

September 15, 2021

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Biden:

Thank you for considering granting clemency to people who were sent to home confinement during the COVID-19 pandemic pursuant to the CARES Act. People who have successfully reintegrated into their communities and followed the strict rules of supervision should not be separated again from their families. For that reason, we urge you to grant clemency to everyone on CARES Act home confinement, not simply those who committed certain types of offenses or who have an arbitrary number of years remaining on their sentences.

Everyone on CARES Act home confinement today was sent home to help the Bureau of Prisons (BOP) mitigate the spread of the deadly COVID-19 virus. All of them were vetted under strict criteria established by Attorney General Bill Barr (and later modified by your administration). As such, they were only eligible for home confinement if, among other things, they had no violence in their record, had no disciplinary infractions within the past year, and were deemed minimum or low risk under the government's risk-assessment tool. Many also had health issues.

Many of these individuals were sent to home confinement by the prior administration and have been home for a year or more. With the benefit of hindsight, we can now see that the bipartisan majority in Congress that approved the CARES Act and the Trump administration were right to establish and use the authority to grant extended periods of home confinement. Lives undoubtedly were saved, and only a tiny fraction of people on home confinement have been returned to prison for violating the rules of supervision.

We are grateful that you appear willing to use your clemency authority to keep people on CARES Act home confinement with their families; however, we think excluding some people based on arbitrary criteria would be a grave mistake. All of these people – regardless of the type of offense they committed or the number of years remaining on their sentence – have demonstrated that they should not be in prison. There is no public safety benefit to reincarcerating any of them, and yet the costs of separating them from their families, communities, and jobs would be enormous.

Applying arbitrary criteria unmoored to public safety needs will produce massive injustices. Kendrick Fulton served a full 17 years in prison for a drug offense before being released on home confinement last year. He moved back with his family, secured a Commercial Driver's License, and is now a full-time truck driver for Coca-Cola. Under the criteria your administration

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is using now, Kendrick would be returned to prison because he has more than four years remaining on his sentence.

Cheryl Johnson served seven years in federal prison and was sent to home confinement several months ago under the CARES Act. She is now parenting her 18-, 15-, and 12-year-old children while pursuing a patent for a cordless hair straightener she designed while in prison. Cheryl's children are scared to death she will have to return to prison. Because she committed a white-collar offense, she would be denied clemency under your criteria and must return to prison for three more years.

It appears that even people sent to home confinement by your administration would be returned to prison. Kirstie Smith Israel was sent to CARES Act home confinement just last month and has been overjoyed to get to know her two baby grandchildren. Like everyone else, Kirstie was not told she might have to return to prison at the end of the pandemic, but now she is terrified that she has not been contacted to fill out clemency paperwork. Because it is not clear if the administration's sentence-length limit for drug offenses is "four years left in sentence" or "four years left to good-time release date," Kristie could fall on the wrong side of the line and be separated again from her family soon.

We urge you to reject using criteria that will produce such unjust and absurd results. Many on CARES Act home confinement have forged deep and important connections with their children after years of separation. Many are working hard at jobs they aspired to for years. These are diligent workers who don't take their employment for granted. They are saving money, buying cars, taking out mortgages, planning weddings. They are living full and productive lives.

All of them deserve a chance to move on with their lives. Please do not limit your consideration to only some of them. On this issue, the undersigned organizations are firmly committed. Thousands of lives are at stake, and we will continue to urge you to show leadership in this critical moment.

Sincerely,

FAMM
ACLU
Color of Change
Justice Action Network
Aleph Institute
Brennan Center for Justice at NYU School of Law
CAN-DO Clemency
Dream Corps JUSTICE
Drug Policy Alliance

Due Process Institute
Fair and Just Prosecution
Federal Public & Community Defenders
Florida Rights Restoration Coalition
The Fortune Society
FWD.us
Galaxy Gives
Innocence Project
The Justice Roundtable
Ladies of Hope Ministries
MoveOn
National Association of Criminal Defense Lawyers
R Street Institute
REFORM Alliance
Right on Crime
Safer Foundation
The Sentencing Project
The Taifa Group
Tzedek Association
Vera Institute of Justice