No Place Like Home: The case for Home Confinement

By Jeremiah Mosbey

***Resolved: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: In addition to economic stimulus, the 2020 CARES Act included a provision that allowed prisoners with a low risk of recidivism to serve their sentences at home. What those prisoners weren’t told is that they would have to return to prison when the emergency period ended. As a result, prisoners are living in a state of limbo where it’s difficult for them to make any life decision. This case proposes that prisoners currently in home confinement should be allowed to stay there for the remainder of their sentences. Such a move would save millions (home confinement is far cheaper than incarceration) and would reduce recidivism (it has been proven that prisoners who serve time in home confinement are less likely to reoffend, likely because it reduces friction in the reintegration process.

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No Place Like Home: The Case for Home Confinement

The Covid pandemic has produced lots of unexpected side effects on our society above and beyond the fatalities and sickness. One of them was a change to the way federal prisoners are managed. And while Covid has been a terrible plague, sometimes a few good things come out of even something that bad. The lessons learned from the effects of Covid on our federal prison system compel us to affirm that: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction.

OBSERVATION 1. DEFINITIONS

Significant

Merriam Webster Online Dictionary copyright 2021. <https://www.merriam-webster.com/dictionary/significant> (accessed 26 June 2021)

2 a: having or likely to have [influence](https://www.merriam-webster.com/dictionary/influence#h1) or effect

Reform

Merriam Webster Online Dictionary copyright 2021 <https://www.merriam-webster.com/dictionary/reform> (accessed 28 May 2021)

: to put or change into an improved form or condition

OBSERVATION 2. INHERENCY, or the structure of the Status Quo.

FACT 1. The CARES Act.

In March 2020, the CARES Act began moving low-risk federal inmates to home confinement

Paulina Smolinski, CBS News, September 3rd, 2021 “Inmates on home confinement could be sent back to prison after the pandemic: "Why make us go back and do it again?" <https://www.cbsnews.com/news/inmates-home-confinement-covid-pandemic-return/> (accessed November 13th, 2021)

Last March, former President Trump signed the CARES Act, a law that expands the Bureau of Prison's ability to place more inmates on home confinement. Mr. Trump's administration released minimum-security inmates without prior violent offenses and no disciplinary issues while in prison. In April, the Biden administration loosened the program's criteria, allowing prison wardens to refer inmates for home supervision.

FACT 2. 4,000 will return.

Under current policy, 4000 prisoners under home confinement will be sent back to prison when the pandemic ends

John Yang & Mike Fritz, PBS News, September 21st, 2021 “Inmates released to home confinement during pandemic fear ‘devastating’ reincarceration” <https://www.pbs.org/newshour/show/inmates-released-to-home-confinement-during-pandemic-fear-devastating-reincarceration> (accessed November 13th, 2021)

Rochelle, now almost 70, was released under a provision of the CARES Act, which made more prisoners eligible for home detention, in an effort to limit the spread of COVID-19 in federal prisons. But almost a year-and-a-half after his release, Rochelle and about 4,000 others like him face the possibility of having to return to prison once the pandemic ends. That's because a Trump era Justice Department legal opinion concluded that these men and women would have to finish their remaining sentences in prison once the pandemic recedes. Biden administration officials agreed with that reading of the law.

OBSERVATION 3. We need the following PLAN implemented by Congress and the President

1. The Bureau of Prisons will allow all prisoners that were moved into home confinement under the CARES Act to remain there until the expiration of their sentences.

2. Funding through existing budgets of existing agencies with net reduction in federal spending.

3. Enforcement through the federal Bureau of Prisons and any other existing agencies currently enforcing the conditions of federal home confinement.

4. Timeline: Plan takes effect the day after an affirmative ballot.

5. All Affirmative speeches may clarify.

OBSERVATION 4. ADVANTAGES

ADVANTAGE 1. Save money

Home confinement saves millions because it’s 65% cheaper than prison

Jillian Snider & Maya Szilak, Reason, 2021 (Snider: policy director for R Street's Criminal Justice and Civil Liberties team, an adjunct lecturer at John Jay College of Criminal Justice, and a retired NYPD police officer. Szilak: fellow for R Street's Criminal Justice and Civil Liberties team) “The Pandemic Showed Home Detention Works <https://reason.com/2021/08/06/the-pandemic-showed-home-detention-works/> (accessed 13 Nov 2021)

In short, home detention seems to be largely successful. Most prisoners under the program have stayed out of trouble and are working to become law-abiding citizens. In doing so, they are saving taxpayers the exorbitant price of incarceration—which, on average, costs over $37,500 per year versus $13,000 per year for home confinement and monitoring.

ADVANTAGE 2. Promotes Rehabilitation

A. The Link: Prisoners were not told that they would return

Doug Reardon, Fox News, October 12th, 2021 “Despite being told otherwise, thousands of convicts sent home for COVID-19 will have to return to prison” <https://www.fox17online.com/news/local-news/despite-being-told-otherwise-thousands-of-convicts-sent-home-for-covid-19-will-have-to-return-to-prison> (accessed November 13, 2021)

“Members of Congress, the Bureau of Prisons even, when they sent them home, the wardens and case managers were not telling these people, 'You may have to come back,'” said Kevin Ring, who is president of the group Families Against Mandatory Minimums. “Some people have young children who, when they went home, the kids said, ‘Are you going to have to go back?’ and they said no. So they’ve made commitments based on this assumption that they were going to be able to stay home.”

B. The Problem: Returning to prison interrupts their successful rehabilitation

Jillian Snider & Maya Szilak, Reason, 2021 (Snider: policy director for R Street's Criminal Justice and Civil Liberties team, an adjunct lecturer at John Jay College of Criminal Justice, and a retired NYPD police officer. Szilak: fellow for R Street's Criminal Justice and Civil Liberties team) “The Pandemic Showed Home Detention Works <https://reason.com/2021/08/06/the-pandemic-showed-home-detention-works/> (accessed November 13th, 2021)

Those released into home confinement are currently living in fear—they have no idea what their futures hold. They have reintegrated into society, and many have reconciled with their families, enrolled in school, and found employment. [Alina Feas](https://www.turnto23.com/national/newsy/thousands-in-home-confinement-due-to-covid-19-could-be-headed-back-to-federal-prison), who was serving an 11-year sentence for a nonviolent offense, is plagued with anxiety every day. Since being placed under home confinement over 15 months ago, she has rejoined her family, has not violated any conditions of her release, and demonstrated she deserves to remain at home. [Brian Carr](https://www.bloomberg.com/news/articles/2021-07-08/prisoners-sent-home-early-by-the-cares-act-dread-the-pandemic-s-end), who has already served five years of a seven-year sentence, decided to strive for success by enrolling in school with the hopes of starting his own business. This, of course, would be impossible if he is forced to return to prison.

C. The Impact: Public safety. Society benefits if prisoners come out better than when they went in

Kevin Ring and Milly Gill 2017 (Ring – President, Families Against Mandatory Minimums (FAMM). Gill – Director of Federal Legislative Affairs, FAMM) USING TIME TO REDUCE CRIME: Federal Prisoner Survey Results Show Ways to Reduce Recidivism, June 2017 <https://www.prisonpolicy.org/scans/famm/Prison-Report_May-31_Final.pdf> (accessed 7 July 2021)

Ninety-six percent of federal prisoners are eventually going to leave prison and rejoin society. Those of us concerned about protecting public safety should support policies and programs that are proven to reduce the likelihood that returning citizens will reoffend. Indeed, all Americans have an interest in making sure that people come out of prison better than they went in.

ADVANTAGE 3. Less Crime

A. Home confinement is better at making prisoners responsible members of society and reducing their return to crime

William D. Eggers 2016 (executive director of Deloitte Services LP’s Center for Government Insights where he is responsible for the firm’s public sector thought leadership) “Rethinking incarceration: Is home confinement a viable prison alternative?) (article is undated but references material published in June 2016) <https://www2.deloitte.com/us/en/pages/public-sector/articles/home-confinement-prison-alternative-virtual-incarceration.html> (accessed November 13th, 2021)

A 2012 [study of electronic monitoring](https://www.urban.org/sites/default/files/alfresco/publication-pdfs/412678-The-Costs-and-Benefits-of-Electronic-Monitoring-for-Washington-D-C-.PDF) in Washington, DC found cost-savings of nearly $600 per offender for local agencies, a reduction in recidivism by 24 percent, and a net benefit to society of $4,800 per person across the criminal justice system. Another [study](https://www.ncjrs.gov/pdffiles1/nij/grants/230530.pdf) identifies even greater savings (nearly $17,000 per offender) by replacing traditional imprisonment with electronic monitoring devices. Estimates show the potential savings by state and local governments of roughly $500,000 per year by virtually incarcerating just 60 offenders.

Aside from fiscal savings, electronic tracking may actually be more effective than physical imprisonment in helping offenders become productive citizens. Home confinement [reduced](https://www.ncjrs.gov/pdffiles1/nij/234460.pdf) the failure rate of offenders by 31 percent in one state. New [data analytic tools](https://www.ncjrs.gov/pdffiles1/nij/grants/249888.pdf) can be used to identify offenders who are the best candidates for [virtual incarceration](https://dupress.deloitte.com/dup-us-en/industry/public-sector/beyond-the-bars.html) and those in the program who are in the most danger of violation.

B. Home confinement not only lowers costs but results in low recidivism rates

The Office of Juvenile Justice and Delinquency Prevention, October 2014 (Agency of the US Dept. of Justice) “Home Confinement and Electronic Monitoring” <https://ojjdp.ojp.gov/library/publications/model-programs-guide-literature-review-home-confinement-and-electronic> (accessed November 13, 2021)

Although the purpose of home confinement and EM differ depending on the phase in the criminal or

juvenile justice system they are used, the ultimate goal of restricting an individual’s activity and

protecting the public remains the same (U.S. Probation and Pretrial Services 2007). Overall, home

confinement and EM programs appear to consistently result in low recidivism rates for both adults

and juveniles when used as a pretrial intervention or post-adjudication sentence. The available

evidence also indicates that electronic monitoring—while perhaps popular—is neither clearly more

nor clearly less effective than close supervision by agency staff. Both home confinement and EM have

also been shown to offer cost advantages over incarceration. For adults, they reduce the public tax

burden by allowing the offender to work. And juveniles continue their schooling uninterrupted.

Home confinement and EM also reduce the cost associated with incarceration.

2A Evidence: Home Confinement

OPENING QUOTES / AFF PHILOSOPHY

Quote from prisoner. Example of how CARES Act home confinement leads to rehabilitation and ending it is bad

Paulina Smolinski, CBS News, September 3rd, 2021 “Inmates on home confinement could be sent back to prison after the pandemic: "Why make us go back and do it again?" <https://www.cbsnews.com/news/inmates-home-confinement-covid-pandemic-return/> (accessed November 13th, 2021)

Jeanne Ray Green, 48, would qualify under this criteria. Her sentence ends in 2024, but she worries she could be sent back to prison because her non-violent drug offense is related to methamphetamine. Now, she works at a gas station's convenience store in Porter, Texas, and helps as the part-time caretaker of her 76-year-old aunt. She's also had time to build relationships with her five grandchildren — four of whom were born while she was in prison. "I feel like a functioning member of society. I pay taxes. I pay for my own medical insurance through my job. I feel like a human being again," Green said. She fears that if the pandemic ends before her sentence, "the carpet will be pulled" from underneath her. She admitted she had no idea she could have been sent back to prison when she first got out. "I pray every day that they do something to help us. At the very least, don't send us back. That's not progress. That's the opposite of progress."

Shutting down a successful program

Ashish Prashar, CNN, 2021 (preeminent transformational leader, innovator, and justice reform activist. Ashish serves as the Global Chief Marketing Officer at R/GA) September 30th, 2021 “This group has a lot to lose when the Covid emergency ends” <https://www.cnn.com/2021/09/30/opinions/cares-act-home-confinement-biden-prashar/index.html> (accessed November 14, 2021)

This is particularly upsetting when evidence shows how the home confinement experiment has been incredibly successful. The bureau screened a population of [150,000](https://www.bop.gov/about/statistics/population_statistics.jsp;#old_pops) federal prisoners and allowed those of high vulnerability to Covid-19 who posed a low risk to public safety to enter home confinement. Michael Carvajal, the director of the Bureau of Prisons, said during a Senate judiciary hearing in April that of the total number of people released on home confinement because of Covid-19, just three had been arrested for [new crimes](https://www.nytimes.com/2021/06/27/us/politics/biden-prison-coronavirus.html).

Re-incarceration punishes those doing everything right

Catalina Garcia, WLRN News, 2021 (journalist, Florida News organization) May 19th, 2021 “As Federal Home Confinement Policy Nears Potential End, South Florida Inmates Face Uncertainty <https://www.wlrn.org/news/2021-05-19/as-federal-home-confinement-policy-nears-potential-end-south-florida-inmates-face-uncertainty> (accessed November 14th, 2021)

“That’s the saddest part and why sending them back would be so cruel. These people have done everything society would have wanted them to do. They got jobs, they reconnected with their families. We've talked to people who have started college or returned to college," Ring said.

Quote from prisoner (punished for doing the right things)

Patrice Gaines, NBC News, September 12th, 2021 “Thousands were released from prison because of Covid. Will they have to return?” <https://www.nbcnews.com/news/nbcblk/thousands-released-prison-covid-will-return-rcna1977> (accessed November 14, 2021)

“It upsets me to be home doing all the right things and now they talk about I may go back,” said Paulette Martin, 74, who lives with her son and his family in West Virginia.

BACKGROUND

CARES Act

Law Office of Jeremy Gordon (award winning defense firm founded in 2012) NO DATE, “Coronavirus” <https://www.gordondefense.com/cares-act-coronavirus-home-confinement/> (accessed November 14, 2021)

When most people think of the CARES Act, they think of economic stimulus. But the CARES Act also provided for individuals in federal prison to seek home confinement as well:

(2) HOME CONFINEMENT AUTHORITY.—During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate. (CARES ACT, Section 12003)

Under normal circumstances the BOP can only award 6 months or 10 percent of an inmate’s sentence in home confinement. The CARES Act allows the BOP to consider more home confinement time than what is previously allowed by statute. As a result of this many individuals were able to go to home confinement immediately even as allegations swirled that the BOP was preventing individuals from going home by setting up administrative roadblocks.

Criteria for release under CARES Act

Law Office of Jeremy Gordon (award winning defense firm founded in 2012) NO DATE, “Coronavirus” <https://www.gordondefense.com/cares-act-coronavirus-home-confinement/> (accessed November 14, 2021)

The criteria for release under the CARES Act are compiled via [the](https://www.gordondefense.com/cares-coronavirus-homeconfinement/) various [memoranda](https://www.gordondefense.com/bop-new-home-confinement-guidelines/) issued by the Bureau of Prisons. Currently those criteria are:

-The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines;

-The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum-security facilities;

-The inmate’s conduct in prison, with inmates who have engaged in violent or gang-related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;

-The inmate’s score under [PATTERN](https://www.gordondefense.com/bop-risk-and-needs-assessment-2/), with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;

-Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;

-The inmate’s crime of conviction and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home detention. Other serious offenses should weigh more heavily against consideration for home detention.

-No 300 or 400 Series incident reports in the last 12 months unless in the Warden’s judgement such placement does not create an undue risk to the community.

-The Inmate must not have, either currently or a prior offense that is violent, a sex offense, or terrorism-related;

-The Inmate must not have a current detainer

-The Inmate has not engaged in violent or gang-related activity while incarcerated (must be reviewed by SIS);

-The inmate must have served 50% or more of their sentence; or has 18 months or less remaining on their sentence and have served 25% or more of their sentence.

Home confinement is a common practice

Udi Ofer, American Civil Liberties Union 2021 (Deputy National Political Director of the ACLU and Director of the ACLU’s Justice Division, which leads the ACLU’s advocacy on criminal justice reform, policing, drug law reform and ending the death penalty) June 21st, 2021” President Biden Can Prevent Over 4,000 People From Being Sent Back to Prison” <https://www.aclu.org/news/criminal-law-reform/president-biden-can-prevent-over-4000-people-from-being-sent-back-to-prison/> (accessed November 13th, 2021)

The concept of serving the end of your sentence at home is far from new. In the federal prison system, it has existed since the George W. Bush presidency, when Congress passed the Second Chances Act, allowing federal prisons to send people to serve the last six-months or ten percent of their sentence at home. When COVID-19 hit, Congress expanded this authority under the 2020 CARES Act.

INHERENCY

Biden administration says prisoners must return to prison from home confinement

Charlie Savage and Zolan Kanno-Youngs, The New York Times, August 30th, 2021 “Biden Legal Team Decides Inmates Must Return to Prison After Covid Emergency” <https://www.nytimes.com/2021/07/19/us/politics/biden-prisoners-covid.html> (accessed November 14, 2021)

The Biden administration legal team has decided that thousands of federal convicts who were released to home confinement to reduce the risk of spreading Covid-19 will be required by law to return to prison a month after the official state of emergency for the pandemic ends, according to officials.

Status Quo policy is misunderstanding the CARES Act and canceling a very successful program

Bonnie Kristian, The Week, 2021(deputy editor at The Week. Her writing has also appeared at Time Magazine, CNN, USA Today, Newsweek, the Los Angeles Times, and The American Conservative, among other outlets.) August 9th. 2021 “The pandemic home confinement experiment was a huge success” <https://theweek.com/politics/1003500/pandemic-home-confinement-federal-prisoners> (accessed November 14, 2021)

“It is disappointing to see DOJ and BOP continue to uphold their erroneous reading of the CARES Act’s home confinement provision. Home confinement under the CARES Act has been incredibly successful at protecting nonviolent, medically vulnerable inmates during the pandemic while also achieving Congress’s goals to reduce recidivism and ensure public safety. But if the OLC Opinion’s misreading of the statute is allowed to stand, thousands will be automatically returned to prison. This would be a profoundly unfair consequence for those like Ms. Martinez-Brooks who have fully complied with the CARES Act and the terms of their home confinement.”

HARMS / SIGNIFICANCE

Sending prisoners back would cause rapid expansion of the prison population

Udi Ofer, American Civil Liberties Union 2021 (Deputy National Political Director of the ACLU and Director of the ACLU’s Justice Division, which leads the ACLU’s advocacy on criminal justice reform, policing, drug law reform and ending the death penalty) June 21st, 2021” President Biden Can Prevent Over 4,000 People From Being Sent Back to Prison” <https://www.aclu.org/news/criminal-law-reform/president-biden-can-prevent-over-4000-people-from-being-sent-back-to-prison/> (accessed November 13th, 2021)

During the campaign trail, candidate Biden told the ACLU that as president, he would be committed to reducing the federal prison population by 50 percent. Yet should President Biden allow thousands of people to be sent to federal prison he would be presiding over the fastest expansion of the federal prison population in history.

Thousands of prisoners affected by the plan

Udi Ofer, American Civil Liberties Union 2021 (Deputy National Political Director of the ACLU and Director of the ACLU’s Justice Division, which leads the ACLU’s advocacy on criminal justice reform) June 21st, 2021”President Biden Can Prevent Over 4,000 People From Being Sent Back to Prison” <https://www.aclu.org/news/criminal-law-reform/president-biden-can-prevent-over-4000-people-from-being-sent-back-to-prison/> (accessed November 13th, 2021)

Imagine being released from prison to serve the rest of your sentence at home. You begin your reintegration back to society. You get a job, rent an apartment, maybe even go back to school. You reconnect with your family. You fully abide by every single regulation related to your home confinement. Then, all of a sudden, you are told that any day now you will have to go back to prison. This is exactly the situation for [thousands](https://www.axios.com/prison-coronavirus-biden-justice-department-58882af9-d14a-4bcc-a0db-93873299a918.html) of people today.

Federal system at 103% capacity

Aaron Nolan, NewsNation, 2021 (journalist) “America’s prisons and jails: overcrowded and understaffed” August 10th, 2021 <https://www.newsnationnow.com/us-news/americas-prisons-and-jails-overcrowded-and-understaffed/> (accessed October 26th, 2021)

The federal prison system is running at 103% capacity. With the delta variant surging, there’s nowhere to be socially distant.

The goal of home confinement is to transition people *out* of prison

Ashish Prashar, CNN, 2021 (preeminent transformational leader, innovator, and justice reform activist. Ashish serves as the Global Chief Marketing Officer at R/GA) September 30th, 2021 “This group has a lot to lose when the Covid emergency ends” <https://www.cnn.com/2021/09/30/opinions/cares-act-home-confinement-biden-prashar/index.html> (accessed November 14, 2021)

Second, the traditional goal of moving people from prison to home confinement is to ease them back into society, not to return them to prison.

No reason for thousands of offenders to be in prison. Home confinement has proven successful

Jamie Roth, Business Insider, 2021 (Journalism, media and communications professional. 15 years experience as an on-air TV news reporter) 13 Aug 2021 “COVID allowed Raquel Esquivel and 4,500 others to be released from overcrowded federal prisons. So why is she back behind bars?” <https://www.businessinsider.com/do-these-4000-federal-inmates-belong-behind-bars-2021-8> (accessed November 14, 2021)

For Kevin Ring, the prison reform advocate, the feasibility of a mass release to home confinement during a pandemic "showed that we had thousands of people in prison who didn't need to be there." "The fact that you can find thousands to release who are so low risk, and they can be monitored successfully without committing crimes, shows us that we're locking up too many people for too long. This is the most obvious evidence. Normally, you'd be speculating. Now, we *had* to let them out, and we were proved right," he said.

Re-incarceration is dangerous: There aren’t enough prison staff to handle the workload

Jamie Roth, Business Insider, 2021 (Journalism, media and communications professional. 15 years experience as an on-air TV news reporter) NO DATE, “COVID allowed Raquel Esquivel and 4,500 others to be released from overcrowded federal prisons. So why is she back behind bars?” <https://www.businessinsider.com/do-these-4000-federal-inmates-belong-behind-bars-2021-8> (accessed November 14, 2021)

Other advocates call the impending re-incarceration flat-out dangerous because of severe prison staffing shortages that go as far back as 2005. The president of the union representing 30,000 federal prison workers said, in a letter to the Senate, that the understaffing "creates a clear and present danger to every employee, inmate, and the community at large." Additionally, the thousands of vacant jobs makes the "response to the COVID-19 pandemic nearly impossible."

Re-incarceration rips away prisoners from their families and the economy – we need to reverse the policy

Insider NJ, 2021 (nonpartisan website dedicated to political news in the state of New Jersey. Veteran award-winning reporter and editor Max Pizarro is contractually in charge of all news content) “BOOKER, DURBIN: WE SHOULD NOT FORCE INDIVIDUALS ON HOME CONFINEMENT TO RETURN TO PRISON” <https://www.insidernj.com/press-release/booker-durbin-not-force-individuals-home-confinement-return-prison/> (accessed November 14, 2021)

“Individuals on CARES Act home confinement have posed no threat, and are already reintegrating into society, reconnecting with their families, and contributing to our economy,” said Sen. Durbin. “I have repeatedly urged the Department of Justice to rescind a Trump-era legal opinion that would needlessly force thousands to return to prison. If this opinion is not withdrawn, the Biden Administration must use other legal tools – like compassionate release and clemency – to ensure that no inmate who has successfully transitioned to home confinement is returned to prison.”

Blocks rehabilitation: It’s impossible to make life decisions and re-integrate to society when living in uncertainty

Harper Neidig, The Hill, May 9th, 2021 “DOJ faces big decision on home confinement” <https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement> (accessed November 14, 2021)

Advocates and lawmakers argue that the program has been a resounding success, and that it would be unjust to reincarcerate thousands of individuals who abided by the terms of their home confinement. “If you're one of these people, you're trying to figure out, 'Do I go back to college? Do I start a new job? Do I start a family? Do I sign a lease? I mean, what can I do, not knowing where I'm going to be in six months?’ That's cruel to keep somebody in that doubt and uncertainty for this long and to say, ‘You know, don't worry about it, it's not going to happen tomorrow,’” said Kevin Ring, president of the advocacy group Families Against Mandatory Minimums.

SOLVENCY

BOP has the authority to decide where sentences are served

Meghan Downey, The Regulatory Review, 2021 (University of Pennsylvania Law School) April 1st, 2021 “Expanding Home Confinement During COVID-19” <https://www.theregreview.org/2021/04/01/downey-expanding-home-confinement-during-covid-19/> (accessed November 14, 2021)

Even with these statutory factors and Justice Department guidance, whether incarcerated people are placed on home confinement is a determination left to the Bureau’s “considerable discretion.” Federal law provides that the Bureau of Prisons has the ultimate authority when it comes to making determinations about where people convicted of federal crimes serve their sentences. For example, even if a sentencing court ordered that a person serve some amount of time in home confinement, that order “shall have no binding effect” on the Bureau’s authority “to determine or change the place of imprisonment of that person.” The Bureau’s policies further specify that only the Bureau may approve someone’s placement in home confinement, and federal law insulates the Bureau’s determinations about home confinement from judicial review. Although incarcerated people denied home confinement cannot seek judicial intervention, they can ask the Bureau to reconsider their cases.

BOP can act regardless of DOJ opinion

CBS News, September 21st, 2021 “Maryland Lawmakers: Don’t Send Prisoners On Home Confinement Back To Prison” <https://baltimore.cbslocal.com/2021/09/21/maryland-lawmakers-voice-support-for-compassionate-release/> (accessed November 14th, 2021)

Maryland lawmakers are calling for federal officials to extend home confinement and compassionate release for prisoners who were let out as part of an effort to curb the spread of COVID-19 in correctional facilities. In a [letter Friday to Attorney General Merrick Garland and U.S. Bureau of Prisons Director Michael Carvajal](https://www.cardin.senate.gov/imo/media/doc/2021.09.17%20Baltimore%20Lawmakers%20to%20DOJ%20re%20OLC%20Memo%20Gwen%20Levi_final%20signed.pdf), the five lawmakers asked Garland to reconsider a legal opinion issued under the Trump administration that would send as many as 4,500 people back to prison once the COVID-19 emergency passes. The letter pointed to the example of Ms. Gwen Levi, a 76-year-old Baltimore woman who served most of her 24.5-year sentence before being released to home confinement in June 2020. Levi was sent back to prison a year later due to a misunderstanding over halfway house rules because she did not answer her phone. Levi was later granted compassionate release despite the DOJ’s opposition.

PLAN/ADVANTAGES

Priority #1 is cancelling re-incarceration

Harper Neidig 2021 (journalist) THE HILL 9 May 2021 “DOJ faces big decision on home confinement” <https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement> (accessed November 14, 2021) (brackets added)

But in the meantime, [president of the advocacy group Families Against Mandatory Minimums, Kevin] Ring said, the priority is for the Biden administration to make clear that it does not intend to re-incarcerate those who are serving their sentences out at home. “Not only do they need to fix it, they need to fix it immediately,” he said. “They need to announce to these people, ‘You're not going back. We're not making you go back. We'll rescind the memo or we'll use some other authority we have to fix this.' But these people need to get on with their lives.”

Home confinement is incredibly successful

Harper Neidig 2021 (journalist) THE HILL 9 May 2021 “DOJ faces big decision on home confinement” <https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement> (accessed November 14, 2021) (brackets added)

Experts and advocates alike see the home confinement policy as a radical experiment that yielded positive results, potentially adding more momentum to criminal justice reform efforts that have seen a growing bipartisan consensus against the tough-on-crime policies of the late 20th century. Ring, of Families Against Mandatory Minimums, said lawmakers should consider the success of the home confinement program as a potential alternative to incarceration. “I think this is still a good model or a good use of natural experiment to show that we can keep more people in the community, and not keep them in prison,” he said. “Congress should use what happened here as evidence for expanding home confinement going forward.”

DISAD RESPONSES

A/T: “Home confinement is less safe”

Returning prisoners makes little sense from safety perspective. They’re low risk and have almost perfect track record

Udi Ofer, American Civil Liberties Union 2021 (Deputy National Political Director of the ACLU and Director of the ACLU’s Justice Division, which leads the ACLU’s advocacy on criminal justice reform) June 21st, 2021” President Biden Can Prevent Over 4,000 People From Being Sent Back to Prison” <https://www.aclu.org/news/criminal-law-reform/president-biden-can-prevent-over-4000-people-from-being-sent-back-to-prison/> (accessed November 13th, 2021)

Third, this makes little sense from a public safety perspective. Everyone released was already determined to be a “low risk”; this was part of the condition of release. Not surprisingly, only about 0.63 percent, or [151 people out of more than 24,000](https://reason.com/2021/04/16/pressure-grows-on-biden-to-rescind-memo-that-would-send-thousands-released-on-home-confinement-back-to-federal-prison/) people, have violated the terms of their release once transferred to home confinement.

Absolute minimum in safety risk

Jillian Snider & Maya Szilak, Reason, 2021 (Snider: policy director for R Street's Criminal Justice and Civil Liberties team, an adjunct lecturer at John Jay College of Criminal Justice, and a retired NYPD police officer. Szilak: fellow for R Street's Criminal Justice and Civil Liberties team) “The Pandemic Showed Home Detention Works <https://reason.com/2021/08/06/the-pandemic-showed-home-detention-works/> (accessed November 13th, 2021)

These offenders represent the absolute minimum in risks to public safety. To qualify for home detention under the CARES Act, prisoners had to meet stringent [criteria](https://www.fd.org/sites/default/files/news/2021.4.13_-_bop_home_confinement_cares_memo.pdf) and rigorous screening requirements. Anyone convicted of a violent crime, sex offenses, or terrorism-related offenses was automatically disqualified, as was anyone subject to deportation. Anyone who engaged in violent or gang-related activity while incarcerated, or was considered risky using a risk assessment [tool](https://www.fd.org/sites/default/files/news/2021.4.13_-_bop_home_confinement_cares_memo.pdf), was also disqualified. Further, BOP officials, exercising prudent correctional [discretion](https://www.justice.gov/olc/file/1355886/download), declined to release many otherwise eligible prisoners on the basis that their criminal history, conduct in prison, or lack of a viable reentry plan increased their risk of recidivism. As a result, many legislators, prisoners' rights advocates, and judges actually [condemned](https://www.forbes.com/sites/walterpavlo/2021/07/21/federal-inmates-eligible-for-home-confinement-under-cares-act-pled-for-their-release-from-prison/?sh=6bd678634afc) the BOP for being overly cautious in refusing to release more prisoners to home detention.

Data shows barely any recidivism. Only 1 out of 28,881 committed a new crime

Jillian Snider & Maya Szilak, Reason, 2021 (Snider: policy director for R Street's Criminal Justice and Civil Liberties team, an adjunct lecturer at John Jay College of Criminal Justice, and a retired NYPD police officer. Szilak: fellow for R Street's Criminal Justice and Civil Liberties team) “The Pandemic Showed Home Detention Works <https://reason.com/2021/08/06/the-pandemic-showed-home-detention-works/> (accessed November 13th, 2021)

The preliminary [data](https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement) are quite promising: The overwhelming majority of those released on home detention have not reoffended. Of the 28,881 [prisoners](https://www.bop.gov/coronavirus/faq.jsp) allowed on home detention last year, only 151 [individuals](https://www.bop.gov/resources/news/pdfs/20210318_hearing_statement.pdf), less than 1 percent, violated the terms of their confinement. Only one person has committed a new crime. Additionally, [research](https://www.uscourts.gov/news/2018/10/22/just-facts-post-conviction-supervision-and-recidivism) on technical parole and probation violations shows that removing people from community supervision and reincarcerating them when they have not committed an offense increases the likelihood of criminal recidivism and makes future reentry into society more difficult.

Public safety is a weak argument: Less than 1% have violated home confinement rules

Bonnie Kristian 2021(deputy editor at The Week. Her writing has also appeared at Time Magazine, CNN, USA Today, Newsweek, the Los Angeles Times, and The American Conservative) August 9th. 2021 “The pandemic home confinement experiment was a huge success” <https://theweek.com/politics/1003500/pandemic-home-confinement-federal-prisoners> (accessed November 14, 2021)

As Reason [reports](https://reason.com/2021/08/06/the-pandemic-showed-home-detention-works/) more than a year into this de facto experiment, "preliminary [data](https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement) are quite promising: The overwhelming majority of those released on home detention have not reoffended. Of the 28,881 [prisoners](https://www.bop.gov/coronavirus/faq.jsp) allowed on home detention last year, only 151 [individuals](https://www.bop.gov/resources/news/pdfs/20210318_hearing_statement.pdf), less than 1 percent, violated the terms of their confinement. Only one person has committed a new crime." That's quite a success. It's a strong case for expanded future use of home confinement, which saves money, doesn't separate families, and gives participants education and job opportunities they can't get in prison, which helps prevent recidivism. With numbers like these, the chief argument against home confinement — that it endangers the community — looks pretty weak.

Formal prison is unnecessary for many offenders

Harper Neidig 2021 (journalist) THE HILL 9 May 2021 “DOJ faces big decision on home confinement” <https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement> (accessed November 14, 2021) (brackets added)

Ames Grawert, a senior counsel at the Brennan Center for Justice who focuses on quantitative research around crime and incarceration, said that from an empirical standpoint, the program’s nearly nonexistent recidivism rates were shocking. “We are led to believe that there are this many people in prison, for whom prison is necessary to protect public safety,” Grawert said. “The pandemic is a very difficult time, and there are a million other social variables at play, but the extended home confinement programs suggest that it may well be the case that there are people in federal prison who do not need to be in a formal prison for legitimate public safety reasons.”

Home confinement could have gone further and still been safe

Harper Neidig 2021 (journalist) THE HILL 9 May 2021 “DOJ faces big decision on home confinement” <https://thehill.com/homenews/administration/552447-doj-faces-big-decision-on-home-confinement> (accessed November 14, 2021) (brackets added)

Douglas Berman, a law professor at Ohio State University who studies sentencing policy, said federal prison inmates are less likely to be violent offenders than those in state institutions, so the Justice Department could have gone much further in reducing the population behind bars. "I certainly went into the pandemic era thinking that Congress should authorize BOP to let a lot of people out and not just the ones about to get out anyway, not just the lowest-risk folks, that this was a time where it was worth being even bolder," Berman said. "That said, this was still the boldest home confinement experiment in federal prison history."

A/T: “Prisoners can’t go back to prison, regardless of behavior”

Any violation sends them back to prison, but it rarely happens because they don’t violate

Paulina Smolinski, CBS News, September 3rd, 2021 “Inmates on home confinement could be sent back to prison after the pandemic: "Why make us go back and do it again?" <https://www.cbsnews.com/news/inmates-home-confinement-covid-pandemic-return/> (accessed November 13th, 2021)

For the inmates under home confinement, the rules of the Bureau of Prisons still apply: any violation or crime would land them back in prison. So far, only five people sent home during the pandemic have been returned to prison for new criminal conduct.

A/T: “Prisoners should serve their sentences”

Home confinement is still punishment

Jillian Snider & Maya Szilak, Reason, 2021 (Snider: policy director for R Street's Criminal Justice and Civil Liberties team, an adjunct lecturer at John Jay College of Criminal Justice, and a retired NYPD police officer. Szilak: fellow for R Street's Criminal Justice and Civil Liberties team) “The Pandemic Showed Home Detention Works <https://reason.com/2021/08/06/the-pandemic-showed-home-detention-works/> (accessed November 13th, 2021)

It's important to understand that serving a sentence on home confinement is not a "get out of prison free" card; it is still punishment. Prisoners in home confinement are closely monitored and subject to strict behavioral rules. They are allowed only limited movement during certain hours to participate in rehabilitative activities such as school, drug treatment, job skills training, and religious events. If they break any of these rules, they are sent back to prison. But, at least to the BOP's knowledge, the vast majority of prisoners on home detention who now face incarceration have not broken any of these rules. They have proven that they can do well under home detention; they should not be punished by the Biden administration.