

July 27, 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.”¹ 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.²

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

¹ 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.

² 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