqualifies someone from home confinement eligibility
  - The BOP also considers a person's sentence length. People will be prioritized if they have served more than 50% of their sentence OR if they have served more than 25% of their sentence and have 18 months or less remaining
- **What's new during the COVID-19 outbreak?:** Normally, the maximum amount of time that a prisoner may spend on home confinement is 10% of their sentence or six months, whichever is *less*
  - But the CARES Act, a bill recently passed by Congress in response to the COVID-19 pandemic, allows the BOP to extend this time limitation. The BOP has placed people on home confinement longer than six months.

- **Can FAMM help?:** Unfortunately, FAMM cannot help people receive home confinement – the decision is entirely up to the BOP.

### **Compassionate Release**

- **What it is:** Compassionate release allows for a sentence to be reduced for “extraordinary and compelling reasons,” typically for terminal illness, other serious medical conditions, or very advanced age
- The COVID-19 pandemic has heightened the need for compassionate release
- **How it works:** A prisoner or their loved one must send a request to their warden asking them to bring a request for compassionate release to a federal district court judge
  - If the warden recommends release, the final decision is made by the BOP Central Office. If the warden does not recommend release, the person can appeal using the grievance process.
  - If the BOP denies the request or doesn’t respond in 30 days, the prisoner or their attorney can ask the court directly for release, by filing a motion in federal district court
  - Making a request to the warden begins this 30-day clock, so it’s important to do it as early as possible
- **Can FAMM help?:** FAMM and other organizations run the Compassionate Release Clearinghouse, which recruits, trains, and supports attorneys who assist compassionate release applicants pro bono (for free)
  - The Clearinghouse is advocating for compassionate release to the greatest extent possible during the COVID-19 pandemic, and working hard to quickly prepare more attorneys to help people with applications
  - To be considered for assistance from the Clearinghouse, federal prisoners or their families should first fill out this questionnaire:  
[http://support.famm.org/site/Survey?ACTION\\_REQUIRED=URI\\_ACTION\\_USER\\_REQUESTS&SURVEY\\_ID=3342](http://support.famm.org/site/Survey?ACTION_REQUIRED=URI_ACTION_USER_REQUESTS&SURVEY_ID=3342)

### **Clemency & Other Executive Action**

- **What it is:** Clemency is a process through which the President can shorten someone’s sentence (a commutation) or set aside their criminal punishment altogether and restore rights (a pardon)
  - There are very few restrictions on the President’s ability to provide clemency for federal offenses
- **How it works:** People can apply for clemency by submitting an application to the Department of Justice, Office of the Pardon Attorney. The President also sometimes

selects people for clemency who have not applied, but this is very rarely done. People do not need an attorney to file a clemency request. The application forms can be found here: <https://www.justice.gov/pardon/clemency-forms-instructions>

- **What's new during the COVID-19 outbreak?:** On March 23, President Trump mentioned the possibility of the administration using an executive order to release “nonviolent” prisoners. If the President did sign an executive order with this goal in mind, it could take the form of expanding home confinement transfers, granting broad clemency, or something else. We do not know if or when President Trump may use his clemency power during the COVID-19 crisis.
- **Can FAMM help?:** Unfortunately, FAMM cannot assist people with filing clemency applications or help them find lawyers to do so.