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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 12, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden:

We respectfully request that your Administration take immediate action to ensure that thousands of individuals who have successfully transitioned to home confinement from federal prison during the pandemic are not returned to prison without cause. Your Administration has ample executive authority to immediately provide the certainty these returning citizens deserve as they reintegrate into their communities, reunite with their families, and join in rebuilding our economy.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provided critical relief from the effects of the coronavirus pandemic. In order to give the Federal Bureau of Prisons (BOP) broader authority to reduce prison populations to help contain the spread of the virus, the CARES Act expanded BOP's home confinement authority. The Act provides that during the covered emergency period, BOP may lengthen the maximum amount of time an otherwise eligible individual may be placed in prerelease home confinement, if the Attorney General finds that the pandemic materially affects the functioning of BOP. Attorney General William Barr made the necessary finding on April 3, 2020, and BOP began exercising this authority. Thousands were released, and almost all have been successful—less than one percent of the more than 24,000 prisoners released to home confinement and halfway houses during the pandemic have been returned to BOP facilities due to rule violations.

On January 15, 2021, in the last days of the Trump Administration, the Department of Justice Office of Legal Counsel issued a memorandum opinion entitled "Home Confinement of Federal Prisoners After the COVID-19 Emergency" ("OLC opinion"). The OLC opinion incorrectly found that following the emergency period of the pandemic, BOP must recall federal inmates released to home confinement pursuant to the CARES Act and require these inmates to complete their sentences at BOP facilities. In fact, the CARES Act does not require or permit BOP to recall these prisoners.

On April 23, 2021, we asked Attorney General Garland to rescind the OLC opinion, and are awaiting his response. However, the opinion does not prevent you from acting. We urge you to use your unfettered pardon power to immediately commute the sentences of those on home

confinement pursuant to the CARES Act. These individuals, who were released only after careful vetting by BOP, have successfully transitioned to home confinement. They have reunited with family, obtained jobs, and are abiding by the conditions of their release.

Additional executive authorities are also available. BOP can provide relief for certain individuals through prerelease home confinement, under 18 U.S.C. § 3624(c)(2), and the Elderly Home Detention Pilot Program, pursuant to 34 U.S.C. § 60541(g). For those who do not qualify for those provisions, BOP can recommend, and DOJ should support, compassionate release pursuant to 18 U.S.C. 3582(c)(1)(A). Compassionate release is authorized whenever extraordinary and compelling reasons warrant a sentence reduction, and the once-in-a-century global pandemic that led to these home confinement placements certainly constitutes such an extraordinary and compelling circumstance.

Given the breadth of available executive authority, no person who has successfully transitioned to home confinement should be required to return to federal prison. The uncertainty of the current situation unnecessarily interferes with the efforts of those on home confinement to rebuild their lives and participate in our economic recovery. With the goal of facilitating successful community reentry, we urge you to act immediately to resolve this issue and enable those on release to move forward with their lives.

Thank you for your time and consideration.

Sincerely,



RICHARD J. DURBIN

Chair

U.S. Senate Committee on the Judiciary



CORY A. BOOKER

Chair

U.S. Senate Judiciary Subcommittee on
Criminal Justice and Counterterrorism