



November 12, 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 am writing in regards to your appearance before the Senate Judiciary Committee for the Department of Justice oversight hearing on October 27 in which you responded to questions about CARES Act home confinement. I was hoping that the confusion created by one of your answers would be clarified by the Department, but to date it has not.

FAMM and other advocates have written to you previously to express our concern about the department's handling of the January 15, 2021 Office of Legal Counsel (OLC) memo, which concluded that people on CARES Act home confinement who will be ineligible for home confinement at the end of the emergency period must return to prison. I am afraid your appearance before the Senate Judiciary Committee has set off yet another, if unintended, wave of confusion among the thousands of people who have lived in an intolerable and needless state of uncertainty and fear of the future since the memo was published ten months ago. **They deserve a decision and a clear account from the Department of Justice of how it intends to proceed in their cases. We urge you now to act swiftly and with transparency.**

Until your testimony, no one knew that the current OLC was still reviewing the memo. People operated under the impression that the memo would stand. That impression originated with a *New York Times* story in July stating that the current OLC has concluded that the memo's legal analysis was sound and required the reincarceration of thousands. The DOJ never disputed that story or offered any public information about its assessment. As we have shared previously, the prospect of return has caused a great deal of anxiety and fear among people on CARES Act home confinement.

We were very pleased to learn from your appearance in Congress last month that your Department is now reviewing the January 15 memo. However, an account of your remarks in Law360 and the action of one of your U.S. Attorneys' offices have caused confusion. The article stated, incorrectly, that you had testified that your office was "revising" and "reworking" the OLC memo. This report raised the hopes, perhaps unrealistically, of many of the families with loved ones on CARES Act home confinement.

Just days after your testimony, a federal prosecutor opposing a compassionate release motion for a person on home confinement relied on that misrepresentation. The prosecutor cited the Law360



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piece, writing that the individual's fear of being returned to prison at the end of the emergency period was merely speculative, in part because "Attorney General Merrick Garland testified before the Senate Judiciary Committee that returning people to prison was terrible policy, and that no one would be returned to prison until the OLC opinion was revised."¹ We understand that the filing in that case has been brought to the attention of your office, but the U.S. Attorney's Office has not corrected the pleading. It was left to the defendant's counsel the task of pointing out the discrepancy in an effort to correct the record.²

People on home confinement deserve answers that only you can give. The Department has taken more than ten months to consider a straightforward legal question. It is time to make a decision, convey it to the public, and then, should you not rescind the memo, take whatever steps at your disposal to guarantee that no one is returned to prison. Because, as you pointed out to Senator Cory Booker at the hearing, it would be a terrible policy to return people to prison who have shown that they are able to live safely and responsibly on home confinement.

I urge you to clarify your position on this matter as quickly as possible. Thank you for considering our views.

Sincerely,



Kevin A. Ring
President

¹ *United States v. Patel*, No. 2:11cr20468, ECF No. 1715 at 2 (E.D. MI), (filed Oct. 29, 2021).

² *Patel*, ECF No. 1716 at 2-4 (filed Nov. 5, 2021).