

U.S.

# Confusion Hampers Coronavirus-Driven Inmate Releases

Shifting policy led to some federal prisoners being told they were eligible for home confinement, only to have it revoked



Former New York state Senate Majority Leader Dean Skelos, as he arrived for sentencing in Manhattan in 2018. Mr. Skelos, who has Covid-19, is serving a 51-month prison term.

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The Justice Department said Wednesday that federal prison officials could consider inmates for early release even if they haven't yet served half of their sentences, clarifying a shifting policy that has sown confusion across the nation's prisons and courts in recent days.

Dozens of inmates who had been granted early release as part of an effort to stem the spread of the coronavirus were told this week they hadn't served enough time to qualify, according to prisoners and court filings. Inmates, prosecutors and federal judges demanded prison officials explain their rules and criteria for releasing inmates during the pandemic.

A department spokesman said the federal Bureau of Prisons "intends to expeditiously transfer all inmates to home confinement who were previously referred" for it, as long as such transfers aren't forbidden by law or criteria set forth by Attorney General William Barr. More prisoners are approved for home confinement every day, the spokesman said.

The decision will affect about 200 inmates across the federal prison system, a person familiar with the matter said.

Adding to the uncertainty, though, prison officials on Wednesday also circulated an internal memo indicating that, with some exceptions, they would prioritize early release for those who have served more than 50% of their sentences and those who have 18 months or less left and have served 25% of their terms. The memo, reviewed by The Wall Street Journal, said those guidelines would be “subject to revision as the situation progresses.”

Confusion over rules for early release represented the latest challenge for the federal system in its effort to limit the virus’s spread behind bars. The bureau said Wednesday that at least 566 inmates and 342 employees had tested positive for Covid-19, the disease caused by the new coronavirus; 24 prisoners and one employee have died.

Mr. Barr directed prison officials last month to begin releasing inmates, prioritizing those who are nonviolent, have shown good conduct behind bars and are particularly at risk for complications of the disease.

The bureau said it has started placing at least 1,440 of the roughly 175,000 prisoners it holds into home confinement, but didn’t say how many of those people have actually been released.

The requirement that inmates must have served at least 50% of their sentence wasn’t outlined by Mr. Barr. But prison authorities had been using that precondition, according to a filing in a lawsuit over conditions at a prison in Oakdale, La.

Yet the filing also said the bureau had expanded its criteria to include even those who hadn’t met that requirement.

Confusion over the 50% cutoff was apparent this week in the case of former New York state Senate majority leader Dean Skelos, whose approved release from federal prison was abruptly thrown into question.

Federal prosecutors said in a filing Friday that the 71-year-old Mr. Skelos—who is about 15 months into a 51-month sentence on federal corruption charges—had Covid-19, and had been approved for release from the Federal Correctional Institution in Otisville, N.Y., to home confinement.

Then in a letter to the court Tuesday, prosecutors said prison officials had told them the bureau “no longer believed Skelos to be eligible for home confinement,” because Otisville had been told to follow the bureau’s previous policy of only considering inmates who had served at least half their sentence.

In their response, lawyers for Mr. Skelos said that after he collapsed on the morning of April 8, Mr. Skelos was taken to the prison’s medical facility and held in a solitary cell for 10 days without access to his lawyers, his medications or a change of clothes.

“The rollercoaster of going from a battle with Covid 19 and a dehumanizing quarantine to the tease of a potential furlough to seeing that hope extinguished just a few days later stands as yet another example of unjust punishment for Mr. Skelos and his family,” his lawyers wrote.

In another Manhattan case, U.S. District Judge Ronnie Abrams on Tuesday ordered the government to explain its release policy after Lewis Stahl—who is serving a 30-month sentence for tax evasion—was told Monday he would be released to home confinement only to learn, later that day, that the BOP had reversed the approval.

It was unclear Wednesday what would happen to Messrs. Skelos and Stahl.

A policy allowing home confinement only for inmates who have served 50% of their sentence also would have affected, among others, President Trump’s former personal lawyer, Michael Cohen. He was told he would be able to serve the rest of his three-year sentence for crimes including campaign-finance violations at home.

A lawyer for Mr. Cohen said the BOP hadn’t responded in writing to his application for Mr. Cohen’s compassionate release.

Memos from Mr. Barr say inmates should serve a 14-day quarantine, but also gave the BOP discretion to immediately release them to quarantine at home.

Prison quarantines were also posing problems, as in the case of Gerard Scparta, a former New York City police officer who pleaded guilty last year in Manhattan federal court to crimes including tax evasion and Social Security fraud.

Mr. Scparta was serving an 18-month sentence at FCI Butner in North Carolina, which has experienced one of the prison system’s worst coronavirus outbreaks. Officials approved Mr. Scparta’s release to serve the remainder of his term in home confinement, after a 14-day quarantine in the prison.

Mr. Scparta’s “quarantine,” according to his lawyers, had him confined in proximity to staff and other inmates. And four days into it, prison officials said Mr. Scparta had to restart the 14-day clock after an inmate he was housed with tested positive.

In court filings, prosecutors didn’t dispute that he was in contact with other inmates, saying that BOP “is best-equipped to determine whether and how to quarantine the defendant.”

In a decision filed Monday, U.S. District Judge Alison Nathan described the BOP’s approach as “Kafkaesque,” ordering the government to release Mr. Scparta immediately.

Mr. Scparta was released from prison on Monday and is self-quarantining at home in Orange County, N.Y., said his lawyer, Joseph Mure Jr.

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