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In Reversal After NCLA Suit, DOJ to Allow Prisoners Moved to Home Confinement for Covid to Stay

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

Washington, DC (December 22, 2021) – The New Civil Liberties Alliance commends Attorney General Merrick Garland and the Department of Justice (DOJ) for reversing course on the idea of automatically returning prisoners put on home confinement to prison once the pandemic ends. Under an [opinion](#) from the Office of Legal Counsel (OLC) released yesterday, prisoners released to home confinement pursuant to 2020’s Coronavirus Aid, Relief, and Economic Security (CARES) Act will not automatically return to prison post-pandemic and will be eligible to remain at home instead.

NCLA represents Dianthe Martinez-Brooks, a 52-year-old nonviolent first-time offender who has been serving her federal prison term on home confinement during Covid. In May 2021, NCLA and Ms. Martinez-Brooks filed [suit](#) against DOJ, seeking declaratory relief against an earlier OLC [opinion](#), which interpreted federal law to strip the Bureau of Prisons (BOP) of its statutorily granted discretion to determine if and when individuals released under the CARES Act to home confinement could be returned to prison. NCLA argues that both proper interpretation of the CARES Act and binding precedent conflict with DOJ’s earlier position. As recently as November, DOJ was [telling](#) the federal court in the *Martinez-Brooks* case that individuals like her must automatically be returned to prison at the end of the CARES Act’s covered emergency period, without the benefit of BOP’s Congressionally authorized discretion being applied to her individual circumstances.

The CARES Act provision which allows BOP to lengthen the “pre-release custody” period during the pandemic is intended to protect medically vulnerable people like Ms. Martinez-Brooks from the significant risk of illness or death posed by the spread of COVID-19 in congregate settings like prisons. Home confinement in accordance with the CARES Act also sought to reduce recidivism while protecting public safety. Thus far, the CARES Act home confinement provision has been a success. Of the approximately 35,277 people released from prison since late March 2020, 4,879 are currently on home confinement under the CARES Act authority. As of April 2021, fewer than 200 individuals had violated the terms of their release and less than a handful were arrested for new crimes.

In a [statement](#) released on Tuesday, Attorney General Garland reiterated that “those who have made rehabilitative progress and complied with the conditions of home confinement ... should be given an opportunity to continue transitioning back to society, ... not unnecessarily returned to prison.” In the 18 months since Ms. Martinez-Brooks was placed in home confinement, she has fully complied with the terms of her release. NCLA looks forward to working with DOJ to ensure that Ms. Martinez-Brooks, who has demonstrated an exemplary record following her release, is able to serve the remainder of her sentence on home confinement.

NCLA released the following statements:

“The CARES Act home confinement provision has been a resounding success, and NCLA is happy to see that its success will not be diminished by the threat of future confinement for our client and other model inmates in her

situation. This new OLC opinion will permit thousands of individuals, like Ms. Martinez-Brooks, to remain on home confinement at the discretion of the Bureau of Prisons, as Congress instructed.”

— **Kara Rollins, Litigation Counsel, NCLA**

“I am ecstatic that AG Garland has stated, as we believed, that the Bureau of Prisons has the authority to keep individuals home beyond the COVID-19 emergency. For myself, and the many others released during this pandemic, the fear of returning has plagued us all and hindered our ability to plan long term. This is an awesome first step! However, given my experience with BOP, I respectfully ask the Department of Justice to oversee BOP as it develops the revised criteria for the individuals out on home confinement under the CARES Act to ensure the only basis on which an individual is sent back to prison would be if they seriously violate their terms of release. No one should be returned just because of how much time they have left on their sentence, or any other similar factor.”

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

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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