Organization Letter in Support of H.R. 4018

October 18, 2019

The Honorable Nancy Pelosi
H-232 U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
H-204 U.S. Capitol
Washington, DC 20515

Dear Speaker Pelosi and Republican Leader McCarthy,

On behalf of the 34 undersigned organizations, we write this letter to voice our strong support of H.R. 4018, introduced by Representatives Ted Deutch (FL), Jerrold Nadler (NY), Doug Collins (GA), Hakeem Jeffries (NY), Matt Gaetz (FL) and Karen Bass (CA). This non-controversial bill is a technical fix to the Elderly Home Detention Pilot Program (the "Elderly Program") of the First Step Act. H.R. 4018 has passed out of the House Judiciary Committee with a strong bi-partisan vote and we urge you to advance this legislation as soon as possible.

Our federal prisons are looking more and more like old-age homes. It is inhumane, and it is unsustainable. It is a crisis that deeply affects us fiscally, and more importantly, goes to the core of who we are as Americans.

The United States Inspector General, Michael Horowitz, found that "According to BOP data, inmates age 50 and older were the fastest growing segment of its inmate population, increasing 25 percent from 24,857 in fiscal year (FY) 2009 to 30,962 in FY 2013." The human cost is reprehensible. But the fiscal cost is equally irresponsible. Mr. Horowitz further writes, "Based on BOP cost data, we estimate that the BOP spent approximately $881 million, or 19 percent of its total budget, to incarcerate aging inmates in FY 2013." This is untenable.

This is why we supported the Elderly Home Detention Pilot Program in the First Step Act, passed into law this past December. This program transfers nonviolent federal individuals in prison to home confinement if they are 60 years-old or older and have served two-thirds of their sentence. Obviously, home confinement is much cheaper for the taxpayer than housing and feeding someone in a prison. It further goes without saying that the medical care available on 'the outside' is incomparably better than the mediocre medical care available in prison.

The problem is that the two-thirds is currently interpreted to be 2/3 of the original sentence, not 2/3 of the sentence with good time credit included.

The issue stems around the language of the statute. The language in the Second Chance Act of 2007 is "of the term of imprisonment *to which the offender was sentenced*." Based on this language, when BOP conducted this elderly pilot program in 2010, it calculated the 75% of the sentence[1] as the full sentence imposed by the judge, without good time included.

[1] With the Elderly Pilot Home Detention Program in the Second Chance Act incarcerated individuals became eligible for home confinement after serving 75% of the sentence. Whereas the First Step Act changed that to 2/3 of the sentence.

The challenge is that back in 2010 this question was reviewed by the judicial branch and the Tenth Circuit Court of Appeals agreed with the BOP that the statute does not include good time credit -- Mathison v. Davis and Izzo v. Wiley, 620 F. 3d 1257 (10th Cir. 2010). In light of this case, the BOP has concluded that this is how it is obligated to calculate the 2/3 requirement under the First Step Act.

It is clear the only way to fix this is legislatively. Congress must clarify the language to show that the 2/3 calculation should include good time credit. Hence, the need for H.R. 4018, which is a technical fix that clarifies what was probably a drafting error so that these eligible elderly incarcerated individuals, who were "model inmates" that followed the rules, should receive good time credit like everyone else.

This technical fix is the right thing to do for the following reasons:

1) The current method is a departure from the way BOP calculates all other transfer decisions. For each transfer and release decision—except those in the "Elderly and family reunification for certain nonviolent offenders pilot program"—BOP always calculates good conduct time credits. As soon as a federal offender arrives in the custody of BOP:
    - His/her projected release date is determined by taking the term of imprisonment to which he/she was sentenced and subtracting the maximum number of good conduct time credits they can possibly earn and accrue.
    - Working back from this projected release date, BOP then determines the projected dates of transfers from higher to lower-security and supervision facilities. For example: when BOP calculates when an offender will become eligible to transfer from a "Low-security" facility to a "Camp"; and from a "Camp" to a "Residential Reentry Center," etc….with all these examples, the calculation of the release date is with good time included. There is no reason that elderly transfer should be treated differently.

2) Moreover, this is an issue of fairness. Why should these elderly men and women lose their good time credit when they did in fact act with good behavior? It would not be fair to penalize them and would counter the compassionate purpose of this provision.

3) One of the goals of this program is to save taxpayer dollars. (In fact, one of the eligibility factors is that the "release to home detention under this section will result in a substantial net reduction of costs to the Federal Government".) Obviously, the older incarcerated individuals get the more it costs to house them in prison. Hence, getting them to home confinement earlier -- by including good time -- will result in tremendous savings to the Federal Government.

Based on these important factors, we urge all members of Congress to vote in favor of H.R. 4018. It will have a truly positive impact on the lives of these elderly human beings and their families, not to mention it will save much needed federal dollars housing these nonviolent people who have the least risk of recidivating.

We thank you for your consideration and look forward to joining you in supporting the passage of this legislation.

Sincerely,

Aleph Institute
American Civil Liberties Union (ACLU)
American Conservative Union
Americans for Tax Reform
Brennan Center for Justice at NYU School of Law
CAN-DO Foundation
Center for American Progress
Church of Scientology National Affairs Office
CURE (Citizens United for Rehabilitation of Errants)
#cut50
Digital Liberty
Drug Policy Alliance
Due Process Institute
FAMM
FreedomWorks
Heritage Action for America
Justice Action Network
Justice Strategies
Life for Pot
Mommieactivist and Sons
National Action Network
NAACP
National African American Drug Policy Coalition
National Association of Criminal Defense Lawyers (NACDL)
National Council of Churches
National Incarceration Association
R Street Institute
Right on Crime
StoptheDrugWar.org
Texas Public Policy Foundation
The Sentencing Project
The Taifa Group
Treatment Communities of America
Tzedek Association

CC: Chairman Jerrold Nadler & Ranking Member Doug Collins