

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Paul Manafort's Early Release from a 7-year Prison Sentence.

In 2019, Paul Manafort, a former presidential campaign chairman for Donald Trump, was convicted of tax fraud, bank fraud, and conspiracy in conjunction with former special counsel Robert Mueller's probe on Russian interference in the 2016 presidential election.¹ Manafort was first sentenced to 47 months in prison by Judge T.S. Ellis III in relation to the tax and bank fraud charges.² The sentence was met with a widespread belief that the punishment was far too light, as the federal sentencing guidelines recommended 19 to 24 years for Mr. Manafort.³ The next week Judge Amy Berman Jackson sentenced Manafort for his separate conspiracy convictions, nearly doubling his mandated prison term to a total of seven and a half years.⁴

During the sentencing, Judge Jackson noted the scale of Manafort's transgressions stating, "It is hard to overstate the number of lies and the amount of fraud and the amount of money involved..."⁵ The Judge assigned Mr. Manafort's motives to a desire to sustain an "ostentatiously opulent" lifestyle with "more houses than a family can enjoy, more suits than one man can wear."⁶ However, in May 2020 Mr. Manafort was released to home confinement from the minimum-security prison in Loretto, Pennsylvania where he had been incarcerated.⁷ He had served less than one-third of his sentence.⁸

The Coronavirus and the Expansion of Eligibility for Early Release from Federal Prison

Paul Manafort's early release was made possible by new directives created in light of the COVID-19 pandemic.⁹ The coronavirus is particularly dangerous in jails and prisons where maintaining social distancing is simply unfeasible.¹⁰ To control the spread of the virus many advocated that decreasing prison populations might be necessary.¹¹

The Director of the Bureau of Prisons has the authority to release federal prisoners to home confinement.¹² Prior to the pandemic, the federal prisoner needed to have completed 90 percent of their sentence to be eligible.¹³ The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed by Congress in response to the COVID-19 crisis, expanded that eligibility, allowing for earlier releases if the attorney general formally declares an emergency.¹⁴ With the founded fear the coronavirus could have a devastating effect on prisons, in early April 2020 Attorney General William Barr declared an emergency, directing federal prison officials to strengthen their efforts to move vulnerable inmates out of prisons.¹⁵ Armed with the declaration of an emergency the Bureau of Prisons (BOP) was given great latitude on deciding who should be released to home confinement.¹⁶

The BOP has declined to comment on their specific process in deciding which inmates are granted early release.¹⁷ However, we can look to the broad unbinding guidance issued by the

Justice Department to understand what may factor into the bureau's unappealable decisions.¹⁸ While Attorney General Barr did not mention a time-served requirement in his initial two memos to the BOP¹⁹, an April 23rd filing by federal prosecutors with the Southern District of New York intended to provide clarity regarding what criteria federal prisons would be considering in determining eligibility for early release.²⁰ The filing stated that the Bureau of Prisons would be prioritizing for consideration inmates who had either served 50 percent or more of their sentences, or had 18 months or less remaining in their sentences and had served 25 percent or more of their sentence.²¹ The federal guidelines also do give priority to elderly inmates and those with serious health conditions.²² In April, a BOP spokesperson also made clear that the bureau was beginning its review with inmates located at facilities that had already been greatly affected by the spread of COVID-19.²³

The Early Release of Paul Manafort

Strikingly, Paul Manafort was granted early release having served less than an a third of his sentence.²⁴ He also had nearly four and a half years left of his sentence remaining, leaving him patently outside the bounds of the DOJ's time-served guidance.²⁵ And at the time of his lawyer's request there were no reported cases of COVID-19 at FCI Loretto where Manafort had been imprisoned.²⁶ As the federal guidelines do also consider age and health, Manafort's lawyers instead focused on arguing he should be released to home confinement because those two factors left him vulnerable to the virus.²⁷

Manafort is 71 years old and suffers from several ailments. In a letter to the director of the BOP, Manafort's lawyers claimed Manafort had high blood pressure, liver disease, and respiratory ailments. They also drew attention to Manafort's December 2019 hospitalization for his heart condition, as well his February 2020 bout with influenza and bronchitis.²⁸ The letter also noted that Manafort "currently takes 11 prescription medications daily... 8 of which are relevant to the [early release request]." The lawyers further concluded that Manafort's health history, "make plain that Mr. Manafort is at a significantly higher risk for serious illness or death."²⁹

Was Manafort's Early Release Improper?

Due to the broad discretion the COVID-19 pandemic afforded to the Bureau of Prisons, a review of Paul Manafort's early release to home confinement is not likely to yield any evidence of formal misconduct. However, that does not mean his early release does not merit further investigation.

Manafort was part of a very small population of prisoners that were granted early release. As of May 21st, BOP records showed about 3,050 inmates had been moved to home confinement, a mere 1.8 percent of people under the bureau's supervision.³⁰ In comparison, roughly 20 percent of inmates fall into the general minimum risk category the bureau was to be considering from.³¹ There is a general consensus that far less people have been released than should have been, although it is admittedly difficult to quantify as the Bureau of Prisons has not been forthright with data or responsive to specific questions regarding which prisoners qualify for release.³²

Thus, BOP's internal and secretive process makes it difficult to discern how legitimate Manafort's early release was. On the one hand, he was 71 years old and suffering from several health conditions. On the other, he nowhere near met the time-served thresholds articulated by the BOP. In addition, at the time Mr. Manafort's early release was granted, there were no recorded cases of COVID-19 among inmates or staff at the minimum-security prison where Manafort was located.

The skepticism surrounding Manafort's early release was compounded by his relationship with President Trump. Trump has not hidden his fondness for his former campaign chairman, tweeting his support for him the morning after he was convicted of several financial fraud charges. Trump wrote, "I feel very badly for Paul Manafort and his wonderful family...he refused to 'break'—make up stories in order to get a 'deal.' Such respect for a brave man."³³ Prior to Manafort's release, there were rumors Trump was considering a pardon for Mr. Manafort, especially in the event the president secured re-election in 2020.³⁴ When directly asked, Trump said "It was never discussed, but I wouldn't take it off the table." He added, "Why would I take it off the table?"³⁵

In the end, Manafort's early release was within the legitimate discretion of the Bureau of Prisons, due to the expansion of their decision-making power under the CARES Act. While it is not surprising his early release drew scrutiny, there is no evidence of formal misconduct in the case of Manafort's release. However, in reviewing this particular case it becomes clear the Trump administration has created a system for determining a federal prisoner's eligibility for early release that is absolutely ripe for abuse. The BOP's internal process comes with no concrete rules or checks on its power, allowing for perfectly legal, but simply unacceptable or inequitable results.

¹ Braktkton Booker, *Paul Manafort Released From Prison To Home Confinement Due To Coronavirus Concerns*, NPR (May 13, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/13/855210214/paul-manafort-released-from-prison-to-home-confinement-due-to-coronavirus-concer>.

² Sharon LaFraniere and Alan Blinder, *Manafort's 47 Months: A Sentence That Drew Gasps from Around the Country*, N.Y. TIMES (March 8, 2019) <https://www.nytimes.com/2019/03/08/us/politics/manafort-sentencing-ellis.html>.

³ *Manafort's 47 Months: A Sentence That Drew Gasps from Around the Country*, supra note ii.

⁴ Sharon LaFraniere, *Paul Manafort's Prison Sentence Is Nearly Doubled to 7½ Years*, N.Y. TIMES (March 13, 2019) <https://www.nytimes.com/2019/03/13/us/politics/paul-manafort-sentencing.html>.

⁵ *Paul Manafort's Prison Sentence Is Nearly Doubled to 7½ Years*, supra note iii.

⁶ Id.

⁷ *Paul Manafort Released from Prison To Home Confinement Due To Coronavirus Concerns*, supra note i.

⁸ Joseph Neff and Keri Blakinger, *Michael Cohen and Paul Manafort Got to Leave Federal Prison Due to COVID-19. They're The Exception*, The Marshall Project (May 21, 2020) <https://www.themarshallproject.org/2020/05/21/michael-cohen-and-paul-manafort-got-to-leave-federal-prison-due-to-covid-19-they-re-the-exception>.

⁹ Josh Gerstein, *Barr to Speed Releases at Federal Prisons Hard Hit by Virus*, POLITICO (April 3, 2020) <https://www.politico.com/news/2020/04/03/barr-to-speed-releases-at-federal-prisons-hard-hit-by-virus-164175>.

¹⁰ Katie Benner, *Barr Expands Early Release of Inmates at Prisons Seeing More Coronavirus Cases*, N.Y. TIMES (April 3, 2020) <https://www.nytimes.com/2020/04/03/us/politics/barr-coronavirus-prisons-release.html>.

¹¹ *Barr Expands Early Release of Inmates at Prisons Seeing More Coronavirus Cases*, supra x.

¹² 18 U.S.C. § 3624(c)(2).

¹³ *Barr to Speed Releases at Federal Prisons Hard Hit by Virus*, supra ix.

¹⁴ Id.

¹⁵ Id.

-
- ¹⁶ *Michael Cohen and Paul Manafort Got to Leave Federal Prison Due to COVID-19. They're the Exception*, supra viii.
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ Luke Barr and Alexander Mallin, *DOJ Clarifies Federal Inmate Release Guidance After Confusion Plagues Process*, ABC NEWS (April 24, 2020) <https://abcnews.go.com/US/doj-clarifies-federal-inmate-release-guidance-confusion-plagues/story?id=70318981>.
- ²¹ *DOJ Clarifies Federal Inmate Release Guidance After Confusion Plagues Process*, supra xx.
- ²² Catherine Herridge, *Paul Manafort's Lawyers Ask to Transfer Him to Home Confinement Over COVID-19 Concerns*, CBS NEWS (April 14, 2020) <https://www.cbsnews.com/news/paul-manafort-s-lawyers-ask-to-transfer-him-to-home-confinement-over-covid-19-concerns-2020-04-13/>.
- ²³ *Paul Manafort's Lawyers Ask to Transfer Him to Home Confinement Over COVID-19 Concerns*, supra xxii.
- ²⁴ *Michael Cohen and Paul Manafort Got to Leave Federal Prison Due to COVID-19. They're the Exception*, supra viii.
- ²⁵ *Id.*
- ²⁶ *Paul Manafort's Lawyers Ask to Transfer Him to Home Confinement Over COVID-19 Concerns*, supra xxii.
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ Ian MacDougall, *Bill Barr Promised. To Release Prisoners Threatened by Coronavirus—Even as the Feds Secretly Made it Harder for Them to Get Out*, PROPUBLICA (May 26, 2020) <https://www.propublica.org/article/bill-barr-promised-to-release-prisoners-threatened-by-coronavirus-even-as-the-feds-secretly-made-it-harder-for-them-to-get-out>.
- ³¹ *Bill Barr Promised. To Release Prisoners Threatened by Coronavirus—Even as the Feds Secretly Made It Harder for Them to Get Out*, supra xxx.
- ³² *Michael Cohen and Paul Manafort Got to Leave Federal Prison Due to COVID-19. They're the Exception*, supra viii.
- ³³ Donald Trump (@realDonaldTrump), Twitter (Aug 22, 2018, 9:21 PM) <https://twitter.com/realdonaldtrump/status/1032256443985084417>.
- ³⁴ William K. Rashbaum and Benjamin Weiser, *If Trump Pardons Manafort, Can State Charges Stick?*, N.Y. TIMES (Feb. 26, 2019) <https://www.nytimes.com/2019/02/26/nyregion/trump-pardons-manafort.html>.
- ³⁵ *If Trump Pardons Manafort, Can State Charges Stick?*, supra xxxiv.