

July 24, 2020

The Honorable Mitch McConnell  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Charles E. Schumer  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510

The Honorable Lindsey Graham  
U.S. Senate Judiciary Committee  
290 Russell Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein  
U.S. Senate Judiciary Committee  
331 Hart Senate Office Building  
Washington, DC 20510

**Re: Support Bipartisan COVID-19 Safer Detention Act, S. 4034**

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Graham and Ranking Member Feinstein:

Our federal prisons are in crisis. The Federal Bureau of Prisons (BOP) reports that, as of July 23, over 10,000 people in its custody have tested positive for COVID-19 and almost 100 have died. As BOP Director Michael Carvajal recently told the Senate Judiciary Committee, “prisons are not designed for social distancing. In fact, they are designed for just the opposite.”<sup>1</sup> Congress must find a sensible way to reduce the federal prison population and make our institutions safer. Today the undersigned organizations ask you to support a **bipartisan** measure that will help do just that, **the COVID-19 Safer Detention Act (S. 4034), co-sponsored by Senators Richard Durbin, Charles Grassley and Kevin Cramer**. We urge you to include the bill in the forthcoming COVID-19 response package.

The COVID-19 Safer Detention Act would reduce the number of people in federal prison by providing a **timely, individualized determination** of suitability for compassionate release or transfer to home detention. It improves these processes and makes them more straightforward for a person who is especially vulnerable to COVID-19 due to age or medical condition.<sup>2</sup>

**Compassionate release.** Under the First Step Act, which Congress passed in 2018, either the BOP or an individual may file a motion with the sentencing court to ask for compassionate release. The judge can exercise discretion and reduce a sentence for “extraordinary and compelling reasons” after weighing a number of sentencing factors.

The COVID-19 Safer Detention Act helps the court to apply this provision in this time of crisis. The Act makes clear that during the pandemic, risk for severe illness from COVID-19 is an extraordinary and compelling reason that may support compassionate release. The bill specifies that a court can consider a motion for compassionate release 30 days after a release request is submitted by an individual to the warden, but that period is shortened to 10 days during the

---

<sup>1</sup> Statement of Michael D. Carvajal, Director and Dr. Jeffery Allen, Medical Director, Federal Bureau of Prisons Before the Committee on the Judiciary, United States Senate (June 2, 2020), page 5.

<sup>2</sup> This letter draws on FAMM’s summary of S. 4034, found here: <https://famm.org/wp-content/uploads/COVID-19-Humane-Detention-Act-Summary.pdf>.

pandemic. The bill also clarifies that the compassionate release provisions of the First Step Act apply to people convicted for offenses committed before November 1, 1987. This makes sense. After all, an elderly and vulnerable person is elderly and vulnerable regardless of the law under which they were convicted.

**Elderly Home Detention.** The COVID-19 Safer Detention Act improves the Elderly Home Detention Pilot Program which Congress enacted as part of the Second Chance Act of 2007. The Program allows BOP to transfer to home detention an elderly person with a non-violent offense or someone who is terminally ill.

The bill would make a person eligible for home detention after serving 1/2 of their sentence, rather than the current 2/3. It clarifies that “good time” sentence credit should be included in the eligibility calculation and that an elderly person convicted of a D.C. Code violation in BOP custody may be considered for home detention. And it allows a court to grant an individual’s motion to reduce a sentence to home detention if the person meets the eligibility criteria and has asked the warden for the transfer. Similar to compassionate release, in which a court must first give the warden 30 days to act; that period is reduced to 10 days during the current pandemic.

We note that two other pending bills also address compassionate release and home detention: the HEROES Act (H.R. 6800) and the Emergency GRACE Act (S. 3698). For varying reasons, some of us might prefer them. However, we firmly believe that the bipartisan approach of the COVID-19 Safer Detention Act deserves your serious consideration. The Act is modest, sensible, and will save lives.

Thank you for considering our request. Please contact Charles Weisselberg if you have any questions (cweisselberg@gmail.com).

A Little Piece Of Light  
All of Us or None  
Braxton Institute  
Church of Scientology National Affairs Office  
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces  
Consult CR/ Co Founder of Racial Justice Initiative  
Criminal Justice Clinic, UC Irvine School of Law  
CURE (Citizens United for Rehabilitation of Errants)  
DC Jail and Prison Advocacy Project  
Due Process Institute  
FAMM  
FedCURE  
Federal Public & Community Defenders  
Free Minds Book Club & Writing Workshop  
FREE! Families Rally for Emancipation and Empowerment  
FreedomWorks  
Health in Justice Action Lab, Northeastern University School of Law  
Illinois Association of Criminal Defense Lawyers

Jesuit Conference Office of Justice and Ecology  
Justice For Women Covid 19 Task Force  
Justice Policy Institute  
Law Enforcement Action Partnership  
Legal Assistance to Minnesota Prisoners  
Legal Services for Prisoners with Children  
Main Street Legal Services, Inc.  
Melanie Bates Consulting, LLC  
Mountain State Justice  
National Advocacy Center of the Sisters of the Good Shepherd  
National Alliance Of Faith and Justice  
National Association of Criminal Defense Lawyers  
New Hour for Women & Children LI  
Post-Conviction Justice Project at University of Southern California Gould School of Law  
The Harvard Legal Aid Bureau  
The Sentencing Project  
The United Methodist Church - General Board of Church and Society  
UCLA Law Covid-19 Behind Bars Data Project  
UCLA Prison Law and Policy Program  
Urban Justice Center  
Urban Justice Center Mental Health Project  
Visionary V  
Washington Office on Latin America