



June 7, 2021

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

Dear Attorney General Garland:

I write to urge you to end the Justice Department's silence and resolve the uncertainty surrounding the January 15, 2021, Office of Legal Counsel (OLC) memo. Unless rescinded, the OLC memo will lead to the return to prison of thousands of individuals transferred to home confinement pursuant to the CARES Act, once you find that the pandemic no longer materially affects Bureau of Prisons (BOP) functioning. For the past four months, FAMM and others have urged the Department to rescind the memo because of the devastating impact it would have on thousands of families with loved ones on home confinement. We also have met with officials in the White House Counsel's Office, the Domestic Policy Council, and the BOP. To date, no one in the administration has done anything to address the very real fear these families feel that they will be separated again in the coming months. On their behalf, we beg you to act now.

The memo's conclusion surprised everyone. Dozens of members of Congress who voted for the CARES Act have written to you, clarifying that they did not intend people on home confinement to return to prison. The BOP did not tell people who were transferred to home confinement that they might have to return. Corrections officers were unaware of the possibility. A union official who represents correctional staff, and who was even not aware of the OLC memo until April, told a reporter it would be "impossible" to bring everyone back due to staff shortages. "We are already in chaos as it is as an agency," he said.<sup>1</sup>

There is no public safety reason to require anyone abiding by the terms of their transfer to be reincarcerated. The BOP screened each one of the approximately 4,000 people currently on home confinement using strict criteria established by Attorney General William Barr. Those deemed to pose no danger to the community now wear ankle monitors and are subject to rigorous surveillance. Some have been home for a full year. Only a vanishingly small percentage have violated the terms of their confinement, according to the BOP.

For the past four months, the thousands of people sent to home confinement under the CARES Act and their families have been hoping and praying that the Biden administration would take swift action to rescind or overrule the January 15 OLC memo, or to otherwise make clear the

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<sup>1</sup> "Thousands of low-level U.S. inmates released in pandemic could be headed back to prison," Sarah Lynch, Reuters, 4/11/2021.



administration's commitment to prevent these families from being separated again. The administration's inaction has been a grave disappointment. Worse, it is harming people who are trying to reintegrate into their families and communities.

"My wife is on home confinement under the CARES Act since May 14, 2020," one FAMM member shared with us recently. "The existence of this OLC memo and the threat that she will have to return to prison makes us live a nightmare day after day, and for the last months anxiety and fear is dominating us."

A grandmother recently told us, "I have been on home confinement since June 4, 2020. I have worked the second shift and for this entire school year I have homeschooled my granddaughters because one of them has special needs and their mother works first shift. We have rebuilt our bond and a routine in their daily lives. I am worried of the disappointment and confusion this will cause them if I have to go back."

The people we have heard from accept responsibility for their crimes, served years if not decades in federal prison, and are thankful to have been sent to home confinement early to avoid contracting COVID-19. They have used the opportunity presented by this crisis to prove that they are fit to rejoin their communities. Unfortunately, the OLC memo and the administration's inaction are creating an enormous amount of unnecessary trauma and fear that is counterproductive to successful reentry.

Put simply, these people are in a terrible limbo. Should they sign an apartment lease or take out a mortgage? Can they start college or co-sign college loans for children? Should they begin a relationship or start a family? Should they take a new job or take out a Small Business Administration loan to start their own business? What do they tell their children? These are the questions they are confronted with every day – and telling them that they do not need to worry about these matters until the emergency period ends in three or six months, as a Justice Department spokesperson said recently, is cruel and does nothing to address their concerns.

Attorney General Garland, we urge you to end now the needless suffering and extreme stress these families are experiencing. You can do so in a number of ways.

First, you have the authority to rescind or overrule the OLC memo. We, along with a bipartisan group of members of Congress<sup>2</sup> and advocacy organizations,<sup>3</sup> have urged and continue to urge you to do so.

If you feel constrained to follow the OLC's opinion, you can and should recommend to the president that he act now to grant clemency to anyone who is serving CARES Act home confinement and has complied with the rules of their supervision. The Department then should do everything it can to support clemency petitions, including ensuring the speedy review and transfer of cases to the president. The president has expressed a desire to use his clemency

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<sup>2</sup> <https://www.durbin.senate.gov/newsroom/press-releases/durbin-booker-call-on-ag-garland-to-rescind-trump-era-olc-opinion-that-would-for-individuals-on-home-confinement-to-return-to-prison-following-pandemic>;  
[https://watsoncoleman.house.gov/uploadedfiles/letter\\_to\\_ag\\_garland\\_-\\_olc\\_home\\_confinement\\_memo\\_-2.pdf](https://watsoncoleman.house.gov/uploadedfiles/letter_to_ag_garland_-_olc_home_confinement_memo_-2.pdf)

<sup>3</sup> <https://famm.org/wp-content/uploads/Letter-to-Attorney-General-Garland-re-OLC-Memo.pdf>

authority more robustly. Commuting the sentences of these extraordinarily low-risk people would be a smart and easy start.

The Department could use its existing authority to keep people home by transferring those eligible for the Elderly Offender Home Detention Program. It also could use its authority to seek compassionate release for those on CARES Act home confinement, especially those who have years left on their sentences. At a minimum, the Department should direct that U.S. Attorneys not oppose compassionate release motions brought by people in those circumstances.

In all cases, the Department should direct the BOP to use its furlough authority to prevent anyone whose status is not resolved before the end of the emergency period from having to return to prison. This approach also would be useful for those people nearing the end of their sentences and for whom the measures discussed above are not necessary because they will shortly be eligible for transfer under 18 U.S.C. § 3624(c).

Whatever approach you decide is best, we urge you to act now. Moreover, we implore you to let these families know right away that the administration is committed to keeping people home with their families and communities. The past four months have been excruciating for thousands of families. There is no reason to wait a day longer before removing this cloud from over their heads.

I continue to believe the Department and the administration want to do the right thing, but I fear you might not grasp the gravity and urgency of the issue for thousands of people who are trying to resume their lives and follow the rules. We stand ready to work with you and the administration to resolve this matter as quickly as possible for the thousands of families who are counting on us.

Sincerely,

  
Kevin A. Ring  
President