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November 2, 2022

Dwayne Bensing
Legal Director
ACLU of Delaware
100 W. 10th Street, Suite 706
Wilmington, DE 19801

Re: Voter Eligibility for Incarcerated Voters

Dear Mr. Bensing,

Thank you for your letter of October 14, 2022. The Department of Justice agrees with the Department of Elections' position in its September 20, 2022 letter that the Vote-By-Mail litigation does not impact the eligibility of voters who are incarcerated in Delaware prison facilities to vote by absentee ballot.

As articulated by the DOE, the "otherwise eligible persons who are incarcerated" absentee reason, which falls under the "Business or Occupation" reason set forth in Article V, Section 4A of the Delaware Constitution, is expressly included on the DOE's 2022 absentee ballot application form as a specific and authorized reason for voting absentee. As such, this Office will not prosecute eligible individuals incarcerated in Delaware Department of Correction facilities for voting or attempting to vote by absentee ballot in the 2022 General Election.

DOJ remains committed to ensuring that eligible incarcerated individuals in Delaware prison facilities are able to vote by absentee ballot in 2022.

Sincerely,

Patricia A. Davis

Patricia A. Davis
State Solicitor