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NCLA Refutes BOP’s Attempt to Dismiss Home Confinement Lawsuit for Medically Vulnerable Inmate

Dianthe Martinez-Brooks v. Attorney General Merrick Garland, et al.

Washington, DC (October 26, 2021) – The U.S. Department of Justice (DOJ) and Bureau of Prisons (BOP) have declared plans to order medically vulnerable people out of home confinement and back to prison as soon as the COVID-19 pandemic abates. In doing so, these agencies are ignoring statements from Congress, the plain language of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the Post-sentence Administration statutes. The New Civil Liberties Alliance has filed a [response](#) on behalf of client Dianthe Martinez-Brooks to the government’s motion to dismiss our lawsuit, *Martinez-Brooks v. Garland*, in the U.S. District Court for the District of New Jersey.

NCLA represents Ms. Martinez-Brooks, a 52-year-old nonviolent, first-time offender who has been serving her federal prison term on home confinement since June 2020. The CARES Act home confinement provision is intended to protect medically vulnerable people like Ms. Martinez-Brooks from the significant risk of illness or death posed by the COVID-19 pandemic in congregate settings like prisons. The provision has been a resounding success for thousands of nonviolent, medically vulnerable inmates. Of the approximately [33,300](#) people released since the CARES Act’s passage, only [151](#) individuals violated the terms of their release, and only three were arrested for new crimes.

On January 15, 2021, the DOJ Office of Legal Counsel (OLC) issued an opinion to BOP’s General Counsel, holding that BOP has unlimited discretion to return individuals released under the CARES Act to prison from home confinement at any time. More problematically, it also opined that once the CARES Act period “expires” BOP must return every person to prison who has served more than six months on home confinement.

DOJ insists it has no choice but to reincarcerate people, despite the success of home confinement placements under the CARES Act. So, unless the court accepts NCLA’s argument, Ms. Martinez-Brooks will be forced to return to prison, even though imprisoning her again serves no legitimate purpose and the CARES Act does not provide for her re-incarceration.

Ms. Martinez-Brooks is challenging the OLC Opinion under the Administrative Procedure Act (APA). The only way to grant her the relief she seeks—*i.e.*, a court decision setting aside the OLC Opinion—is through court review of the OLC Opinion under the APA. NCLA argues that the [current statute](#) vests BOP with sufficient discretion to allow Ms. Martinez-Brooks to serve the remainder of her sentence on home confinement and therefore, the government’s motion to dismiss for lack of subject-matter jurisdiction should be denied.

NCLA released the following statement:

“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.”
— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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