

Congress of the United States
Washington, DC 20510

September 17, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

As members of the Maryland Congressional Delegation, we write to urge you to take action to prevent individuals on Coronavirus Aid, Relief, and Economic Security (CARES) Act home confinement from being returned to prison at the end of the COVID-19 emergency period. These individuals were transferred from correctional facilities to home confinement to stem the spread of COVID-19 after the Bureau of Prisons (BOP) determined that they did not present a danger to the public, but a Department of Justice Office of Legal Counsel (OLC) opinion issued under the prior administration erroneously concludes that they will have to return to prison. The recent experiences our fellow Marylander, Ms. Gwen Levi, demonstrate the harmful consequences of permitting the current opinion to stand and the importance of finding compassionate solutions for this group of Americans.

In March of 2020, we supported the inclusion of provisions to protect federal prisoners from the COVID-19 virus through the CARES Act. That legislation permitted the BOP to transfer individuals to prerelease home confinement earlier than otherwise permissible to stem the spread of the pandemic. Of the approximately 24,000 or so individuals transferred to home confinement during that period, the majority have completed the few weeks or months remaining in their sentences. However, a smaller number of those on home confinement will, as it stands, be recalled to prison pursuant to an opinion issued by the OLC under the Trump administration on January 15, 2021 entitled “Home Confinement of Federal Prisoners After the COVID-19 Emergency” (OLC opinion). This opinion mandates that CARES Act home confinement end with the emergency period, requiring the recall of up to 4,500 prisoners who are successfully serving their sentences from home.

This OLC opinion incorrectly interprets the CARES Act, and we join Judiciary Committee Chairman Durbin and Subcommittee on Criminal Justice and Counterterrorism Chairman Booker in asking you to direct OLC to review and rescind the memo. Moreover, recalling these individuals to prison does not serve the public interest. They were designated for transition to home confinement only after the BOP engaged in a demanding screening process to determine that they do not pose a risk to the community. This assessment was borne out by

testimony of BOP Director Michael Carvajal in an April 15th hearing before the Senate Judiciary Committee, in which he stated that only three individuals, among the thousands sent to home confinement, were re-incarcerated for new crimes. As further discussed in that hearing, home confinement also represents a significant cost-saving to the taxpayer.

The need to find a compassionate solution for these individuals is evident in the recent experiences of Ms. Gwen Levi. Ms. Levi is a 76-year old Baltimorean who had served 16 years of her 24.5 year sentence for playing a role in a non-violent drug conspiracy. In June of 2020, the BOP transitioned her to home confinement because she satisfied the CARES Act criteria, which involved an assessment of her age and vulnerability to COVID-19, low risk of reoffending, incarceration in a low-security facility, commission of a non-violent drug offense, and outstanding disciplinary record. Over more than a year of home confinement, Ms. Levi reconnected with family, participated in church activities, and continued her education, all while abiding by the rules of her confinement. Because of uncertainty over whether the home confinement policy would be made permanent, however, she also spent this time in fear about her future. **We urge you to rescind the OLC opinion in order to prevent thousands of Americans like Ms. Levi from being recalled to incarceration.**

As you may know, Ms. Levi was unfortunately returned to federal confinement on June 12, 2021, though not because the emergency period ended. Instead, she was re-incarcerated because of a technical violation of halfway house rules. While attending a pre-approved computer class, during which time her phone was silenced, Ms. Levi missed calls from Volunteers of America Chesapeake (a BOP contractor). When she contacted the VOA after class to explain the missed calls, she was cited for “escape” and her home confinement was terminated.

We were pleased Judge Deborah K. Chasanow of the U.S. District Court for the District of Maryland recently granted Ms. Levi compassionate release but were surprised by the Department’s opposition to this motion. Alongside rescinding the OLC memo, compassionate release is an important tool at the Department’s disposal to prevent the re-incarceration of individuals like Ms. Levi. **We urge BOP to recommend, and DOJ to support, compassionate release in similar cases in the future to prevent the re-incarceration of others transferred to home confinement under the CARES Act.**

Finally, we urge the Department to consider additional solutions available under its authority, including lending support for clemency for all individuals who have successfully complied with conditions of home confinement since their transfer out of the Bureau of Prisons.

We believe that these actions align with this administration's stated support for reducing the incarcerated population in our country and for realigning our criminal justice system to focus on rehabilitation over punishment. Thank you for your attention to this matter.

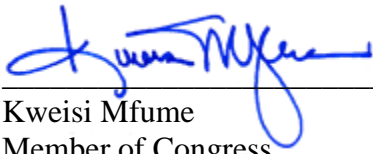
Sincerely,



Benjamin L. Cardin
United States Senator



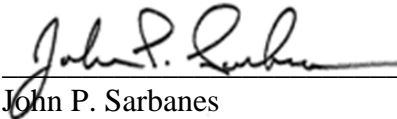
Chris Van Hollen
United States Senator



Kweisi Mfume
Member of Congress



C.A. Dutch Ruppersberger
Member of Congress



John P. Sarbanes
Member of Congress

CC: The Honorable Michael Carvajal, Director, Federal Bureau of Prisons