

Federal: U.S. Bureau of Prisons

Currently the U.S. Parole Commission (USPC) is holding long-term federal prisoners hostage, including prominent U.S. political prisoners like Leonard Peltier, Dr. Mutulu Shakur, Sundiata Acoli, Veronza Bowers, and Bill Dunne. USPC decisions have expanded interpretations of "serious" and "frequent" rules violations, dredging up ancient rule violations as a pretext and rationale for permanent punishment, in effect life without parole. The USPC – now just 2 people – is re-sentencing long-term prisoners to death by incarceration.

Background: the U.S. Parole Commission

In 1976, Congress passed the Parole Commission and Reorganization Act ("Parole Act"), to "provide an infusion of due process in Federal parole procedures." Congress characterized the existing parole system "as the single most inequitable, potentially capricious, and uniquely arbitrary corner of the criminal justice map."

Under the Parole Act, the new Parole Commission was established with nine members: a chair, three National Commissioners who would sit on the National Appeals Board, and five Regional Commissioners who would make first-level parole decisions in their geographic regions. The Commission was to be "an independent agency in the Department of Justice." However, the Attorney General was given certain limited powers with respect to the administration of the Commission, such as designating members of the Commission to serve as National or Regional Commissioners.

Eight years later, Congress passed the Sentencing Reform Act (SRA) of 1984, ending the possibility of parole for anyone convicted on or after November 1, 1987. These "new law" prisoners were sentenced under the new federal sentencing guidelines, to determinate sentences without the possibility of parole. "Old law" prisoners (people convicted of offenses that took place before November 1, 1987) remained subject to the Parole Commission. The number of "old law" prisoners currently inside federal prisons is unknown.

As part of the Sentencing Reform Act, Congress decided that indeterminate sentencing would be ended, and the Parole Commission abolished. It was originally scheduled to be dismantled by November 1, 1992. In 1990, Congress extended the life of the Commission for five more years, or until 1997. Since then Congress has extended the life of the Commission eight more times, most recently to keep the Commission functioning until October 2020.

Under the 1996 and 2002 Acts, the Attorney General was required to report to Congress on whether it would be more cost effective to keep the Commission or to transfer its functions elsewhere. Under the 2011 and 2013 Acts and continuing each year through 2018 the Commission must report to the Congressional Judiciary Committees on 17 separate items that will be used to assess its performance. Thus, contrary to most administrative agencies whose tenure is ongoing, the USPC must justify its continued existence to Congress and, as an agency with the Department of Justice, must obtain the continuing support of the Attorney General. This results in obvious conflicts of interest between the mission of the USPC to be neutral, and the requirement that it serve the interests of the Attorney General and DOJ in order to guarantee its very existence.

The USPC currently has jurisdiction over people convicted of crimes in the District of Columbia, military prisoners, and others in addition to federal old law prisoners. But in 2020, the District of Columbia is eliminating parole and will transition to its own version of a determinate sentencing system. The number of old law federal prisoners subject to USPC jurisdiction is dwindling, as is the USPC budget and staff. The Parole Commission was abolished statutorily in 1984: it clings to its existence by refusing to release old law prisoners who should have been released years ago.

Discretionary and Mandatory Parole

Under the Parole Act, an “old law” prisoner with a sentence over 30 years is eligible for release on “discretionary parole” after serving 10 years. In deciding whether to grant discretionary parole, the Commission is required to apply its guidelines, as well as consider the “nature and circumstances of the offense and the history and characteristics of the prisoner,” and to determine whether release would “depreciate the seriousness of his offense or promote disrespect for the law” or “jeopardize the public welfare.” If a prisoner is not released after an initial hearing, subsequent hearings (“statutory interim hearings”) are held every two years thereafter.

After a person has served two-thirds of a sentence or thirty years of a life sentence, the calculus shifts to favor the grant of parole. The Parole Act requires release on “mandatory parole” unless the Commission makes specific affirmative findings to overcome a statutory presumption of release. The Parole Act also changed the focus of the parole inquiry from the “nature and seriousness of the offense” to whether that person has obeyed prison rules and will obey the law on release:

Any prisoner . . . who is not earlier released . . . shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier. Provided, however, That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State or local crime.

The Commission’s Decision-Making Process

Parole Commissioners do not conduct parole hearings. Rather, the power to conduct hearings is delegated to hearing examiners. A single examiner typically presides at a parole hearing, prepares a summary of his or her findings, and makes a recommendation. By law and past practice, that recommendation is then reviewed by a second examiner, and possibly a third. The recommendation of the examiner panel previously went to a Regional Commissioner. At that point, there are two different ways for decisions to be made.

In the vast majority of cases, the Regional Commissioner agrees with the examiners, the recommendation becomes the final decision of the Commission, and a Notice of Action is issued to the prisoner. Once this decision was made by the Regional Commissioner, either the prisoner or the Attorney General could appeal to the Commission’s appellate body, the National Appeals Board. The gradual diminishment of the USPC in size has resulted in a current Commission comprised of only two people. These same two individuals comprise the “National

Appeals Board," which is the only appeals mechanism that old law prisoners have outside of federal courts.

Numerous "old law" prisoners have challenged their continuing illegal incarceration through writs of habeas corpus. Unfortunately, both U.S. District and Circuit Courts of Appeal have ruled – almost without exception – that the courts have no jurisdiction to review specific USPC decisions.

Current Practices of the US Parole Commission

A preliminary analysis of several recent USPC decisions exposes that the USPC is holding old law prisoners hostage, to guarantee the permanent punishment of aging prisoners, the Commissioners' own job security, and the Commission's continued existence.

Sources

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