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## **NCLA Tells Court Bureau of Prisons May Keep Inmates on Home Confinement Post-Covid**

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

**Washington, DC (May 18, 2021)** – The U.S. Department of Justice (DOJ) and Bureau of Prisons (BOP) cannot overrule Congress and ignore decisions of the courts of appeals, argues the New Civil Liberties Alliance in a [complaint](#) filed in the U.S. District Court for the District of New Jersey. NCLA, a nonpartisan, nonprofit civil rights group, seeks to obtain declaratory relief and to halt DOJ’s effort to disregard prior court decisions on prison alternatives for nonviolent and medically vulnerable people.

NCLA represents Dianthe Martinez-Brooks, a 52-year-old nonviolent first-time offender currently serving a federal prison term on home confinement. BOP released her from prison after determining that she posed no threat to the public but was at serious risk of severe illness or death should she contract Covid-19 in prison—in accordance with Attorney General William Barr’s “home confinement” [memorandum](#).

According to current [statute](#), BOP must always evaluate use of home confinement as “pre-release custody” for those inmates in the last six months of their sentence. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed by Congress in March 2020 directed BOP to use home confinement for medically vulnerable people. Neither the relevant statute nor the CARES Act’s applicable [section](#) deprives BOP of its discretion to make an initial placement outside of a prison setting. Likewise, neither the relevant statute nor the CARES Act requires BOP to revoke home confinement for medically vulnerable people after six months.

Nevertheless, in January, BOP’s General Counsel directed the agency to order the return of more than 4,000 inmates once the declared Covid-19 emergency has ended, regardless of the nature of their offenses or their conduct while on home confinement. NCLA believes the agency has wrongly interpreted an obligation to release people to home confinement when they near the end of their sentences as a limit on how long anyone can be released to home confinement, no matter why they were released initially.

This interpretation contradicts several federal court decisions, including one from the Third Circuit, the pertinent jurisdiction in this case, which have held that this statute does not preclude having a defendant serve a much longer portion of her term on home confinement. To the contrary, the Third Circuit specifically stated that BOP is obligated to evaluate each individual’s circumstances and make a determination as to where she should serve the entirety of her [sentence](#).

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. Since her transfer, Ms. Martinez-Brooks has excelled at returning to the community. In addition to not being legally required, ordering her back to prison would be unnecessary and cruel. NCLA is asking the court to issue a declaratory judgment concluding that the CARES Act and current law allow—albeit do not require—BOP to keep Ms. Martinez-Brooks out of prison for the remainder of her sentence.

**NCLA released the following statements:**

“Part of BOP’s mission is to ensure that people who return home from prison reintegrate into their communities. But BOP is poised to force thousands of people who have proven that they are not a danger to the community back to prison, contrary to Congressional directives and binding decisions of the courts.”

— **Caleb Kruckenberg, NCLA Litigation Counsel**

“Ms. Martinez-Brooks was a model prisoner and her conduct for ten months, while on home confinement, has likewise been impeccable. Despite this, BOP wants to send her back to prison to finish her sentence. Although BOP claims that this is required by law, in actuality, the pertinent statutes and case law establish precisely the opposite: that Ms. Martinez-Brooks is entitled to an individualized assessment of her circumstances, with the possibility of serving the remainder of her sentence on home confinement.”

— **Jenin Younes, NCLA Litigation Counsel**

**For more information about this case visit [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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