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DOJ Will Revise Trump-Era Home Release Limit, Garland Says

By Jack Queen

Law360 (October 27, 2021, 7:42 PM EDT) -- The U.S. Department of Justice will rework a Trump-era legal opinion that inmates on early home release because of the COVID-19 pandemic must go back to prison when the crisis subsides, Attorney General Merrick Garland said Wednesday, calling it a "terrible policy."



Attorney General Merrick Garland testifies before the Senate Judiciary Committee on Wednesday. (U.S. Senate)

Garland told the Senate Judiciary Committee that a compassionate release program under the CARES Act has been a success, noting that only a tiny percentage of inmates had violated the terms of their home confinement. Garland didn't offer a timeline but assured senators that "no one will be returned" to prison until the Office of Legal Counsel completes its review.

"I agree it would be a terrible policy to return these people to prison after they've shown that they're able to live in home confinement without violations," Garland said under questioning by Sen. Cory Booker, D-N.J. "As a consequence, we are reviewing the OLC memorandum... We are also reviewing all other authorities that Congress may have given us."

The opinion, issued in the final days of Donald Trump's presidency, concluded that the U.S. Bureau of Prisons can't extend home confinement for otherwise ineligible detainees once the emergency period under the Coronavirus Aid, Relief and Economic Security Act or CARES Act expires.

More than 33,000 people have been placed on home confinement during the pandemic, and under 1% of them have been sent back to prison for rule violations, according to the BOP. Thousands could be sent back if they still aren't eligible for home confinement when the COVID-19 crisis in prisons subsides.

Senate Judiciary Committee Chairman Dick Durbin, D-Ill., has joined Booker in lobbying the Justice Department to rescind the memo, arguing the emergency period covers only the BOP's authority to grant new releases and shouldn't end those that have already been approved.

"I very much agree that the home confinement program has proven successful," Garland said under questioning from Durbin. "It relieved pressure on prisons with respect to the COVID-19 pandemic but also gave people the opportunity to adjust themselves to their communities ... so I'm very strongly in favor of being able to continue this program."

The remarks came during a wide-ranging hearing that also touched on antitrust enforcement, the Jan. 6 Capitol riot investigation and the FBI's botched handling of the Dr. Larry Nassar sexual abuse case.

Garland assured lawmakers that the government is ramping up antitrust enforcement across the board, from health care to agriculture and labor market allocation. The flurry of activity — including 18 pending trials and a mammoth enforcement action against Google — demands additional resources, Garland said, noting he has asked Congress for another \$201 million for the Antitrust Division budget.

"The Antitrust Division does need more money — and more lawyers and economists and investigators," Garland told Sen. Alex Padilla, D-Calif., adding that the division he inherited had one of its lowest headcounts in many years.

"The number of mergers has skyrocketed, and the number of people we have in the division evaluating those mergers has decreased," Garland said.

Garland also indicated that the Justice Department's sweeping Jan. 6 investigation extends beyond the hundreds of people who participated in the insurrection at the Capitol and includes those who funded the rally that precipitated it.

A House committee investigating the riot is scrutinizing dark money groups and donors believed to have bankrolled the "Stop the Steal" rally, and Sen. Sheldon Whitehouse, D-R.I., sought assurances that the FBI is following the money as well.

"It's fair to say that all investigative techniques with which you're familiar ... are all being pursued in this matter," Garland responded, sidestepping direct comment on the pending cases.

Garland also addressed the Justice Department's deeply unpopular decision not to charge former FBI agents who lied to investigators as they sought to cover up their botched handling of tips about Nassar, the former USA Gymnastics doctor serving an effective life sentence for abusing more than 100 victims.

Deputy Attorney General Lisa Monaco told lawmakers this month that the department was reconsidering its past decision not to prosecute the agents, a turnabout that came after a **bombshell government report** identified a litany of missteps and misconduct by the FBI.

Garland said "new evidence has come to light" regarding the agents' conduct, meriting a fresh review of the decision to pass on prosecution.

--Editing by Jill Coffey.