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

September 24, 2021

**Re: Law Enforcement Urges Clemency for All Individuals Placed on Home Confinement Pursuant the CARES Act**

Dear President Biden:

We write as individuals and on behalf of our respective national organizations — Law Enforcement Leaders to Reduce Crime & Incarceration, Law Enforcement Action Partnership, and Fair and Just Prosecution — as it pertains to the approximately 4,000 individuals placed on home confinement pursuant the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, who face the continued threat of reincarceration due to the prior administration’s January 15, 2021, Office of Legal Counsel memo (“OLC memo”). We are pleased to see reports that your Administration is beginning to consider commutations for individuals who have committed nonviolent drug offenses and have been placed on home confinement pursuant the CARES Act. Joining members of Congress, justice reform advocates across the political spectrum, and companies that currently employ these individuals, we seek to add our law enforcement perspective and urge you to grant clemency to all individuals placed on home confinement pursuant the CARES Act — regardless of underlying offense or sentence.

As current and former members of law enforcement, our priority, above all else, is public safety. Following the enactment of the CARES Act by Congress in March of 2020, Attorney General Bill Barr used his emergency authority to direct the BOP to place eligible incarcerated individuals on home confinement following the review of extensive criteria pertaining to public safety including: age and vulnerability to COVID-19, security level, PATTERN score, conduct while incarcerated, and initial crime, among other factors. Individuals whose primary offense was violent or sexual in nature were ineligible. Because public safety was prioritized when making these determinations, and due to the extensive use of electronic monitoring, as of April 2021, only three individuals put on home confinement pursuant the CARES Act committed new offenses, leaving 99.9 percent of individuals with no new violations (which is notable considering the average recidivism rate among individuals formerly incarcerated at the federal level is 49 percent).
Despite this clear success story, the OLC memo authorizes the BOP to rescind home confinement status following the emergency period of the COVID-19 pandemic. And though the COVID-19 pandemic continues to pose a threat to people behind bars — especially considering the rise of variants (namely the “delta,” “delta plus,” and “mu” strains) and insufficient vaccination rates among incarcerated people and correctional officers — the OLC memo has left individuals placed on home confinement in fear, as the potential for reincarceration hangs over them and their families.

Forcing the return of individuals who are safely serving their sentences at home, as the OLC memo details, has no public safety rationale and will overwhelm an already strained federal system, thereby presenting a health risk not simply to people housed in these facilities (places that have been among the nation’s largest COVID-19 hot spots), but also the staff who work there. The BOP is currently understaffed, with a third of federal correctional officer positions vacant, and disturbing reports of prison cooks, teachers, and nurses “guarding” incarcerated people.

Your Administration’s choice to consider clemency for individuals who have committed nonviolent drug offenses is a promising first step. However, we urge you to use your clemency power to ensure that all people successfully placed on home confinement under the CARES Act do not return to full custody. Whether their underlying offenses were drug related or not, all individuals on home confinement deserve an opportunity to reintegration into their communities without the persistent threat of reincarceration. While campaigning for president in 2020, you pledged to prioritize and “broadly use [your] clemency power.” There is no better opportunity to fulfill this promise than to grant clemency to all low-risk individuals who are already serving their sentences at home without issue. Notably, as you are aware, your clemency authority is more than broad enough to support, for example, a commutation to time-served, or an order directing that the remaining sentence be carried out in a less restrictive setting — such as home confinement. And, the DOJ has other tools at its disposal to prevent these individuals from unnecessarily returning to prison, including the Elderly Offender Home Detention program, compassionate release, and furlough authority.

For the reasons stated herein, we urge you to act now and to ensure that all individuals placed on home confinement pursuant the CARES Act are not returned to prison upon the end of this pandemic, whenever that may be. Every day that passes without definitive action or clarity from your Administration, families and communities suffer — which only serves to undermine formerly incarcerated individuals’ rehabilitation and reentry. Ultimately, there is no public safety rationale to exclude some individuals from clemency, especially when doing so would place an unnecessary burden on the federal system and exacerbate health dangers to those who are housed and work within these overcrowded facilities.

Sincerely,

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12 Schick v. Reed, 419 U.S. 256, 266 (1974) (holding that the president’s clemency power was intended to vest “plenary authority in the President to ‘forgive’ the convicted person in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with conditions which are in themselves constitutionally unobjectionable”); Justin Wm. Moyer and Neena Satija, “A grandmother didn’t answer her phone during a class. She was sent back to prison,” *Washington Post*, June 26, 2021, https://www.washingtonpost.com/local/public-safety/inmates-pandemic-biden-trump-policy/2021/06/25/e89aa28e-d376-11eb-baed-4abcfa380a17_story.html.