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14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 MUTULU SHAKUR,

17 Petitioner,

18 vs

19 LOUIS MILUSNIC, WARDEN, BUREAU OF  
20 PRISONS, ET AL.,

21 Respondents.

) Case No. 19-cv-00727-SVW-GJS  
)  
) UNOPPOSED BRIEF OF *AMICUS*  
) *CURIAE* LEONARD PELTIER AND  
) WASHINGTON LAWYERS'  
) COMMITTEE FOR CIVIL RIGHTS  
) AND URBAN AFFAIRS  
)  
) Honorable Stephen V. Wilson  
) Honorable Gail Standish  
) United States Magistrate Judge  
)

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## I. INTRODUCTION

1 The unopposed brief is submitted in support of Petitioner’s Opposition to  
2 Respondents’ Motion to Dismiss. [Doc. # 25].

3 The mission of the U.S. Parole Commission (“Commission”) is to promote  
4 public safety and to “strive for justice and fairness in the exercise of its authority” to  
5 release and revoke offenders under its jurisdiction. U.S. Department of Justice, U.S.  
6 Parole Commission, homepage. Available at <https://www.justice.gov/uspc> (last  
7 checked September 26, 2019). As *Amicus* will show, the Commission’s  
8 misinterpretation of federal law and absence of rules defining key statutory terms  
9 relevant to parole decisions, have caused and continue to cause large numbers of  
10 prisoners to be denied parole despite their rehabilitation and unlikely future crimes.  
11 The vast majority of these prisoners are elderly and have served decades in prison, and  
12 are unrepresented by counsel. There are only about 450 such prisoners left today,  
13 comprising those who committed crimes before November 1, 1987.

14 Although abolished in 1992, the life of the Commission has been repeatedly  
15 extended by Congress with decreasing budgets, a diminishing number of  
16 Commissioners, and a skeleton staff. By denying the few prisoners left under its  
17 jurisdiction release on parole based on a misreading of federal law, and its failure to  
18 adopt uniform standards interpreting key criteria in federal statutes relating to the  
19 release of prisoners, the small Commission keeps itself in business, but does so without  
20 exercising “justice and fairness in the exercise of its authority.”

21 Federal prisoner Mutulu Shakur became eligible for release on mandatory parole  
22 pursuant to 18 U.S.C. § 4206(d) on February 10, 2016. Mr. Shakur had served 30 years  
23 of his sentence without a single rule violation involving violence or the threat of  
24 violence. The Bureau of Prison’s (“BOP”) staff has praised Mr. Shakur’s excellent  
25 prison record, and confirmed it believes he is rehabilitated and unlikely to reoffend,  
26 and that he has consistently advocated for peaceful and lawful steps to address issues  
27 of social justice. Mr. Shakur’s situation is not unique to his individual case. The

1 unlawful and arbitrary challenges he has faced to release on parole are experienced by  
2 the several hundred federal prisoners whose release rests in the hands of the long-ago  
3 abolished Parole Commission that now adjudicates a dwindling number of cases of  
4 prisoners seeking release on parole.

5         Instead of releasing Mr. Shakur on mandatory parole, the Commission denied  
6 parole citing the exceptions under 18 U.S.C § 4206(d), specifically claiming Mr.  
7 Shakur's 1990 positive urine test and four minor phone-related infractions over 30  
8 years of incarceration mean he has "seriously" violated institutional rules and is  
9 seemingly permanently barred from parole. Based on these infrequent rule violations,  
10 and his past use of the salutation "stiff resistance" and occasionally referring to himself  
11 as a victim of COINTELPRO and a political prisoner, the Commission decided,  
12 despite unrefuted evidence of Mr. Shakur's acceptance of responsibility and  
13 rehabilitation, that he is likely to reoffend if released on parole.

14         The Commission's (1) failure to define or issue rules regarding how  
15 Commissioners interpret the term "seriously" when deciding whether to release long-  
16 term prisoners under § 4206(d), (2) failure to consider long-term federal prisoners for  
17 discretionary release under 18 U.S.C. § 4206(a) when they are considered ineligible for  
18 mandatory release under § 4206(d), and (3) rejecting for no reason, and without  
19 pointing to any reliable evidence of record, a prisoner's acceptance of responsibility  
20 because of the purported "recency" of the acceptance of responsibility, impact unfairly  
21 on Mr. Shakur and *all* long-term prisoners, almost none of whom have legal counsel,  
22 and strongly discourage rather than encourage rehabilitation and compliance with  
23 Bureau of Prison ("BOP") rules.

24         If federal prisoners have no faith in the fairness of the Commission's  
25 proceedings, the central goal of rehabilitation is undermined and subverted. At the  
26 same time, the Commission's lack of standards makes its duty to protect the public  
27 safety and as accurately as possible assess a prisoner's likelihood of reoffending,  
28 difficult if not impossible.

1            *Amicus* will focus its arguments on the impact that the Commission’s current  
2 policies and practices have on federal prisoners, including Mutulu Shakur, and how, at  
3 bottom, these policies and practices are resulting in *ad hoc* decision-making lacking in  
4 uniformity or fairness.

## 5            **II. INTEREST AND IDENTITY OF *AMICUS CURIAE***

6            Proposed amicus curiae the Washington Lawyers’ Committee for Civil Rights  
7 and Urban Affairs (Washington Lawyers’ Committee) has a strong interest in the  
8 underlying fairness of U.S. Parole Commission proceedings both as a matter of  
9 rehabilitated prisoners being assessed in a manner consistent with federal laws and  
10 their right at minimum to fair and equal treatment, as well as to insure the public safety  
11 through accurate assessments of prisoners who pose a risk of reoffending if released.  
12 As part of its mission to create legal, economic, and social equity, the Washington  
13 Lawyers’ Committee is dedicated in part to advocating for the fair and equal treatment  
14 of incarcerated persons convicted of criminal offenses under DC law whose release is  
15 evaluated and adjudicated by the U.S. Parole Commission. The Washington Lawyers’  
16 Committee has engaged in litigation regarding access to parole, and provided training,  
17 recruitment, and placement of pro bono attorneys providing assistance and  
18 representation in parole hearings. The Washington Lawyers’ Committee is the only  
19 legal organization representing the interests of the approximately 4,700 DC prisoners  
20 currently incarcerated by the U.S. Bureau of Prisons (BOP). This work includes  
21 advocacy and representation aimed at insuring that parole decisions are uniformly  
22 made consistent with federal law and the US Parole Commission’s regulations and  
23 rules, that parole decisions are based upon known guidelines, and that procedures and  
24 decisions are fair and based upon the matters of record. Amicus curiae the Washington  
25 Lawyers’ Committee is deeply concerned with the US Parole Commission’s  
26 interpretation of 18 U.S.C. § 4206(d), which, contrary to the Parole Commission and  
27 Reorganization Act’s plain terms and legislative history, does not liberalize the path to  
28 release on parole for very long-term prisoners, but rather effectively sentences them to  
die in prison, regardless of their rehabilitation.

1 Proposed amicus curiae Leonard Peltier has been a federal prisoner for more  
2 than forty years. Over the course of those years, Mr. Peltier has been denied parole on  
3 several occasions by the U.S. Parole Commission. Mr. Peltier has a strong interest in  
4 the issues raised by the instant case, including that due process requires that the Parole  
5 Commission create clear guidelines and definitions of terms governing inmates' parole  
6 decisions, that it follow the rules it already has set out, and that it comply with all of its  
7 statutory obligations to ensure fairness for prisoners' under its jurisdiction. The current  
8 policies and procedures governing Mr. Peltier's release on parole are not rehabilitative  
9 in nature because Mr. Peltier has been consistently penalized for maintaining his  
10 innocence, and would in effect be forced to lie to gain his freedom. As in Petitioner  
11 Shakur's case, the U.S. Parole Commission has arbitrarily ignored evidence of Mr.  
12 Peltier's rehabilitation while focusing its attention on the nature of his alleged criminal  
13 conduct, a factor not included by Congress in 18 U.S.C. § 4206(d). Also as in Mr.  
14 Shakur's case, in Mr. Peltier's case the Parole Commission failed to define or use a  
15 uniform interpretation of the term "seriously" used in 18 U.S.C. § 4206(d), and also  
16 refused to consider release under the terms of § 4206(a) once release under § 4206(d)  
17 was denied. Mr. Peltier is an accomplished artist and grandfather whose tribe has  
18 agreed to take responsibility for him and reunite him with his family. The issues raised  
19 in this case are of the utmost importance to Mr. Peltier.

### 20 III. ARGUMENT

#### 21 1. Background of legislation discloses a distrust of parole decisions including 22 the failure of the Parole Commission to adopt and follow clear guidelines 23 while making *ad hoc* decisions.

24 In the early part of the 20th century, each state in the union moved to create the  
25 parole function, based largely on the belief in a rehabilitative role for corrections. This  
26 movement cast parole boards as the evaluators of readiness for release—judging when  
27 rehabilitation had taken place, in the context of an "indeterminate" sentencing scheme.  
28 One of the primary criticisms was that parole commissions often had "no standards for  
their decisions, which were therefore shaped largely by individual biases and arbitrary



1 and capricious decision-making that violated notions of fundamental fairness.” U.S.  
2 Department of Justice, National Institute of Corrections (“NIC”), *The Future of Parole*  
3 *as a Key Partner in Assuring Public Safety (July 2011)*, at 2 (“NIC The Future of  
4 Parole”).

5 Congress passed the Parole Commission and Reorganization Act which took  
6 effect in May 1976. The existing Parole Board was re-titled the United States Parole  
7 Commission. The Act also required explicit guidelines for decision-making, required  
8 written rejections, and established an appeal process.

9 However, less than ten years later, in the Comprehensive Crime Control Act of  
10 1984, Congress decided to terminate the Parole Commission. While preserving the  
11 Commission's jurisdiction over persons who committed offenses prior to November 1,  
12 1987, the Comprehensive Crime Control Act established determinate sentences for  
13 federal crimes; thus federal prisoners after that date are not eligible for parole  
14 consideration.

15 Although the Commission was abolished in 1992, its diminishing life and  
16 jurisdiction has been extended by several acts of Congress.<sup>1</sup>

17 It is widely agreed that the Comprehensive Crime Control Act of 1984  
18 introduced more structure, certainty, and determinacy into how long prisoners remain  
19 incarcerated through sentencing guidelines, mandatory minimums, time-served  
20 requirements and the like. One of the principle reasons why most states and the  
21 Congress veered away from parole boards and commissions is precisely because of the  
22 difficulty they face issuing consistent and evidence-based decisions, or in accurately  
23 assessing prisoners’ likelihood of reoffending.

24 Nevertheless, for those parole boards and commissions that continue to function,  
25 the NSI’s *The Future of Parole* report emphasizes the importance these bodies using

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26 <sup>1</sup> The first extensions were granted in the Judicial Improvements Act of 1990, and the  
27 21st Century Department of Justice Appropriations Authorization Act of 2002.  
28 Recently the United States Parole Commission Extension Act of 2013, Pub. L. No.  
113-47, 127 Stat. 572, extended the life of the USPC until November 2018. Provisions  
extending the Parole Commission appear as notes to 18 U.S.C. § 3551.

1 “sound decision-making tools—e.g., risk and needs assessments for a variety of  
2 populations, scales for severity of parole violations, and tools that provide explicit  
3 structure for discretion ...” NSI *The Future of Parole* at 3. *The Parole Commission*  
4 *appears to use no consistent or sound decision-making tools.*

5 Parole and criminal justice experts fully understand the importance of parole  
6 commissions “implementing evidence-based practices.” *Id.* at 3. By doing so, parole  
7 bodies “[o]ffer an incentive to motivate higher risk individuals to participate  
8 successfully in interventions to reduce their risk while incarcerated and prepare them  
9 for potential parole and release to the community.” *Id.* at 4. These “evidence-based  
10 practices” must include “good assessment and decision-making tools,” and decisions  
11 should be “empirically informed ...” *Id.* at 10.<sup>2</sup> Neither in this case nor in the cases of  
12 hundreds of other elderly BOP inmates does the Parole Commission have or  
13 implement “good assessment and decision-making tools.” This inevitably leads to *ad*  
14 *hoc* decision-making in virtually all cases.

15 Research also demonstrates that structured guidelines and assessment tools can  
16 predict risk of reoffense “more effectively than professional judgment alone.” *Id.* at 5.  
17 Without structured guidance and uniformity, studies show that seasoned professionals  
18 relying on their experience and professional judgment “*predict recidivism at rates no*  
19 *better than chance ...*” *Id.* (emphasis added).

20 Determinations regarding the timing of parole release and requirements of  
21 release should clearly be guided by well-defined and policies and statutory  
22 interpretations well-known to prisoners and Commission hearing examiners and staff,  
23 and should incorporate an assessment of risk as well as a structured consideration of  
24 other factors as defined by the federal parole statutes. *Id.* p. 10.

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25  
26 <sup>2</sup> Contemporary research suggests that recidivism can be reduced by 10, 20, or perhaps  
27 30 percent or more if certain and clear principles and practices are applied by parole  
28 boards. US Department of Justice, National Institute of Corrections, Evidence-Based  
Policy, Practice, and Decision-making: Implications for Paroling Authorities,  
Accession Number: 024198 (2011). Available at §26, 2018).

1 As the Amended Petition for Habeas Corpus and its attachments make clear, the  
2 Commission has neither considered nor adopted the recommendations and guidance  
3 provided over several years by criminal justice parole experts working with the U.S.  
4 Department of Justice’s National Institute of Corrections. It has no rules or structured  
5 guidelines on how it, or prisoners, should interpret the key terms used in § 4206(d) to  
6 determine if long-term prisoners should be granted mandatory release. It has no rules  
7 or structured guidelines on whether a prisoner denied mandatory release under §  
8 4206(d) may also qualify for discretionary release under § 4206(a). It has no known  
9 rules or structured guidelines on the weight to be given to BOP’s assessment of  
10 whether an ancient “serious” rule violation remains “serious” in the view of BOP. It  
11 has no known rules or structured guidelines on the weight it gives to BOP’s security  
12 score based on a prisoner’s individual characteristics and institutional behavior.<sup>3</sup> It has  
13 no known rules or structured guidelines on the weight it gives to BOP’s Case  
14 Managers’ assessments of inmates’ institutional behavior or likelihood to reoffend if  
15 released on parole.<sup>4</sup>

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17  
18 <sup>3</sup> In contrast, BOP publishes all of its policies and guidelines in detailed regulations  
19 and as “Program Statements.” Administrators rely on Program Statements as they  
20 make decisions pertaining to inmates, including their security risk. Different facilities  
21 may modify the Program Statements and publish “Institution Supplements” if they  
22 deem further clarification necessary. All BOP Program Statements and Institutional  
23 Supplements are available in prison law libraries. Most facilities have access to an  
24 electronic database that maintains the policies; the facilities that lack the electronic  
25 database have hard copies on file in the library. If those Program Statements are not  
26 available, a prisoner has a right to request the Program Statement from a BOP staff  
27 member.

28 <sup>4</sup> BOP Case Managers (Correctional Treatment Specialists) perform correctional  
casework in an institutional setting; develop, evaluate, and analyze program needs and  
other data about inmates; evaluate progress of individual offenders in the institution;  
coordinate and integrate inmate training programs; develop social histories; evaluate  
positive and negative aspects in each case situation, and develop release plans. See  
<https://www.bop.gov/jobs/positions/index.jsp?p=Case%20Manager> (last checked  
September 26, 2019).

1 This state of affairs contributed to the decision to deny Mr. Shakur parole, but  
2 has also resulted and continues to result in the denial of parole to several hundred  
3 elderly prisoners, many of whom have accepted responsibility for their crimes, are  
4 fully rehabilitated, and BOP's expert assessment is they pose no significant risk of  
5 reoffending.

6 **2. The Parole Commission's misinterpretation of federal law and failure to**  
7 **issue rules interpreting critical statutory terms it uses to deny hundreds of**  
8 **prisoners release on parole significantly *discourages* rehabilitation and**  
9 **compliance with BOP rules.**

10 The parole system was created to encourage federal prisoners to comply with  
11 BOP rules, to accept responsibility where it should be accepted, and to make  
12 continuous efforts aimed at rehabilitation or a showing that the prisoner will not  
13 reoffend if released on parole.

14 When a prisoner's good record over many years is ignored without explanation,  
15 including two decades of BOP observations and evidence that a prisoner has  
16 repeatedly and publicly denounced the use of violence, trust in the parole system  
17 understandably deteriorates.

18 When the Commission decides to reject a prisoner's statements of remorse or  
19 acceptance of responsibility by claiming, with no support in the record, that the  
20 prisoner's statements are "suspect ... self-serving and disingenuous," the Commission  
21 dissolves trust in the system and discourages prisoners from expressing remorse or  
22 acceptance of responsibility for their crimes.

23 Similarly, when the Commission is required to interpret critically important  
24 terms in federal law, such as the language in Section 4206(d) that prisoners shall not be  
25 granted mandatory release under that section if they have "seriously or frequently"  
26 violated BOP rules, and *fails to adopt a consistent interpretation applied in all cases*,  
27 prisoners have little reason to find parole proceedings fair or to believe that all  
28

1 prisoners are treated equally when the Commission decides whether a prisoner has  
2 “seriously or frequently” violated BOP rules. The Commission’s failure to follow clear  
3 guidelines is inconsistent with its duly promulgated regulations which state that the  
4 Commission must “establish a national paroling policy, promote a more consistent  
5 exercise of discretion, and enable fairer and more equitable decision-making without  
6 removing individual case consideration ...” 28 C.F.R. § 2.20.

7 The Parole Commission’s interpretation of § 4206(d) and its arbitrary denial of  
8 parole means that hundreds of BOP prisoners have no realistic hope of ever being  
9 released regardless of their rehabilitation or danger of reoffending. The Supreme Court  
10 has explained the psychological danger for prisoners who have no realistic possibility  
11 of parole:

12 As for the punishment, life without parole is ‘the second most severe penalty  
13 permitted by law.’ It is true that a death sentence is ‘unique in its severity and  
14 irrevocability’; yet life without parole sentences share some characteristics with  
15 death sentences that are shared by no other sentences. The State does not execute  
16 the offender sentenced to life without parole, but the sentence alters the  
17 offender's life by a forfeiture that is irrevocable. It deprives the convict of the  
18 most basic liberties without giving hope of restoration... *[T]his sentence ‘means*  
19 *denial of hope; it means that good behavior and character improvement are*  
20 *immaterial; it means that whatever the future might hold in store for the mind*  
21 *and spirit of [the inmate], he will remain in prison for the rest of his days.’*  
22 *Graham v. Florida*, 560 U.S. 48, 69-70 (2010) (citations omitted) (emphasis added).

23 Although Mr. Shakur and many other BOP inmates were not sentenced to life  
24 without parole, the reality of their situation for all purposes leads to the same result.  
25 Mr. Shakur and similarly situated prisoners are elderly and may die long before their  
26 full sentences are served. Having once suffered a single “serious” BOP rule violation,  
27 even if 30, 40 or 50 years ago, and even if BOP no longer treats the violation as  
28 “serious” because of the prisoner’s subsequent good conduct or the passage of time,  
the Commission may still deny mandatory parole under § 4206(d), and then refuse to

1 assess the prisoner for discretionary release under § 4206(a), *under which release may*  
2 *be granted even if the prisoner has a “serious” rule violation.* The Commission’s  
3 approach is viewed as a death sentence by many elderly long-term federal prisoners.

4 The Commission’s misapplication of federal law and its denial of parole to  
5 hundreds of prisoners based on critically important statutory terms it refuses to follow  
6 or has never defined in its rules or regulations “cannot be justified by the goal of  
7 rehabilitation.” *Graham, supra*, at 74. Indeed, the Commission’s policy and practice  
8 “forswears altogether the rehabilitative ideal.” *Id.*

9 **3. The goal of rehabilitation is of central importance to the criminal justice**  
10 **system.**

11 Rehabilitation is the re-integration into society of a convicted person and the  
12 main objective of modern penal policy aimed at countering habitual reoffending. While  
13 prisons are considered punishment, they also are intended to have the purpose of future  
14 crime prevention.

15 Early American prisons during the 1820s, implemented rehabilitative principles.  
16 These early programs isolated convicts in order to remove them from the temptations  
17 that had driven them to crime and to provide inmates with time to listen to their  
18 conscience and reflect on their deeds. Smith, Nick (2008) Rehabilitation,  
19 Encyclopedia of Criminal Justice. Over time, rehabilitation became a science of  
20 reeducating the criminal with the values, attitudes, and skills necessary to live lawfully.  
21 *Id.*

22 The philosophy of rehabilitation is that “the character and reformability of the  
23 offender” should determine his incarceration and treatment. Vanstone, Maurice (2008)  
24 The International Origins and Initial Development of Probation an Early Example of  
25 Policy Transfer, British Journal of Criminology, at 48 (6), 735–755.

26 In short, criminal rehabilitation focuses on preventing future offenses, creating  
27 productive members of society, and helping offenders successfully reenter the outside  
28 world. These programs reduce criminal populations. A rehabilitation program can  
change the prison experience and reduce the likelihood of future crime. Encouraging

1 positive behavior can cost less in the long run than locking up every offender and  
2 imposing increasingly stringent sentencing.

3 The Supreme Court has long upheld the purpose and benefits of parole. In *Solem*  
4 *v. Helm*, 463 U.S. 277 (1983), the Court held, “[p]arole is a regular part of the  
5 rehabilitative process. Assuming good behavior, it is the normal expectation in the vast  
6 majority of cases.” *Id.* at 300.

7 In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Supreme Court expanded on  
8 the benefits of parole, stating -

9 During the past 60 years, the practice of releasing prisoners on parole before the  
10 end of their sentences has become an integral part of the penological system.  
11 Rather than being an *ad hoc* exercise of clemency, parole is an established  
12 variation on imprisonment of convicted criminals. *Its purpose is to help*  
13 *individuals reintegrate into society as constructive individuals as soon as they*  
14 *are able, without being confined for the full term of the sentence imposed.* It also  
15 serves to alleviate the costs to society of keeping an individual in prison. The  
16 essence of parole is release from prison, before the completion of sentence, on  
17 the condition that prisoners abide by certain rules during the balance of the  
18 sentence.

19 *Id.* at 477 (1972) (citations omitted) (emphasis added).

20 In numerous statutes and regulations, the Government acknowledges the  
21 importance of rehabilitation and, where appropriate, acceptance of responsibility. The  
22 process of assessing prisoners’ suitability for parole should start early in the prisoner’s  
23 incarceration. For example, 18 USC § 4205(d) mandates that “the [Parole  
24 Commission] Director, under such regulations as the Attorney General may prescribe,  
25 shall cause a complete study to be made of the prisoner and shall furnish to the  
26 Commission a summary report together with any recommendations which in his  
27  
28

1 opinion would be helpful in determining the suitability of the prisoner for parole.”<sup>5</sup>  
2 *Amicus curiae* does not believe that the Commission Chair or Director have  
3 implemented § 4205(d) with regards long-term prisoners like Mr. Shakur seeking  
4 release on parole.

5 Pursuant to 18 U.S.C. § 4209, the Commission may impose conditions of parole  
6 “to the extent that such conditions are reasonably related to (1) the nature and  
7 circumstances of the offense; and (2) the history and characteristics of the parolee.” *Id.*  
8 The history and characteristics of potential parolees clearly place primary importance  
9 on their rehabilitation.

10 In the case of mandatory release, the Commission’s regulations state that the  
11 Commission “shall review each prisoner's release plan to determine whether the  
12 imposition of any special conditions should be ordered to promote the prisoner's  
13 rehabilitation and protect the public safety.” 18 C.F.R. § 2.83.

14 The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime  
15 Control Act of 1984) provides for the development of guidelines “that will further the  
16 basic purposes of ... rehabilitation.” United States Sentencing Commission Guidelines  
17 Manual, The Statutory Mission (2015) at 1.<sup>6</sup>

18 In summary, for many years federal laws, regulations, and judicial decisions  
19 have recognized the central importance of rehabilitation to the criminal justice system.  
20 However, the Commission’s failure to follow federal law, and its failure to issue and  
21 make known to all stakeholders objective guidelines and rules interpreting important  
22 terms in federal statutes controlling who will and who will not be released on parole,  
23

---

24 <sup>5</sup> Section 4205 (Act March 15, 1976, P.L. 94-233, § 2, 90 Stat. 222) was repealed by  
25 Act Oct. 12, 1984, P.L. 98-473, Title II, Ch II, § 218(a)(5), 98 Stat. 2027. For  
26 continuation of this section as to certain individuals and terms of imprisonment, see §  
27 235(b) of Act Oct. 12, 1984, P.L. 98-473.

28 <sup>6</sup> Available at <https://www.ussc.gov/guidelines/2015-guidelines-manual/2015-chapter-1>  
(last checked September 26, 2019).



1 result in *ad hoc* decisions and significantly discourage federal prisoner’s incentive  
2 toward rehabilitation, compliance with BOP rules, and excellence in prison behavior.

3 The Commission’s internet home page states: “The mission of the USPC is to  
4 promote public safety and strive for justice and fairness in the exercise of its authority  
5 to release and supervise offenders under its jurisdiction.” Organization, Mission And  
6 Functions Manual: United States Parole Commission.<sup>7</sup> Unfortunately, federal  
7 prisoners do not today see the Parole Commission as exercising its authority with  
8 “justice and fairness.” The Commission’s decisions are often based on its unknown  
9 interpretation of important provisions in federal law and result in federal prisoners,  
10 mostly proceeding without counsel, feeling helpless, disillusioned, and with little faith  
11 in the fairness of the Commission’s procedures and decisions.

12 As the National Institute of Corrections’ Parole Essentials: Practical Guides for  
13 Parole Leaders states, it is “important” for parole bodies to embrace and promote  
14 “transparency and credibility.” Parole Essentials: Practical Guides for Parole Leaders  
15 (July 2011), NIC Accession No. 024201, at 1.<sup>8</sup> The policies and practices addressed in  
16 Petitioner’s Amended Habeas Corpus Petition, as applied to the relatively small  
17 number of BOP prisoners whose release on parole the Commission still controls, result  
18 in neither “transparency” nor the Commission’s “credibility.”

#### 19 IV. CONCLUSION

20 The role of paroling authorities and their members is complex yet critical to the  
21 effective functioning of the criminal justice system. Paroling authorities are uniquely  
22 positioned to assist the criminal justice system to target its resources toward risk  
23 reduction and recidivism reduction goals and to make significant impacts on  
24 community safety.

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27 <sup>7</sup> Available at [https://www.justice.gov/jmd/organization-mission-and-functions-](https://www.justice.gov/jmd/organization-mission-and-functions-manual-united-states-parole-commission)  
28 [manual-united-states-parole-commission](https://www.justice.gov/jmd/organization-mission-and-functions-manual-united-states-parole-commission) (last checked September 26, 2019).

<sup>8</sup> Available at <https://s3.amazonaws.com/static.nicic.gov/Library/024201.pdf> (last  
checked September 26, 2019).

1 As discussed above, incentivizing good behavior in prison should be at the core  
2 of the parole and criminal justice systems. A prisoner must be encouraged to follow  
3 prison rules, and the largest incentive for such behavior and rehabilitation is the hope  
4 to eventually be released on parole.

5 By holding that good behavior will not lead to parole, and that prisoners will  
6 continue to be deemed a threat to society despite overall positive behavior for over 30  
7 years, by failing to provide rules about how mandatory parole decisions will be made,  
8 and by refusing to consider prisoners for discretionary release under § 4206(a) if  
9 denied release under § 4206(d), prisoners are no longer encouraged to follow prison  
10 rules. Indeed, they may become resentful and bitter towards an unfair system, and may  
11 act in conformity with the violent identity that the Commission ascribes to them  
12 regardless of uncontested evidence of rehabilitation and years of compliance with  
13 prison rules.

14 Dated: September 30, 2019

Respectfully submitted,

15 Larry Hildes

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