



March 4, 2022

Hon. Merrick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
NW Washington, DC 20530-0001

Re: U.S. Parole Commission; “Old-law” federal prisoners

Dear Attorney General Garland:

We write to urge you to exercise oversight of the U.S. Parole Commission, and ensure that the Commission provides a fair process for the several hundred “old law” people within its jurisdiction. We are alarmed because, based on the Commission’s December 2021 report, **the Commission appears not even to know how many “old law” individuals are in federal prisons.** We would appreciate the opportunity to meet with the Office of the Attorney General regarding this issue at your earliest convenience.

“Old law” people in federal prison are serving sentences for offenses committed prior to November 1, 1987, when the Federal Sentencing Guidelines went into effect. These people are the oldest, sickest, and most vulnerable cohort of people incarcerated in the federal system. Unlike individuals sentenced under the Guidelines, “old law” individuals are barred from seeking compassionate release under the First Step Act. Their only path for release is through the U.S. Parole Commission.

The Commission’s most basic task is to consider people convicted under the federal “old law” for release when they become eligible for parole. If parole is denied to a person who is in custody for an “old law” offense, the Commission must hold interim hearings every two years thereafter until the individual is released. 18 U.S.C. § 4208(h). Given this statutory duty, it is critical for the agency to know about and track all of the “old law” people in custody who are eligible for parole. Yet it now seems that the Commission has failed in this fundamental responsibility. It does not even know who is within its jurisdiction.

Every December, the Commission submits a report to Congress. Over the years, the number of people still in custody serving “old law” federal sentences has steadily decreased, as one would expect. From FY 2019 to FY 2020, the number of “old-law” individuals in federal custody fell from 195 to 153, a decrease of 21.5%. But, stunningly, the Commission’s December 2021 report states that **the number of “old law” individuals in custody increased 69% in FY 2021, from 153 to 258.**¹ In its FY 2021 report, the Commission provides no explanation for the dramatic rise in “old law” people in federal custody. The number stands in stark contrast to the

¹ These data are from Table 1 of the Commission’s FY 2019, FY 2020 and FY 2021 reports.

Commission's FY 2020 report, where it projected that it would have 140 "old law" people in custody on October 31, 2021.

There can be no good explanation for this rise in people in prison. The agency clearly did not revoke the parole release of more than 100 souls during the pandemic. We know that because the Commission also reports holding 22 revocation hearings as well as 73 parole release hearings during the year. And it is inconceivable that the Commission could somehow have received new data and suddenly "discovered" 100 more people in custody, since the agency is charged with conducting parole hearings every two years for incarcerated individuals under its jurisdiction. The only conclusion we can draw is that the Commission has failed to keep track of "old law" people.

The 1976 Parole Act established the U.S. Parole Commission as "an independent agency in the Department of Justice." 18 U.S.C. § 4202. When Congress passed the Sentencing Reform Act of 1984, it sought to sunset the Commission in 1992. Thirty years later, the Commission lives on; its most recent reauthorization expires on October 31, 2022. We believe that the Commission should be required to sunset this year, and its U.S. Code cases transferred elsewhere, preferable to U.S. Magistrate Judges. But until that day comes, the Parole Commission remains within your Department. And, after all, defendants convicted of federal offenses are sentenced to the custody of the Attorney General. We submit that *you* have the responsibility to ensure that the "old law" people still serving sentences are known, accounted for, and treated fairly under the law.

We therefore respectfully request that you conduct an accounting of the "old law" individuals still serving federal prison sentences. We do not know whether these people number 150 or 250, and it appears the Commission does not know either. While it would be inappropriate for the Department to intercede in individual cases, surely you have the legal and moral responsibility to identify all of the parole-eligible "old law" people in custody, and hold the Commission accountable. In all times, but especially during the COVID-19 pandemic, this aging population must be considered for release fairly, with integrity, and under the procedures provided by law. Please contact Liz Komar at The Sentencing Project at lkomar@sentencingproject.org to schedule a meeting with the below listed organizations and individuals.

Sincerely,

American Civil Liberties Union

Linda Evans

California Coalition for Women Prisoners (for identification purposes only)

Federal Public & Community Defenders

National Association of Criminal Defense Lawyers

The Leadership Conference on Civil and Human Rights

The Sentencing Project

Charles D. Weisselberg
Yosef Osheawich Professor of Law
Berkeley Law School (for identification purposes only)