

Romano v. Warden: Procedural Missteps or Structural Defects?

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Due process, protected by the *Fifth and Fourteenth* Amendments, ensures the government follows fair legal procedures before depriving a person of life, liberty, or property. The law entails that every person is entitled to this right, as was the case with Romano in his initial conviction for money laundering, which sentenced him to 20 years. However, what legal framework governs a repeat offender? Or, in this instance, could Romano himself be considered a victim of his past convictions? It is common knowledge that the judicial system is inherently flawed, but just enough where crimes are sentenced and the legal counsel is satisfied. The gaps within the system, in fact, make their jobs objectively easier. But this case isn't about those flaws, nor about the tiny cracks within the system. The real concern arises when the cracks within the pillars of our government deepen; they risk collapsing into a chaotic mess of legislative dysfunction. The cycle of miscommunication, legal loopholes, and systemic injustices can all be examined through the playout of this ongoing case. By inspecting the expiration of these laws, lack of discretionary power, and systemic disregard for procedural fairness, it poses serious questions on who holds the law accountable when it causes objective harm and how these flaws enable legal mishaps to persist. The broader implications of a system where justice is compromised by its own design go beyond *Romano V. Warden* and touch upon our own lives.

Meet Michael Romano, sentenced on February 27, 2014, to incarceration, yet was released in 2022 to home confinement due to the Coronavirus Aid, Relief, and Economic Security (CARES) Act and his vulnerability to disease, as, at the time, COVID-19 was prevalent within prisons. He spent nearly one month living at home, rekindling old relationships and kick-starting his life back to the image of normalcy. This remained the case until July 2022,

when the Bureau of Prisons (BOP) revoked his confinement, reimprisoning him for two more years without any legal hearing until he filed for Habeas Corpus in the district of New Jersey. His amended petition calls for two counts: violation of due process and violation of substantive due process. Interesting, right? But, what is more intriguing is the BOP's response as they essentially claim they lack a protectable liberty interest, which are the fundamental rights or freedom safeguarded by the Fourteenth Amendment, in their home confinement placement, and regardless, they cannot restore Romano to home confinement because the CARES Act has expired.

So what's the point? The CARES Act is gone, so there would be no reason to reestablish his home confinement anyway. But the core concern is that Romano deserves a court hearing before being sent back to prison. As per the Fourteenth Amendment, he should not simply be tossed back behind bars without due process! If the CARES Act expired and, hypothetically, Romano were granted a court hearing, which current frameworks of the Act could they even respond to? The answer is none—there is no legal framework left to address this. Neither was there in *Young v. Harper*, a case with strikingly similar remnants, yet it took place decades before. Talk about an incline of improvement... Within this case, Lerol L. Young was released under the Pre-Parole Conditional Supervision Program (PCSP), a program that allowed inmates to be placed on parole after serving 15% of their sentence and receiving approval from the governor. Young served 15 years of his life sentence prior to his release. However, after five months, the governor denied his parole and ordered his return to prison without a hearing. Young claimed he was denied habeas relief by a state trial court (due process procedure), which violated his constitutional right. The Court of Appeals agreed, ruling that preparole was sufficiently similar to parole, entitling participants to procedural protections, effectively *ending* the PCSP.

In both cases, the core issue is the lack of procedural safeguards and regulator actions after an act expires, which directly contributes to this growing gap of miscommunication. When legal frameworks like the CARES Act or programs like the PCSP expire or are removed without any clear guidelines for the future, it creates a grey area where individuals like Romano or Young are left without any procedural protections. These gaps between policy and practice, especially when laws are no longer in place to guide them, create confusion and lead to the inconsistent treatment of those affected. Without clear regulatory actions after the expiration of such acts, individuals are at risk of being swept up into an unpredictable playing field with no rules, further deepening the divide in legal protections that are meant to safeguard their rights. In Young's case, the similarities between preparole and regular parole were just enough to bridge the gap and put an end to the framework mess the PCSP was in. However, Romano's case presents a different challenge. While there are case similarities, the expiration of the CARES Act leaves no clear legal framework to fall back on, emphasizing the inconsistency in how individuals are treated when such acts dissolve. The gap is only growing between the lack of regulatory directives and the failure to ensure the protection of individual rights, undermining the very foundation of our legal structure.

In Romano's case, the disregard for procedural affairs is another clear issue, which is a continuation of a long-standing issue within legal systems where individuals are denied due process despite its guarantees under the Constitution. Romano's imprisonment without a hearing is a reminder of the countless historical examples where the justice system continues to fail in upholding fundamental rights, under the guise of convenience or security. Disregard for procedural fairness is evident in the cases of individuals detained at Guantanamo Bay. Many detainees were held for years without formal charges or the ability to challenge their detention in

court, which violated their constitutional right to due process under the Fifth Amendment. Their inability to access timely legal hearings for that long is more than a simple legal mistake, but an inherent fault within the system's attitude itself. Now left in a legal limbo—Romano and the detainees—it becomes clearer than ever that legal mechanisms are either inadequately enforced or manipulated to circumvent protections to ensure individual rights. The same issues that arose in Guantanamo Bay, such as the suspension of habeas corpus, are direct parallels to the failure in Romano's case to ensure a fair process prior to his re-imprisonment. The lack of a clear legal framework to address his return to prison, combined with the lack of transparency and accountability in legal actions, highlights a structural flaw in how justice is administered. Moreover, this trend is a reflection of a broader error of constitutional guarantees across different areas of the law, where exceptions are made for efficiency, national security, or political convenience, which sets a dangerous model that threatens public trust in the justice system. The Constitution itself rests on the groundwork of these principles of due process and guarantees that no one is deprived of liberty without a just process. The failure to follow these principles, whether in the context of post-conviction releases and military detentions, reveals a systemic vulnerability where legal processes are bent or ignored in favor of ease. In all instances, the harm is not just to the individuals directly affected, but to the rule of law itself, with implications that could potentially destroy the very foundation of legal fairness that is central to our society's legal identity.

Identifying the flaws is the first step, but amending them is the hardest part.

Theoretically, if someone were to analyze every case involving the Fifth and Fourteenth Amendments, comparing them section by section to identify inadequacies, they would likely uncover a pattern of overlapping faults and inconsistencies. Then they'd likely think: how have

these inconsistencies gone unnoticed? Well, to that there is one simple answer, the fuel of all these issues, yet the exact thing which prevents change—the normalization of errors. The normalization of procedural errors has established a dangerous precedent that continues to allow systemic injustices to persist unchecked. *Wilford v. Engleman* exemplifies this issue, where Wilford challenged BOP and federal authority to revoke home confinement under the CARES Act and incarcerated individuals without any mention of their violations or providing due process (Sound familiar?). The cases raised concerns about the unchecked power of federal agencies to make arbitrary choices without considering legal protections.

The similarity between these cases reveals a deeply rooted issue: the integration of injustice isn't a one-time occurrence. See, the problem is not merely that these errors exist but that their persistence prevents the establishment of actually clear legal guidelines, creating an environment where legal ambiguities are exploited rather than corrected. In both Wilford's and Romano's cases, the absence of clear legal violations did not stop the government from taking action, showing how the failure to uphold procedural fairness has evolved into an expectation rather than an exception. This systematic failure is increased by the inconsistent application of due process, creating confusion over why similar cases produce differing legal outcomes. Moreover, the unwillingness to rectify these contradictions reinforces a flawed cycle in which procedural errors are *tolerated and not* fixed, and precedents are set based on incomplete legal frameworks, with meaningful reforms being constantly delayed. Essentially, this issue reflects a judicial culture that prioritizes convenience and already existing power structures over the protection of constitutional rights. By failing to challenge these missteps, the legal system effectively enforces them, allowing these violations to pass by with no consequence. Without

addressing these inconsistencies, the normalization of legal errors will continue to obstruct necessary changes.

In conclusion, it becomes increasingly clear through numerous files for habeas corpus that the justice system resembles Sisyphus, rolling the same rock over and over again. But society has become so accustomed to these “mistakes” that they’ve become an expectation when, in truth, they go against core constitutional values. These continuing flaws enable mishaps to persist, and the longer we allow this issue to pass through, the more people are stripped from their individual rights and protections. *Romano v. Warden* may seem insignificant at first glance, but when you look closer, it reveals the deeper implications that sit stagnant between the lines; issues that our system has yet to address.

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