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CLERK OF COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Yorie Von Kahl
Reg. No.: 04565-059
Federal Correctional Institution Pekin
P.O. BOX 5000
Pekin, IL. 61555-5000
Petitioner pro se

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

Ex parte Yorie Von Kahl
Petitioner,

No.: 18-1245

PETITION FOR WRIT
OF HABEAS CORPUS

TO the United States District Court for the Central District of Illinois Yorie Von Kahl, Petitioner herein submits this:

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner makes this application for a writ of habeas corpus on the grounds that he is unlawfully imprisoned, detained and restrained of his liberty by the United States Bureau of Prisons (BOP) in the person of Steve Kallis, Warden of the Federal Correctional Institution (FCI) Pekin, at Pekin, Illinois at the address of 2600 South Second Street, Pekin, Illinois 61555;

2. The purported cause or pretext of Petitioner's detention and restraint is the BOP's Program Statement (PS) 5880.30, generated on July 16, 1993 under the title Sentence Computation Manual ("Old Law" - Pre-CCCA - 1984), by which the BOP on April 12, 1994 altered Petitioner's two-thirds/30-year mandatory parole release (MPR) date previously set and settled by the U.S. Parole Commission (USPC) as "2/12/2013" by adding ten (10) years thereto rendering it as "2/12/2023" and the BOP now holds him under the added ten (10) years.

SUMMARY OF GROUNDS

3. The BOP's application to Petitioner, a citizen, on April 12, 1994 altering his previously established two-thirds/30-year MPR date of 2/12/2013 (affirmed

by the USPC) to 2/12/2023 by adding ten (10) years thereto under which the BOP currently imprisons and detains Petitioner: (a) violates 18 U.S.C. § 4001(a)(1) which forbids the BOP to imprison or detain any citizen "without an act of Congress"; (b) usurped Article III judicial power by effectively amending the sentencing court's judgment ordering Petitioner's life plus 15-year sentence to be executed "[p]ursuant to 18 U.S.C. § 4205(b)(2)" and making his parole release subject to "such time as provided by law and as the Parole Commission shall determine" violating constitutional separation of powers; (c) usurped Article I legislative powers by eviscerating Congress' deliberate vestiture of parole release determinations exclusively in the USPC's jurisdiction as an "independent agency in the Department of Justice (DOJ)" composed of 9 members "appointed by the President by and with the advice of the Senate," 18 U.S.C. § 4202, of which all parole release "power," including the power for rule-making to that end, were made subject to a "majority vote" of USPC Commissioners, id., §§ 4202, 4203(a)(1) & (b)(1), 4206, 4207, 4208, violating constitutional separation of powers; (d) usurped Article II Appointments Clause Powers by effectively eviscerating the congressionally mandated "majority vote" of the USPC Commissioners "appointed by the President by and with the advice of the Senate" for promulgating rules and regulations for parole release determinations and for all substantive parole release determinations, 18 U.S.C. §§ 4202, 4203(a)(1) & (b)(1), violating separation of powers; and (e) violated substantive and procedural due process requirements of (i) the Fifth Amendment; (ii) 18 U.S.C. §§ 4201(b) & 4203(a)(1) (mandating parole rule-making to proceed with notice and opportunity to comment per 5 U.S.C. § 553); (iii) 18 U.S.C. §§ 4206, 4207, 4208 (requiring parole release determinations to be made by USPC upon full notice, presence of prisoner, and express procedural standards, criteria and consideration of information), and (iv) 18 U.S.C. § 4206(b) & (c) (requiring particularized post-determination written notices to validate proceeding in which parole is denied).

JURISDICTION

4. This court has jurisdiction to hear and decide this Petition pursuant to 28 U.S.C. §§ 1331, 2241(c)(3) and, under such authority, to enter declaratory judgment, effectuate such further remedy as law, justice or equity may permit or require, 28 U.S.C. §§ 2201, 2202, and to take such measures as may best accomplish such ends. 28 U.S.C. § 1651(a).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. While the nature of the claims raised herein do not require exhaustion of administrative remedies, Petitioner has nonetheless exhausted administrative remedies to the point of over-exhaustion. See Exhibit 2A-C, Attachs. 1, 2, & 3.

FIRST HABEAS APPLICATION

6. This petition is the first and only such petition to any court to address the claims herein.

7. Petitioner was sentenced on June 24, 1983 to a sentence of life plus 15 years the judgment of which ordered such sentence executed:

Pursuant to 18 U.S.C. Section 4205(b)(2), the defendant to be eligible for parole at such time as provided by law and as the Parole Commission may determine.

See Exhibit 1 (Judgment and Commitment Order (J & C)).

8. The USPC held its first parole determination proceeding for Petitioner in June, 1984, and it held subsequent parole determination proceedings (referred to as statutory interim hearings (SIH)) in June 1986, June 1988, June 1990, and December 1992. In each pre-hearing assessment and each post-hearing summary review the USPC expressly established and acknowledged Petitioner's two-thirds/30-year mandatory parole release (MPR) date as "2/12/2013." See Exhibit 2C, Attach. 2, pp. 18-24, 26, 60, 62, 64-69.

9. At his 1986 SIH, Petitioner expressly requested the USPC examiners to

provide him with his MPR date, which they determined to be February 12, 2013 and they verbally assured him that in the worst-case scenerio he would be released no later than 30 years of the service of his sentence. The USPC memorialized its assurances to Petition in its 1986 SIH Review Summary thus: "On his life plus 15 year sentence, Kahl can serve at most 30 years which the Bureau computes to be the two-thirds point of his aggregate sentence." See Exhibit 2C, Attach. 2, p.20.

10. The same assurances were provided to Petitioner by the USPC examiners at his 1988 SIH, which were once again memorialized in the USPC's 1988 SIH Review Summary thus: "On his life plus 15 year sentence, subject will serve at most 30 years, the two-thirds point of his aggregate sentence." See Exhibit 2C, Attach. 2, p.22.

11. On April 16, 1993, the BOP generated PS 5880.30 titled "Sentence Computation Manual, ('Old Law' - Pre-CCCA-1984)." It was not published in the Federal Register and no public comment opportunity was provided.

12. Petitioner was not provided with any notice of PS 5880.30's existence, any indication that the BOP was empowering itself to make parole release determinations, or of its intent to alter previously settled MPR dates.

13. Unknown to Petitioner, on April 12, 1994 BOP employees applied PS 5880.30 to him and altered his previously settled MPR date changing it from 2/12/2013 to 2/12/2023.

14. Petitioner first learned of the 10-year addition to this MPR Date at a Unit Team meeting on July 7, 1994. See Exhibit 2C, Attach. 2, p.30.

15. After its discovery, Petitioner informally brought the matter to the attention of a Mr. McKenna, the Inmate Systems Manager (ISM) at the United States Penitentiary (USP) at Leavenworth, Kansas and, after initial resistance, McKenna said he would correct it.

16. After later discovering that Mr. McKenna did not correct Petitioner's MPR date, Petitioner filed an Inmate Request to a new ISM at USP Leavenworth, a Mr. Lake, to correct his MPR date and , although Mr. Lake did not correct it, he did provide Petitioner with the basis upon which his MPR date had been altered in his response:

PS 5880.30, Appendix IV, Page 1, Chapter 2.a.(1), whcih states, "Parolable sentences followed by a consecutive parolable sentence: Eligibility is 2/3 of each sentence added together for an aggregate and then computed from the date computation begins (DCB) of the first sentence, minus all presentence time.

See Exhibit 2C, Attach. 2, p.33.

17. Neither Mr. McKenna nor Mr. Lake provided Petitioner with any statutory authority vesting parole release determination powers in the BOP.

18. Petitioner thereafter exhausted informal and formal administrative remedies to correct his altered MPR date. See Exhibits 2C, Attachs. 2 & 3.

19. While BOP Officials did not provide Petitioner with any purported statutory authority to alter his MPR date or to make parole release determinations, Regional Director Michael K. Nalley sent a letter to Petitioner's Attorney Barry Bachrach (while his administrative appeal was pending in Nalley's Office) informing Mr. Bachrach that the BOP was construing "18 U.S.C. § 4206(d)" as a "section of statute [that] directs the Bureau [of Prisons] to 'stack' two-thirds dates of consecutive sentences to arrive at one two-thirds/30-year date for the [MPR date] calculation." See Exhibit 2C, Attach. 2, p.74.

20. Although the Regional Director answered Mr. Bachrach's inquiry timely, he did not address Petitioner's appeal timely and, Petitioner, pursuant to BOP regulation's, proceeeded with his appeal to the BOP's General Counsel. While the General Counsel received the appeal, see Exhibit 2C, Attach. 2, pp.34-40, it did not acknowledge receipt nor respond in any way.

21. Petitioner received a belated response from the Regional Director's

office long after he was compelled to proceed with the appeal to the General Counsel, which, similarly to the letter sent to Mr. Bachrach, indicated that it was construing 18 U.S.C. 4206(d) as a grant of jurisdiction to the BOP to de-aggregate otherwise aggregated single sentences and to thereupon re-determine MPR dates under that statute. See Exhibit 2C, Attach. 2, pp.40-42.

22. After Petitioner's MPR date as established by the USPC as "2/12/2013" had passed, Petitioner directly petitioned the BOP Director in care of the BOP's General Counsel to acknowledge his MPR date lawfully established by the USPC pursuant to its exclusive jurisdiction under 18 U.S.C. §§ 4202, 4203(a)(1) and (b)(1), and 4206(d) to establish such date; to correct the date altered by the BOP pursuant to PS 5880.30; to provide him with statutory authority for the BOP to make parole release determinations or supersede the USPC's authority to administer 18 U.S.C. § 4206(d); to provide the substance of PS 5880.30 as published in the Federal Register without which the BOP is without even color of authority to apply it to extend parole release dates; and to comply with 18 U.S.C. § 4001(a)(2) forbidding the BOP to detain Petitioner pursuant to PS 5880.30 without an act of Congress. See Exhibit 2C, Attach. 2, pp.1-76. The Director/General Counsel received the petition on July 24, 2013, see Exhibit 2C, Attach. 3, pp.1-6, but, like its treatment of Petitioner's final appeal to the General Counsel, it remained unacknowledged and no effort to comply with Petitioner's requests were forthcoming.

23. Petitioner made another and final effort to compel correction of his MPR date by providing a comprehensive request in June 2017 to Mr. Hewitt, the Supervisory Correctional Systems Specialist (SCSS), Corrections System Department (CSD), Records at FCI Pekin, Pekin, Illinois and thereby to:

Provide [Petitioner] with all records, including the express statutory authorities by which PS 5880.30 legally superseded the USPC's... authority and jurisdiction to set [his] 30-year MPRD and vested such powers in the BOP along with the contents relative to PS 5880.30 required to be published and as actually published in the Federal Register for rule-making purposes prior to its use by the BOP on April 12, 1994 and to alter and extend [his] long-settled 30-year MPRD.

See Exhibit 2B, cover request & p.1.

24. That request included a summary of the problem, Exhibit 2B, p.1, a documented history of Petitioner's efforts to correct the date with a comprehensive citation to relevant authorities, including BOP policy mandates to investigate and correct records pertaining to prisoners' legal release dates, the Administrative Procedures Act (APA) requirements for rule-making that affect the public, id., pp.1-4, and included notice that any continuation by the BOP holding Petitioner in prison without an act of Congress was a knowing violation of 18 U.S.C. § 4001(a)(1). id., p.5.

25. With that request Petitioner included documentation generated by the USPC showing undisputably that it had established and repeatedly affirmed Petitioner's MPR Date as "2/12/2013" and his repeated unacknowledged efforts to compel correction to and through the BOP's Central Office and Director, Exhibit 2C, Attach. 2, pp.1-76 & Attach. 3, pp.1-6, including the final record of the USPC relative to the MPR date generated on May 4, 2002 acknowledging the date as "2/12/2013," id., Attach. 1, pp.1-3, after which the USPC's enabling act was repealed by positive law on November 1, 2002 of which Petitioner put the BOP on notice as well. Exhibit 2B, pp.2, 3 n. 3. (citing statutes at large).

26. Mr. Hewitt, FCI Pekin's SCSS immediately faxed the request to the BOP's Designation and Sentence Computation Center (DSCC) at Grand Prairie, Texas and, on July 5, 2017, emailed the following message to Petitioner:

I received a call from Grand Prairie today. Their response is that nothing has changed and you have already addressed this with them and region.

See Exhibit 2A.

27. The BOP continues to hold Petitioner in prison under the MPR date altered by BOP employees pursuant to PS 5880.30; refuses to acknowledge the MPR date of "2/12/2013" established and affirmed by the USPC - the agency in which Congress

vested jurisdiction respecting MPR dates - and correct the date as repeatedly requested; refuses to provide Petitioner (or the public) the statutory authority to establish or amend MPR dates or otherwise make parole release determinations; and without any such act of Congress refuses to release Petitioner as required by 18 U.S.C. § 4001(a)(1).

GROUND ONE

28. Imprisonment or detention of Petitioner by the BOP solely upon action pursuant to PS 5880.30, which is neither a statute nor a legislative rule authorized by statute, is prohibited by 18 U.S.C. 4001(a)(1) rendering Petitioner's imprisonment unlawful and requiring his immediate release.

GROUND TWO

29. The BOP's application of PS 5880.30 altering Petitioner's MPR date from 2/12/2013 to 2/12/2023 and imprisonment of Petitioner under the added ten years violates separation of powers principles by effectively usurping the sentencing court's Article III powers through which it ordered Petitioner's sentence executed exclusively by the USPC pursuant to 18 U.S.C. § 4205(b)(2) rendering the added ten (10) years of imprisonment unlawful and requiring Petitioner's immediate release.

GROUND THREE

30. The BOP's alteration of Petitioner's MPR date of 2/12/2013 as established by the USPC by application of PS 5880.30 pursuant to which it reset such date as 2/12/2023 violates separation of powers principles by effectively eviscerating the Parole Commission and Reorganization Act of 1976 (PCRA), 18 U.S.C. §§ 4201-18, under which Congress established the USPC as an "independant agency" in the DOJ composed of 9 members each "appointed by the President by and with the advice of the Senate," § 4202, and constrained all parole release determination "power," including that of making rules and regulations for such purpose to the "majority

vote" of USPC Commissioner's, § 4203(a)(1) and (b)(1), all of which usurped Congress' Article I legislative power rendering the altered MPR Date unlawful and Petitioner's imprisonment under the added ten (10) years unlawful requiring his immediate release.

GROUND FOUR

31. The BOP's application of PS 5880.30 to alter Petitioner's MPR date of 2/12/2013 and to reset it as 2/12/2023 violates separation of powers principles by effectively eviserating from 18 U.S.C. §§ 4202, 4203(a)(1) and (b)(1) Article II's Appointment Clause requisites for which the power to make all parole determination proceedings vested in the "majority vote" of Commissioners "appointed by the President by and with the advice of the Senate" rendering the altered MPR date unlawful and Petitioner's imprisonment under the added ten (10) years unlawful requiring his immediate release.

GROUND FIVE

32. The alteration of Petitioner's MPR date of 2/12/2013 to 2/12/2023 pursuant to PS 5880.30 without publishing the substance of the program statement in the Federal Register and without prior notice to Petitioner with an opportunity to defend against the additional ten (10) years of imprisonment violated substantive and procedural due process requirements of the Fifth Amendment, 18 U.S.C. §§ 4201(b) and 4203(a)(1) (requiring parole rule-making to comply with 5 U.S.C. § 553), 18 U.S.C. §§ 4206, 4207, 4208 (requiring parole determination's to be made by statutorily required procedures with notice, presence of prisoner, standards, criteria, and consideration of information pursuant to parole determination proceedings), and 18 U.S.C. §§ 4206(b) and (c) (requiring specilized post-determination written notices for validation of determination), the absence of which renders the altered date unlawful and Petitioner's imprisonment under the added ten (10) years in unlawful requiring his immediate release.

PRAYER

Upon the reasons aforesaid, Petitioner prays this Court to:

33. Forthwith award the requested writ or order Respondent to show cause within 3 days and in no case exceeding 20 days, as mandated by 28 U.S.C. §2243 ¶ 2, why Petitioner is not entitled thereto;

34. Specifically order Respondent in making his returning certifying the true cause of Petitioner's detention, as mandated by 28 U.S.C. § 2243 ¶ 3, to include a copy of the actual statute enacted by Congress that expressly authorized the BOP to administer 18 U.S.C. § 4206(d) or to otherwise amend Petitioner's sentence imposed by his Sentencing Court or to make or re-make parole release determination's respecting Petitioner or his mandatory parole release date;

35. Specifically order Respondent in making his return certifying the true cause of the Petitioner's detention to immediately inform the Court if no express statutory authority as explicated in ¶ 31 above exists;

36. Declare that PS 5880.30 is not an act of Congress;

37. Declare that PS 5880.30 is not a legislative or substantive rule authorized by Congress as a parole release determination rule or regulation pursuant to the statutory required rule-making process under 18 U.S.C. §§ 4201(b), 4202, 4203(a)(1) and 5 U.S.C. § 553;

38. Declare that PS 5880.30 is not a legislative or substantive rule for any purpose;

39. Declare that 18 U.S.C. § 4206(d) does not authorize the BOP to:

- (a) "stack" sentences;
- (b) Otherwise alter sentences;
- (c) hold parole release determination proceedings;
- (d) make parole release determinations; or
- (e) unsettle, reset, or otherwise alter parole release dates previously established by the U.S. Parole Commission;

40. Declare that PS 5880.30 as applied to Petitioner on and since April 12, 1994 upsetting his established two-thirds/30-year mandatory parole release date of 2/12/2013 and re-establishing it as 2/12/2023:

(a) effectively usurped the Article III judicial powers of Petitioner's sentencing court by eviscerating the judgment ordering the execution of his life plus 15-year sentence to be executed exclusively by the U.S. Parole Commission pursuant to 18 U.S.C. § 4205(b)(2) for all parole release determinations;

(b) effectively usurped the Article I legislative powers of Congress which specially vested all parole release determinations jurisdiction in the U.S. Parole Commission of 9 Commissioners each appointed by and with the advice of the Senate and which channeled all "power" to make such determinations, including all rule-making "powers" to such ends, through the "majority vote" of such Commissioners;

(c) effectively usurped Article II Appointments Clause authority by eviscerating such requirements from 18 U.S.C. §§ 4202, 4203(a)(1) and (b)(1) relative to the U.S. Parole Commission, its Commissioners and its powers to make all parole release determinations; and

(d) violated substantive and due process requirements of the Constitution's Fifth Amendment's Due Process Clause, 18 U.S.C. §§ 4201(b), 4203(a)(1), 4206(b) and (d), 4207, 4208, and 5 U.S.C. § 553;

41. Declare that PS 5880.30 as applied to Petitioner on and since February 13, 2013 to imprison and detain him as unlawful and in violation of 18 U.S.C. § 4001(a)(1);

42. Declare that PS 5880.30 as applied to Petitioner on and since February 13, 2013 to imprison and detain him is unconstitutional for violating:

- (a) Article III of the U.S. Constitution;
- (b) Article I of the U.S. Constitution;
- (c) Article II of the U.S. Constitution; and

(d) the Fifth Amendment's Due Process Clause of the U.S. Constitution;

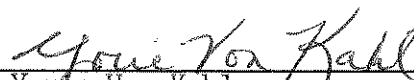
43. Declare that Petitioner's lawful two-thirds/30-year mandatory parole release date is February 12, 2013;

44. Declare that Petitioner is constitutionally and lawfully entitled to immediate release;

45. Declare that Petitioner is constitutionally and lawfully entitled to immediate release on February 12, 2013 nunc pro tunc;

46. Declare that this court shall retain jurisdiction of this case until such time as all essential and substantive matters herein are fully resolved to the satisfaction of the law and justice.

Petitioner hereby declares that all factual assertions herein are true and correct pursuant to penalties of perjury as provided under Title 28 U.S.C. § 1746.



Yorle Von Kahl, pro se
Petitioner/Declarant
Reg. No.: 04565-059
F.C.I. Pekin
P.O. BOX 5000
Pekin, IL. 61555-5000

DEFENDANT

YORIE VON

COUNSEL

in the presence of the attorney for the government
the defendant appeared in person on this date

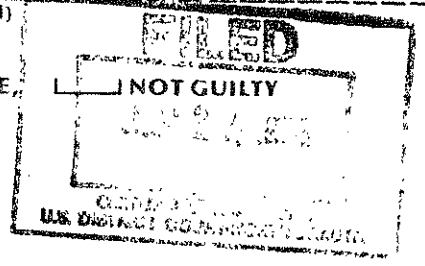
MONTH DAY YEAR
JUNE 24, 1983

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

WITH COUNSEL MR. WARREN C. SOGARD, Fargo, ND 58107
(Name of Counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE



FINDING & JUDGMENT

Jury
There being a ~~XXXX~~g/verdict of NOT GUILTY. Defendant is discharged
 GUILTY.

Defendant has been convicted as charged of the offense(s) of **second degree murder of Federal Officers and aiding and abetting, in violation of 18 U.S.C. §§ 1111, 1114 and 2, as charged in Cts. 1 and 2 of the Indictment; forcibly assaulting and impeding Federal Officers by use of a deadly weapon and aiding and abetting, in violation of 18 U.S.C. §§ 111, 1114 and 2, as charged in Cts. 5,6,7 and 8 of the Indictment; harboring and concealment of fugitive and aiding and abetting, in violation of 18 U.S.C. §§ 1071 and 2, as charged in Ct. 9 of the Indictment; and conspiracy to assault, in violation of 18 U.S.C. § 371, as charged in Ct. 11 of the Indictment.**

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **LIFE on Counts 1 & 2 to run CONCURRENTLY; TEN (10) YEARS on Counts 5,6,7 and 8 to run CONCURRENTLY but to run CONSECUTIVELY to the life sentence on Counts 1 and 2; FIVE (5) YEARS on Count 9 to run CONSECUTIVELY to the Life sentence imposed on Counts 1 and 2 and the ten year sentence imposed on Counts 5,6,7 and 8; FIVE (5) YEARS on Count 11 to run CONCURRENTLY with the sentences imposed on Counts 1,2,5,6,7,8 and 9.**

SPECIAL CONDITIONS OF PROBATION

Pursuant to 18 U.S.C. Section 4205(b)(2), the defendant to be eligible for parole at such time as provided by law and as the Parole Commission may determine.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, or at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant to revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

Paul Benson
PAUL BENSON, Chief Judge
U. S. DISTRICT COURT

Date JUNE 24, 1983

CERTIFIED AS A TRUE COPY ON

THIS DATE June 24, 1983

By *Charles J. Rose*

EXHIBIT 1

DEPUTY

TRULINCS 04565059 - KAHL, YORI VON - Unit: PEK-A-B

FROM: R&D/Mailroom
TO: 04565059
SUBJECT: RE:***Inmate to Staff Message***
DATE: 07/05/2017 10:27:01 AM

I received a call from Grand Prairie today. Their response is that nothing has changed and you have already addressed this with them and region.

Hewitt

>>> ~^!"KAHL, ~^!YORI VON" <04565059@inmatemessage.com> 6/13/2017 10:28 AM >>>

To: Mr. Hewitt, SCSS/Records
Inmate Work Assignment: Orderly III-2

6/13/2017 10:29 AM

Mr. Hewitt,

I have a request to correct records relative to my release date that AW Thompson told me needs to be addressed to you. I have the request and documents ready, but need to know when and how I should get them to you. Please let me know how to proceed. Thank you.

BP-S148.055 INMATE REQUEST TO STAFF CDFRM
SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) M. Hewitt, SCSS/CSD-Records	DATE: June 14, 2017
FROM: Yorie Kahl	REGISTER NO.: 04565-059
WORK ASSIGNMENT: IL-2 Orderly	UNIT: IL-2

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

Request for correction of records. See Request attached w/Attachments 1-3 thereto.

*Thank you,
Yorie Kahl*

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date
------------------------	------

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94

EXHIBIT 2B

TO: Mr. M. Hewitt, SCSS,
Correctional Systems Department (CSD), Records,

DATE: June 14, 2017

REQUEST:

Correct my 30-year mandatory parole release date (MPRD) set by the United States Parole Commission (USPC) as February 12, 2013 (pursuant to its exclusive jurisdiction and authority under 18 U.S.C. §§ 4203, 4206(d), 28 C.F.R. §§ 2.5, 2.53, 2.64, and Pub.L. 98-473, Tit.II, Ch. II, §§ 218(a)(5), 235(b)(1)(B) and (b)(3), 98 Stat. 2027, 2032 as amended by Pub.L 101-650, Tit. III, §316, 104 Stat. 5115 and Pub.L. 104-232, § 2(a), 110 Stat. 3055), which was re-set by the Bureau of Prisons (BOP) on April 12, 1994 pursuant to Program Statement (PS) 5880.30 to February 12, 2023.

Provide me with all records, including the express statutory authorities by which PS 5880.30 legally superseded the USPC's above authority and jurisdiction to set my 30-year MPRD and vested such powers in the BOP along with the contents relative to PS 5880.30 required to be published and as actually published in the Federal Register for rule-making purposes prior to its use by the BOP on April 12, 1994 to alter and extend my long-settled 30-year MPRD.

SUMMARY OF UNDERLYING PROBLEM:

On April 12, 1994, the BOP altered my 30-year (MPRD) long settled by the USPC as February 12, 2013 by adding thereto ten (10) years and recording such date as February 12, 2023. This action by the BOP was effected by application of PS 5880.30, created by the BOP on July 16, 1993, under which the BOP authorized itself to administer 18 U.S.C. §4206(d). Pursuant to PS 5880.30 the BOP interpreted §4206(d)'s statutory term "release" to mean "hearing" and expressly not to mean "release"; Construed the section's requirement that a "prisoner" who has served a specific period of time of "a sentence of five years or longer... shall be released on parole" to simply provide "[e]ligibility" for parole; and construed §4206's exclusive authority in and requiring "the Commission" to effect its requirement's as a grant of power to the BOP to "'stack' sentences." My repeated efforts to compel correction of the record or for the BOP to provide me with lawful authority to administer §4206(d) through PS 5880.30 (or otherwise) and to re-set or alter MPRD have failed. The BOP has refused to correct my MPRD or to provide its source of jurisdiction to administer §4206(d) or to otherwise alter, amend or re-set such date.

UNDERLYING FACTS:

Since July 1994, I have repeatedly and unsuccessfully sought to compel the BOP to correct its records respecting my 30-year MPRD and to re-instate the correct date of February 12, 2013 as set and repeatedly acknowledged by the USPC - the agency Congress exclusively charged with parole decision-making authority under the Parole Commission and Reorganization Act of 1976 (PCRA), 18 U.S.C. §4201 et seq, and exclusively given jurisdiction for that purpose. 18 U.S.C. §4203(a)(1) & (b)(1).

Following repeated unsuccessful attempts to compel correction of the date, including numerous informal efforts and finally exhaustion of administrative remedy procedures - i.e., filing BP-8 through BP-11, I petitioned former BOP Director Charles Samuels directly through the BOP's Office of General Counsel to correct the date and to provide me with the BOP's authorities to alter it. See Petition w/Exhibits (Attachment 2, pages 1-75).¹ The BOP's Central Office never acknowledged receipt of my BP-11 or the Petition and made no efforts to correct the record as requested or to provide me with the BOP's authority to administer 18 U.S.C. §4206(d), to nullify my 30-year mandatory parole release date set by the USPC, or to provide me with proof that PS 5880.30 complied with the APA for rule-making purposes by which the BOP was empowered to extend my settled mandatory parole release date - all of which I requested in my Petition.

On October 12, 1984, Congress positively repealed the USPC's enabling Act, Title 18, United States Code, Chapter 311 (18 U.S.C. §§4201-4218), Pub.L. 98-473, supra, §218(a)(5), 98 Stat. 2027, but set off finality of that appeal for five (5) years after the effective date of the Act. id., §235(b)(1)(B), 98 Stat. 2032. The USPC was thereby mandated to set final release dates for parolable prisoners before the end of that 5-year period. id., §235(b)(3), 98 Stat. 2032. The 5-year period has been construed as beginning on the date the Sentencing Guidelines first began to be employed by the courts in imposing sentences - i.e., November 1, 1987,² and Congress has amended the 5-year period for the final repeal of the PCRA and for the final setting of release dates for parolable prisoners by the USPC before such period ended first by changing the 5-year period to 10-years, Pub.L. 101-650, supra, §316 104 Stat 5115, and then to 15-years. Pub.L. 104-232, supra, §2(a), 110 Stat. 3055, which ended on November 1, 2002. See e.g., United States v. Feist, 585 F.Supp.2d 1107, 1109, 1111-12 (D.N.D. 2008).

Section 235(b)(3), 98 Stat. 2032, mandated the USPC to set final release dates for parolable prisoners sufficiently prior to the end of the original 5-year period so as to permit the prisoner to exhaust administrative remedies. That requirement carried over throughout the amendments, including Pub.L. 104-232, §2(a), 110 Stat. 3055, under which the amended period ended on November 1, 2002 and Title 18 U.S.C. §§4201-4218 was finally repealed. The USPC promulgated a rule ensuring the mandatory release dates would be set permanently pursuant to the requirements of the terms of §235(b)(3) as amended. The rule required the USPC to "set" the release dates "three to six months before the end of [the statutory] periods." 28 C.F.R. §2.64(b).

1. I mailed the original Petition signed and dated July 19, 2013 with it's exhibits to the Director via the Office of General Counsel on the same date and it was received and signed for on July 24, 2013. See Attachment 3, pp.1-6 (copy of envelope, certified mail receipt dated July 19, 2013, and signed receipt of delivery on July 24, 2013). The copy of the Petition included herewith is not signed or dated because I was in the SHU at USP Terre Haute at the time and was unable to copy the signed and dated pages before mailing.

2. While the effective date of the Act and the date of sentencing guidelines required to be promulgated by the U.S. Sentencing Commission created by the Act obviously can't be the same dates and the Act obviously had to go into effect long prior to the guidelines, this obvious anomaly represents the judicial constructions of that Act. This anomaly need not be addressed as it is irrelevant to the scope of my request.

Within the six-month period prior to the final repeal of the PCRA on November 1, 2002, the USPC's last and final action in respect to me acknowledged my long set and settled 30-year MPRD as "2/12/13." USPC Federal 15 year Reconsideration Hearing Prehearing Assessment 5/4/2002, p.1 (Attachment 1, p.1) A copy of this Assessment was provided to me by my Unit Team at USP Leavenworth from my Parole Mini-File and was part of the BOP's records. PS 5800.17.17.b.(7). This is the date long settled by the USPC. See 1993 USPC Original Jurisdiction Appeal Summary, Exh. G to Petition (Attachment 2, p.26) (recognizing sentence of single aggregate "TERM" of "Life + 15 yrs," "mandatory" 2/3 Date: 2/12/13 "with" MO[NTH]S AT REL[LEASE]: 360"); USPC Review Summary of 12/1/92 Statutory Interim Hearing [SIH] (Attachment 2 p.24)(determination of "2/3 or STAT[UTORY] M[ANDATORY] R[LEASE] Date: 2/12/2013"); USPC Review Summary of 6/20/90 SIH (Attachment 2, p.23) (determination of "TWO-THIRDS OR STATUTORY M[ANDATORY] R[LEASE] Date: 2/12/2013"); USPC Review Summary of 6/22/88 SIH (Attachment 2, pp.21-22)(determination of "TWO-THIRDS OR STATUTORY M[ANDATORY] R[LEASE] Date: 2/12/2013)(AFTER THE SERVICE OF 30 YEARS)" "expressly evaluating that" "On his life plus 15 year sentence, subject will serve at most 30 years, the two-thirds point of the aggregate term."); USPC Review Summary of 6/18/86 SIH (Attachment 2, pp.19-20)(determining "(TWO-THIRDS) OR STATUTORY M[ANDATORY] R[LEASE] Date: 2/12/2013" and evaluating that: "On his life plus 15 year sentence, Kahl can serve at most 30 years...."); USPC Pre-Hearing Assessment for 6/6/84 Intial Hearing (Attachment 2, p.18)(determining "[xx Two-Thirds] [___ Stat. MR] Date: 2/12/2013").

18 U.S.C. §§4203(a)(1) and (b)(1) and §4206(a)-(d) exclusively vested jurisdiction in the USPC to make parole release decisions and to promulgate rules and regulations to do so. 18 U.S.C. §§4203(a)(1) and (b)(1), 4206(a)-(d). That jurisdictional grant of power is made expressly dependant upon determinations made by a majority of Commissioners appointed by the President with the advice and consent of the Senate both as to promulgation of rules and regulations for effectuating the provisions of §4206 and as to parole determinations as to individual parole eligible prisoners. §§4202, 4203(a)(1) & 4203(b)(1). And, the USPC alone was mandated to set final release dates for all parolable prisoners prior to the final repeal of the USPC's enabling Act pursuant to Pub.L. 98-473, *supra*, §§218(a)(5), 235(B)(1)(B), 98 Stat. 2027, 2032 as amended through Pub.L. 104-232, *supra*, §2(a), 110 Stat., and setting of my 30-year MPRD as 2/12/2013 by the USPC is the lawfully set date.

3. The Assessment also acknowledged that my previously ordered 15-year reconsideration hearing date was June 2001. Attachment, p.1. The 15-year reconsideration hearing was originally ordered July 17, 1986 changing a previously ordered 10-year reconsideration hearing of June 1994 to one in June 2001 based upon an *ex post facto* legislative rule amending 28 C.F.R. §§2.12(b), 2.14(a)(2) & (c). Under USPC Parole Policy, an order to a reconsideration hearing included a presumption of release on parole at the time of that hearing. *Feist* determined that the last USPC decision prior to the effective date of the PCRA's final repeal on November 1, 2002 qualifies as the mandatory release date for purposes of §235(b)(3) as amended. The last Notice of Action by the USPC in respect to me was a 15-year reconsideration hearing in June 2001, which, technically, stands as my legal release date under *Feist*. However, for purposes of this request, I am only seeking correction of my 30-year MPRD and the June 2001 date is irrelevant to the USPC's determination that my 30-year MPRD is February 12, 2013.

RECORDS MUST REFLECT THE CORRECT AND LEGAL RELEASE DATE:

The CSD is responsible for responding to requests involving records, PS 5800.15.101, and must ensure The "legality" of an "inmate's...release." id., at 101.a. It is required to establish and maintain a "records control system" to effect the release of inmates on the correct release date. PS 5800.15.101.a. Reasonable steps must be taken to ensure accuracy of challenged information in Central Files Material particularly when information is verifiable. PS 5800.17.11.c. When the inmate provides the correct information, staff must review the alleged errors and take reasonable steps to ensure that the information is correct. id. Upon receipt of verified correct information, staff must file the correct information and make special notation on the Inmate Activity Record Form (BP-A0381) to ensure that future decisions affecting the inmate are not based on the discredited information. id. Information verified as inaccurate must be corrected, including information contained in BOP generated reports or data such as the Custody Classification Form (BP-A0338), Progress Report, and all other relevant reports. id. Corrections to BOP reports, data and SENTRY transactions must be made within a reasonable time after identification of the inaccuracy. id. Incorrect information, upon verification, must be immediately removed from the record. id. See also PS 1351.05.24.

PS 5880.30 DOES NOT AUTHORIZE THE BOP TO SET, ALTER OR INTERFERE WITH PAROLE RELEASE DATES SET BY THE USPC UNDER THE PCRA OR Pub.L. 98-473, supra, §235(b)(3) AS AMENDED:

The BOP is without authority to act in interference with or to the prejudice of an inmate's rights or to usurp jurisdiction of other agencies pursuant to program statements of which the contents and purpose were not published in the Federal Register with opportunity for comment. 5 U.S.C. §553. BOP staff are informed of the difference between mere "program statements" and "rules." PS 1221.66.1.2.1-2, 2.1, 2.3, 3.1, 3.2.2, 3.3.1-2, 3.5.1-4. Program statements represent general policy. PS 1221.66.1.2.1, 2.1.

Policy effects inmates only indirectly and therefore do not require rules. PS 1221.66.3.1. Rules are provisions of BOP Policy that directly affect inmates. id. For a program statement/policy to be a rule it must first be published in the Federal Register and when final entered into the Code of Federal Regulations. id. It must follow the course prescribed by the APA. PS 1221.66.3.2.2. Rules in the proposed text of a program statement are provisions that impose more restrictive requirements on inmates or the public, impose new restrictions on an inmate or the public, or establish new conditions or programs affecting inmates must first be published for public comment in the Federal Register, PS 1221.66.3.3.1, and then codified in Title 28 of the Code of Federal Regulations (CFR). PS 1221.66.3.4.

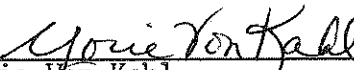
Under the APA, 5 U.S.C. §553, BOP PS 5880.30 is not a rule by which the BOP can effect changes detrimentally to prisoners' MPRD once set by the USPC. See 5 U.S.C. §551(4)(defining "rule"). It has neither force or affect of law for such purposes and is not even arguable authority for the BOP to oust the USPC's jurisdiction to administer 18 U.S.C. §4206(d) or to alter or undermine my 30-year MPRD as set by the USPC under 18 U.S.C. §4206(d), 28 C.F.R. §§ 2.5 and 2.53 or pursuant to Pub.L. 98-473, supra, §235(b)(3) as amended.

REMEDY:

My correct and legal MPRD is February 12, 2013. It was set by the agency - The only agency - Congress authorized to set such dates. The CSD is required to maintain the history of my most recent sentence computation and all material relating to my original sentence computation in my Judgement and Commitment (J&C) File, PS 5800.15.304, which must contain relevant parole materials. PS 5800.17.17. (7)&(8). The CSD is responsible to prepare my release as a result of USPC decisions, expiration of the confinement portion of my sentence, or any other method meeting legal qualifications for my release. PS 5800.15.901.

Source documents upon which the CSD/DSCC staff must determine my correct MPRD include USPC Notice of Actions and 28 C.F.R. §§2.5 and 2.53. PS 5800.502(h).

At present, I am detained by the BOP solely upon the alteration of my 30-year MPRD from February 12, 2013 to February 12, 2023 pursuant to PS 5880.30, which is not a "rule" authorized by the APA and certainly not an Act of Congress. As my correct and legal release date is February 12, 2013, the CSD must correct it accordingly. PS 5800.17.11.c. As my release date has passed, injury cumulates with each day it goes uncorrected. The BOP is prohibited by positive law from detaining me without an Act of Congress. 18 U.S.C. §4001(a).



Yorie Von Kahl
#04565-059

ATTACHMENT 1

FEDERAL 15 YEAR RECONSIDERATION HEARING PREHEARING ASSESSMENT

Offense of Conviction - Second Degree Murder of Federal Officers; Assaulting and Impeding Federal Officers by Use of a Deadly Weapon; Harboring and Concealment of a Fugitive; Conspiracy to Assault

Name	: Kahl, Yori	Institution	: Leavenworth USP
Reg No	: 04565-059	Sentences(s) Length/Type	: Life 4205 (B)(2)
Date of Birth	: 8/12/59	Parole Eligibility Date	: USPC Discretion
Detainer	: None	2/3 or MR Date	: 2/12/2013
Date Dictated	: 5/4/02	Fines/Restitution/Court Assessment	: None
		Reviewer	: David E. Johnson

Months in Custody 231 as of 5/4/02

I. PRESENT OFFENSE:

A. The prisoner was convicted by jury verdict in the District of North Dakota.

B. THIS IS A 15 YEAR RECONSIDERATION HEARING. On 2/13/83, the subject and several codefendants, including the subject's father, murdered two United States Marshals and wounded other United States Marshals and local law enforcement officers in a gun fight which ensued when the Marshals attempted to serve a federal probation violator warrant on the subject's father, a tax protester. The subject is reported to have fired the first shot killing a United States Marshal.

An initial hearing was conducted in 1984. The case was designated as OJ. On 7/10/84, a NOA was issued ordering: Continue to a 10 year reconsideration hearing in 6/94. The original Guidelines in this case were 100+ months.

A SIH was conducted in 6/86 and the Commission issued a NOA dated 7/17/86 modifying the previous decision per policy to a 15 year reconsideration hearing in 6/2001. A decision more than 48 months above the guidelines was found warranted in that the offense involved the murder of two government agents and crippling injuries to other government agents.

Subsequent SIH hearings resulted in no change. The material in the file indicates that the last SIH was conducted on 12/12/94. A NOA was issued on 5/22/95 ordering no change.

The subject waived his SIH in 1997 as he had requested disclosure and stated that he had not received disclosure. The last NOA in the file is dated 3/9/98 ordering: Continue for pre-hearing disclosure. The Commission issued a letter to the subject dated 3/10/98 informing him that, "...the file does not contain any documents informing the Commission of factors that have changed since your last federal parole hearing that are not also available to you in your institution file."

The subject waived SIH hearings in 1999 and 2001. He has requested disclosure of documents in the most recent I-24 form he signed dated 4/22/02. There is not a letter from the Commission in the file responding to the subject's request for disclosure. The file also contains an I-24 the subject signed and submitted on 4/22/02 indicating that he wishes to waive his scheduled SIH.

NOTE: A new recommendation regarding OJ consideration should be made.

EFB
5/24/02

C. The offense behavior is rated as Category 8 severity because it involves murder.

II. SALIENT FACTOR SCORE:

A = 3 Subject has no prior convictions.

B = 2 Subject has no commitments of more than 30 days that were imposed prior to the last overt act of the current offense.

C = 2 Subject was 23 years old at the commencement of the current offense.

D = 1 Subject has no prior commitment, less than three years prior to the current offense.

E = 1 Subject was not on parole, probation, confinement or escape status at the time of the current offense.

F = 0 Subject was not 41 years of age or more at the commencement of the current offense.

9 TOTAL SCORE

III. The guideline range is 100+ months.

IV. OTHER SIGNIFICANT PRIOR RECORD/STABILITY FACTORS:

According to the progress report dated 4/22/02, the subject is has had clear conduct since 1992. The only incident report in the file is dated 12/92 at USP Lewisburg for possession of a weapon (shank) which was handled by DHO sanction in 1/93. A sharpened metal rod was found in the subject's locker constituting a violation rated as greatest severity. The DHO imposed: Forfeit 30 SGT; 30 days D/S. The subject has no other misconduct incidents during his period of incarceration. Possession of a dangerous weapon other than a firearm or explosive is rated as new criminal behavior in a prison Category 3. The Rescission Guidelines are 12-16 months.

During his period of confinement, the subject has worked numerous job assignments. They include: Food Service, Steam Fitter, UNICOR tool and die, Education, Yard Orderly, Recreation, and Center Hall Orderly. Since 4/22/99, he has been assigned as a Central Hall Orderly and receives good performance ratings.

While at USP Lewisburg, the subject received Auto Mechanics Vocational Training- 180 hours. He also received his GED in 1991. He has ot participated in any counseling programs.

The subject will have served 232 months at the time of the 15 year Reconsideration Hearing. He is eligible for up to 36 months SPA.

V. CO-DEFENDANTS: Gordon Kahl (father) Deceased; Scott Faul -Life +15 years; David Broer - 10 years; Vernon Wagner -Disposition Unknown; Joan Kahl (mother) Acquitted

VI. FORM USA-792, AO-235, AO-337: An AO 325 in the file from the sentencing judge dated 6/24/83 indicates that the sentence was imposed in this case for the purposes of retribution and deterrence.

VII. PAROLE ON THE RECORD: No

DXJ

May 04, 2002

ATTACHMENT 2

ATTACHMENT 2

Yorie Von Kahl
Reg. No. 04565-059
U.S.P. Terre Haute
P.O. Box 33
Terre Haute, IN 47808

Charles E. Samuels, Jr.
Director, Bureau of Prisons
c/o
General Counsel for the Bureau of Prisons
320 First Street, N.W.
Washington, D.C. 20534

Re: Request for Investigation into and Correction of BOP
Unauthorized Alteration Of Release Date and for
Appropriate Action to Effect Correct Release Date

Dated: _____

Director Samuels,

I hereby request that your Office order an immediate investigation into a drastic change by BOP personnel of my mandatory parole release date of February 12, 2013 to February 12, 2023. Long prior to the original release date of February 12, 2013, I had exhausted remedies to this Office¹ in an effort to prevent illegal detention under the illegally altered date. Former Director Harley Lappin did in fact order an investigation into this matter and I have recently discovered correspondence in response thereto in which BOP personnel misrepresented the law and facts back to Director Lappin. In consequence, I urge you to re-order an investigation, including the seeking of legal advice into the legal authority of BOP action in respect to the change in the date, and I request that your Office provide me with any statutory authority under which such action was taken.

1. See Inmate Grievance Request No. 396297. See Exhibit L.

Basic Facts

Prior to April 12, 1994, the BOP and the U.S. Parole Commission consistently calculated my two-thirds/30-year mandatory parole release date as February 12, 2013. The two-thirds/30-year release date is statutory and enacted by Congress as Subsection 4206(d) of the Parole Commission and Reorganization Act of 1976 (PCRA) (P.L. 94-233). The Parole Commission was created by the Act, 18 U.S.C. § 4202, and administers the PCRA and particularly § 4206 with express delegation of authority to promulgate rules, regulations and guidelines to carry out its policies. 18 U.S.C. § 4203(a). See e.g., United States v. Addonizio, 442 U.S. 178, 188-89 (1979) ("The decision as to when a lawfully sentenced defendant shall actually be released has been committed by Congress, with certain limitations, to the discretion of the Parole Commission. Whether wisely or not, Congress has decided that the Commission is in the best position to determine when release is appropriate....").

While Congress did not authorize the BOP to administer the PCRA nor to promulgate rules or regulations to carry out its policies, Congress did authorized the BOP to compute sentences for purposes of sentence reduction based upon good-time credits. 18 U.S.C. § 4162 et seq. In performing such function Congress mandated that consecutive sentences be aggregated from which basis such deduction shall be calculated. § 4161. That statute was repealed by positive law on October 12, 1984, see Pub. L. 98-473, Tit. II, Ch. II, § 218(a)(4), 98 Stat. 2027. However, a saving clause preserved it for five years. id., § 235(b)(1)(B).

The BOP was required by § 4205(d) to provide its § 4161 computation to the U.S. Parole Commission with its summary report upon commitment of a prisoner into its custody. As I was committed into the custody of the Attorney General and BOP on June 24, 1983, the BOP made such computation and properly provided it to the Parole Commission. See Exhibit A (Sentence Data Summary, Prepared at FCI Bastrop, Texas).

The original Sentence Data Summary (SDS) calculated my § 4206(d) 2/3rds or 30-year mandatory parole release date as "2/12/2013." Exh. A. On its face, the SDS has been altered and a BOP employee has since altered the "2013" by pen with a "2023." id. It also reflects a single sentence of "Life + 15 years." id.

The Parole Commission's first Pre-Hearing Assessment shows on its face my "Two-Thirds" mandatory parole date as "2-12-2013." See Exhibit B (1984 Pre-Hearing Assessment).

Following my first Parole Hearing at FCI Bastrop, Texas in June of 1984, my case was designated "original jurisdiction" by the Parole Commission pursuant to 28 C.F.R. § 2.17 after which all parole-related decisions have been made by the National Commissioners. At that hearing I was expressly informed that my 2/3rds/30-year mandatory parole release date was February 12, 2013.

At my statutory interim parole hearing in 1986, I expressly requested that the Parole Commission provide me with a precise determination of my 2/3rds/30-year mandatory release date. In my presence the examiners made calculations and expressly informed me that I would serve no more than 30 years on the entire sentence. Under their "Evaluation," the examiners provided on record (and pursuant to my request) their official determination as follows:

On his life plus 15 year sentence, Kahl can serve at most 30 years which the Bureau computes to be the two-thirds point of his aggregate term.

See Exhibit C (1986)(Parole Review Summary). The 1986 Parole Review Summary also expressly shows on its face-page: "(TWO-THIRDS) OR STATUTORY MR DATE: 2-12-2013." id. The National Commissioners affirmed the decision.

At my 1988 statutory interim parole hearing, I was again informed that I could serve at most 30 years on my life plus 15 year sentence and the examiners again provided under their "Evaluation" section of the post-hearing Review Summary the following:

On his life plus 15 year sentence, subject will serve at most 30 years, The two-thirds point of the aggregate term.

See Exhibit D (1988 Parole Summary Review). The 1988 Parole Review Summary expressly shows on its face-page: "TWO-THIRDS OR STATUTORY MR DATE: 2/12/2013" and expressly adds thereto "(AFTER SERVICE OF 30 YEARS." id. The National Commissioners affirmed the decision.

The 1990 and 1992 Parole Review Summaries on their face-pages respectively state: "TWO-THIRDS OR STATUTORY MR DATE: 2/12/2013" and "2/3 or STAT MR DATE: 2/12/2013 (whichever comes first)." See Exhibit E (1990 Parole Summary Review); Exhibit F (1992 Parole Summary Review).

Following the 1992 parole hearing, I appealed to the Full National Appeals Board, which on the face-page the Original Jurisdiction Appeal Summary affirmatively showed: "2/3 DATE: 2/12/2013" and "MOS AT REL: 360."² See Exhibit G (Original Jurisdiction Appeal Summary).

The U.S. Parole Commission has consistently maintained that my 2/3rds/30-year mandatory release date is February 12, 2013 and the National Commissioners, including the Full National Appeals Board, has consistently affirmed that date.

On April 12, 1994, BOP personnel at USP Leavenworth, KS began to make changes in my 2/3rds/30-year mandatory parole release date. While the Sentence Monitoring Good Time Data record of that date shows the "PROJ[ECTED] SATISFACT[ION] D[A]T[E]" as "02-12-2013 TUE[SDAY]" and the "PROJ[ECTED] SATISF[ACTION] METHOD" as "TWO THIRDS," see Exhibit H (Sentence Monitoring Good Time Data print-out, 04-12-1994), the Sentence Monitoring Computation Data record of that same date show that my projected 2/3rds mandatory parole release date had been altered to "02-12-2023." See Exhibit I (Sentence Monitoring Computation Data print-out, 02-8-1994).

2. "MOS AT REL" is, of course, "months at release."

I did not discover this alteration until a team meeting in July 1994, when I was provided a copy of a Custody Classification Form and discovered that an additional 120 months had been added to my 2/3rds/30-year mandatory parole release date resulting in an increase in my custody level. See Exhibit J (Custody Classification Form print-out, 07-20-1994).

I spent considerable time attempting to correct this matter informally through my Unit Team and the Records Department at USP Leavenworth and in April 2002 I filed a request to the Inmate Systems Manager (ISM) to correct the matter prior to an approaching 15-year parole reconsideration hearing scheduled in July. See Exhibit K (inmate Request 4/25/02). The ISM responded that the altered date was based upon PS 5880.30, Appendix IV, Page 1, chapter 2.a(1)." id. It was apparent that my single sentence of life plus 15 years, which had been aggregated since 1983 pursuant to 18 U.S.C. § 4161, had been de-aggregated and made into multiple sentences altering the former 30-year release date to 40. id. The ISM, applying PS 5880.30, insisted the 40-year date was correct.

After arriving at USP Terre Haute in 2005, I filed a formal inmate grievance request, which I pursued to this Office. See Exhibit L. While BOP personnel answering my request at the various levels consistently appeared to apply the criteria embodied in BOP PS 5880.30 through which it appears the BOP was administering 18 U.S.C. § 4206(d), my then attorney pursued an inquiry for correction of the altered date to the North Central Regional Office. Regional Director Michael K. Nalley wrote him to explain that § 4206(d) expressly:

directs the Bureau [of Prisons] to "stack" two-thirds dates of consecutive sentences to arrive at one two-thirds/thirty year date for computation.

See Exhibit M (Letter of 1/24/2006 from Regional Director Michael K. Nalley to Barry A. Bachrach).³

3. Regional Director Nally informed Mr. Bachrach that he could not submit a request or appeal for an inmate. Mr. Nalley obviously overlooked the serious nature of the correction sought. Under BOP PS 1351.05 § 24, 1351.06 and 1400.04 anyone can request such correction.

Of course, § 4206(d) provides no directive to the BOP at all. The directive for all of § 4206(d) is clearly and facially to "the [Parole] Commission." Moreover, § 4203 expressly charges the Commission to carry out the national parole policy and effectuate the chapter.

Although I never received a direct response to my BP-11 to the General Counsel for the BOP, former Director Harley Lappin did in fact issue an inquiry as to why my original 2/3rds/30-year mandatory release date had been extended by ten years soon after I initiated my original inquiry. Director Lappin's inquiry was re-routed ultimately to Tim R. Barnett, ISM, USP Terre Haute, who answered it. See Exhibit N (Response 8/17/2005 from T.R. Barnett, ISM to Jon B. Evans re: Director Lappin's Correspondence).

ISM Barnett responded to Director Lappin's inquiry by stating that I was:

 serving a LIFE sentence followed by a consecutive 15 year sentence. 2/3rds of LIFE is 30 years. 2/3 of 15 is 10 years. 2/3rds date is 30 + 10 for a total of 40 years....
 Keep in mind, [and the inmate should be aware of this as well] the 2/3rds date is NOT a release date.
 It is a mandatory parole hearing date.

Exhibit N.

The Claim Rests Upon Official Action Without Authority Of Law, That Is Arbitrary, Capricious And Outright Illegal

The BOP was empowered by statute with authority and an express mandatory command to aggregate any and all consecutive sentences into a single sentence for the purpose of computing sentence reduction based upon good-time credits, 18 U.S.C. § 4161 et seq,⁴

4. 18 U.S.C. §§ 4161-4164 were contained in 18 U.S.C. Chapter 309, which was repealed on October 12, 1984 by Pub. L. 98-473, Tit. II, Ch. II, § 218(a)(4), 98 Stat. 2027. A saving clause, Pub. L. 98-473, supra, § 235(b)(1)(B), saved the chapter for 5 years. The BOP's sentence computation authority contained in §§ 4161-4164 ceased to exist for so-called "old law" sentences in 1989 and, in any case, prior to the existence of BOP PS 5880.30 and the actions taken by BOP in altering my mandatory parole release date.

which the BOP was then required to provide to the U.S. Parole Commission with its summary report. 18 U.S.C. § 4205(d). The BOP properly complied with these requirements by aggregating the terms of my sentence into a single sentence of life plus 15 years in its original Sentence Data Summary. See Exhibit A.

In the Act repealing the former good-time credit sentence reduction computation requirements of § 4161 et seq, Congress enacted a new section effectively maintaining the aggregation principle by providing that:

Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

18 U.S.C. § 3584(c).

The Parole Commission "treats" the BOP's aggregated sentence under former § 4161, (as provided to it under § 4205(d)), "as a single aggregate sentence for the purpose of every action taken by the Commission pursuant to [its] rules" in Title 28, Code of Federal Regulations, Part 2, § 2.1 et seq. See 28 C.F.R. §§ 2.5 and 2.65(a).

Section 4206 of Title 18, United States Code, governs "[p]arole release criteria" within which Congress prescribed the standards to be used by "the Commission" in its "determin[ation]" to release or deny release of a prisoner on parole. On its face and consistent with the PCRA's [d]efinitions," 18 U.S.C. § 4201, "creat[ion]" of the Parole Commission, id., § 4202, and the "[p]owers and duties of the Commission," id., § 4203, all of § 4206 is administered by the Parole Commission. The Commission is the only delegated authority to promulgate rules and regulations for parole release determinations and for the purpose of carrying out the national parole policy and purposes of the PCRA. See 18 U.S.C. § 4203(a).

Directed to the Parole Commission, § 4206(d) provides that:

Any prisoner serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after

having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier; Provided, however, That the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.

18 U.S.C. § 4206(d).

Pursuant to its authority and duty under § 4203(a), the Parole Commission promulgated rules and regulations to effectuate § 4206(d). Subtitled "Mandatory parole," the Commission provided that:

A prisoner...serving a term or terms of 5 years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of 30 years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined.

28 C.F.R. § 2.53(a).

The Commission further provided that:

When feasible, at least 60 days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

28 C.F.R. § 2.53(b).

Thus, the Commission does not require a hearing and has discretion to dispense with such hearing altogether. The force of the Regulation clearly mandates that after serving the requisite period relative to the term or terms, "whichever comes earlier," the "prisoner...shall be released.., unless pursuant to a hearing... the Commission" makes the exceptional determination. 28 C.F.R. § 2.53(a). This is not merely a reasonable interpretation of § 4206(d), it is the most obviously correct and only legal interpretation.

The command "shall be released" in the statute and regulation make clear that they establish a release date. ISM Barnett's message to the Director that the "2/3rds date is NOT a release date," but a "mandatory parole hearing date," see Exhibit N, is belied by the plain language of § 4206(d), which doesn't even use the word "hearing", and the regulations' clear message that if the Commission determines by a "review" prior to the "two-thirds date" that mandatory parole will proceed "no hearing shall be conducted." 28 C.F.R. § 2.53(b).

The Commission by regulation also has expressly interpreted § 4206(d) as establishing a "statutory release date" and has set the absolute upper limit to its guidelines at that date. 28 C.F.R. § 2.65(d). The regulation construes "the limit of the U.S. Code sentence" involved in the procedure literally as conterminous with § 4206(d)'s mandatory parole release date. id.

Thus, the agency created by Congress to administer § 4206, to promulgate rules and regulations to effectuate that section and the PCRA's national parole policy and, thus, with authority to interpret the section and apply it, performed all of its mandatory and discretionary functions by setting and affirming my mandatory parole release date at February 12, 2013.

Courts that have construed § 4206(d) have found it to create "mandatory parole," see La Magna v. U.S. BOP, 494 F.Supp. 189, 192 (D. Conn. 1980), with "a very strong presumption of parole at the two-thirds point for any prisoner serving more than five years." id., at 192 n. 11. The Third Circuit has pointedly held that:

Under 18 U.S.C. § 4206(d)(repealed), a federal prisoner will be released on mandatory parole unless the Parole Commission "determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime." For an inmate serving a life sentence or greater than 45 years, the mandatory parole date comes after serving two-thirds of his sentence or 30 years, whichever is earlier.

Mansfield v. Beeler, No. 06-2240, 238 Fed. Appx. 794, 798 (3rd Cir. 2007). See also United States v. Addonizio, 442 U.S. 178, 188 n. 13 (1979)("[A]ny prisoner sentenced to more than 5 years' imprisonment is entitled to be released on parole after serving two-thirds of each consecutive term or 30 years, whichever is first, unless the Commission determines that the prisoner 'has seriously or frequently violated institution rules' or that there is a reasonable probability that he would commit further crimes. 18 U.S.C. § 4206(d).").⁵ Addonizio noted that § 4206(d)'s provision "entitl[ing] [a prisoner] to be released" absent the special "determin[ation]" is one of the "certain limitations" on the Commission's "discretion." 442 U.S. at 188 & n. 13.

I have been unable to discover any statutory authority by which Congress has delegated to the BOP power to de-aggregate any paroleable sentence. There is considerable authority, however, that once aggregated under § 4161 such sentences can never be de-aggregated. See 28 C.F.R. §§ 2.5, 2.65(a). See also 18 U.S.C. § 3584(c). See also Gill v. U.S. Parole Comm'n, 692 F.Supp. 623, 626 (E.D. Va. 1988); Boone v. Menifee, 387 F.Supp.2d 338, 347 (S.D.N.Y. 2005)("[o]nce aggregated, the two sentences cannot then be divided.... They are but a singly sentence.")(quoting Howard v. U.S. Parole Comm'n, No. 88-cv-1769, 1988 WL 98140 (D.D.C. Aug., 31, 1988)); McCray v. U.S. Bd. of Parole, 542 F.2d 558, 560 (10th Cir. 1976)("Once...aggregated under the mandatory provisions of § 4161, consecutive sentences are not to be subsequently de-aggregated...."). And see Chatman-Bey v. Meese, 797 F.2d 987,

5. The legislative history of § 4206(d) says that "this section provides more liberal criteria for release on parole for prisoners with long sentences after they have completed two-thirds of any sentence or thirty years, whichever occurs first." H. Conf. Rep. No. 94-838, Joint Explanatory Statement of the Committee of Conference, p. 27 (reported in 1976 U.S. Code Cong. & Adm. News, Vol. 2, p. 360).

992-94 & nn. 6, 8 (D.C. Cir. 1986).⁶

The words "term or terms" as employed in § 4206(d) to embrace the plural appears to have been rejected in practice by the BOP. In an early BOP Policy Statement the BOP purported to interpret the parole statutes by omitting the conjunctive plural "or terms" from the text of § 4206(d) in respect to service of "30 years of each consecutive term of more than 45 years including any life term...." PS 7500.46A, 3/18/77, p.5. "[T]erm or terms" as used in § 4205(a) have always been treated to effectuate the object of that statute - i.e., to ensure that the 1/3rd date for eligibility does not exceed 10 years, thus treating sentences of more than 30 years as a sentence of 30 years. See United States v. Fountain, 768 F.2d 790, 799 (7th Cir. 1985); Chatman-Bey, supra, 797 F.2d at 792, 793-94. See also United States v. Franklin, 313 F.Supp. 43, 45-46 (S.D. Ind. 1970)(holding that "'term or terms'" used in pre-PCRA parole statutes should be given "same" construction" in different sections), aff'd, 440 F.2d 1210 (7th Cir. 1971).

The record shows that the complained of alteration in my mandatory parole release date on April 12, 1994 by BOP personnel was premised on BOP PS 5880.30 which purports to be a revised "Sentence Computation Manual" for "('Old Law' - Pre-CCCA-1984)" sentences. The revised Manual under the Program Statement is dated July 16, 1993. The Manual purports to interpret both the parole statutes and

6. The practice of aggregating and treatment of more than one consecutive sentence or multiple consecutive terms of a single sentence as a single sentence has persisted for at least most of a century as a rule of law. See e.g., Phillipps v. United States, 212 F.2d 327, 335 (8th Cir. 1954)(citing cases); Brown v. United States, 256 F.2d 151, 152 (5th Cir. 1958); Affronti v. United States, 350 U.S. 79, 83 & nn. 12 & 13 (1955). Since 1980, the Parole Commission ensured that practice by rule having the force of law, 28 C.F.R. § 2.5, and Congress re-enacted it by positive law in 1984. 18 U.S.C. § 3584(c)(effective Nov. 1, 1987). Courts have in fact expressly applied the aggregate command of § 3584(c) in conjunction with 28 C.F.R. §§ 2.5 and 2.65(a) to cases involving paroleable sentences imposed prior to § 3584(c)'s effective dates. Boone, supra, 387 F.Supp.2d at 346-47; Bryant v. U.S. Parole Comm'n, No. 5:05-HC-801-BO, 2006 U.S. Dist. LEXIS 96861 (E.D.N.C. Sept. 26, 2006).

regulations promulgated by the Parole Commission. It also purports to administer those statutes and regulations by directives to the BOP personnel.

The record shows that this 1993 Manual, under guise of a Program Statement, was employed to interpret § 4206(d) and to impliment it in respect to my formerly long-established mandatory parole release date calculated, set and repeatedly affirmed by the Parole Commission and the Full National Parole Board by which that date was extended without any hearing or notice by ten years.

The Manual does not show on its face any statutory authority for its creation and nowhere cites any statutory authority delegated to the BOP to administer the parole statutes or to overrule and alter actions of the Parole Commission made pursuant to their own delegated authority.

I have been unable to discover any evidence or record that so much as suggests that this Manual was promulgated or otherwise created as required by the Administrative Procedures Act (APA). It appears to never have been published in the Federal Register with any notice and comment period nor can I find any trace of it anywhere in the Code of Federal Regulations.

As this record shows, PS 5880.30 acts as a grant of immense power over matters of utmost substance. It thus purports to be a legislative rule with power to act upon substance and to effect such substance in the gravest manner retroactively no less.

The actions of the BOP personnel creating the Manual in derogation of the APA and without any statutory authority to do so for purposes of construing, interpreting or administering the parole statutes and particularly § 4206(d) are without authority of law and are arbitrary, capricious and outright illegal.

Employment of the Manual or any other basis to de-aggregate the terms of my sentence and to extend my mandatory parole release date by ten years is thus without authority of law and arbitrary, capricious and illegal action.

Even if there is somewhere authority in the BOP to create such a Manual by which it may so drastically alter settled sentences (if not settled law), to employ it in such fashion without notice and hearing would render it illegal and unconstitutional under at least the Constitution's Ex Post Facto and Due Process Clauses. Of course, the APA prohibits this very sort of retroactive rule-making as well.

The U.S. Parole Commission and its statutes were repealed by positive law on October 12, 1984 by Pub. L. 98-473, Tit. II, Chap. II, § 218(a)(5), 98 Stat. 2027, but saved by § 235(b)(1)(A) as amended through October 31, 2002,⁷ when the saving amendments expired mandating that release dates be affirmatively set prior thereto. See United States v. Feist, 585 F.Supp.2d 1107, 1109, 1111-12 (D.N.D. 2008)(citing amendments and statutory requirements to provide set release dates prior to November 1, 2002 and finding that last decision of Parole Commission prior to the expiration date of "continue to expiration" constituted the Commission's binding decision for prisoner post-November 2, 2002 under new regime)(following Feist v. Schultz, 2006 WL 657003 (E.D. Cal. March 13, 2006)).

The Commission's last decision prior to the final repeal of the parole laws and Congress' mandate to set release dates prior to that date of November 1, 2002 in respect to me and my parole consideration consisted of a 15-year reconsideration hearing in June of 2001 and, of course, the 2/3rds/30-year mandatory release date

7. Strictly, the 5-year saving clause expired on October 31, 1989 over a year prior to its first 5-year statutory extension. However, this Complaint concerns the 2/3rds/30-year mandatory release date of 2/12/2013.

repeatedly affirmed and reaffirmed. While the June 2001 reconsideration hearing established a presumptive release date,⁸ due to the Commission's refusal to provide me with records mandatorily required to be kept and provided upon request, 18 U.S.C. § 4208 (h)(2); 28 C.F.R. §§ 2.13(f) and 2.56(e), and its deliberate and finally admitted destruction thereof, I have been unable to obtain any hearings within the terms and under the conditions required by the PCRA since 1995.

The 2/3rds/30-year mandatory parole release under these circumstances is and remains February 12, 2013 as a matter of fact and law. Due solely to the arbitrary, capricious, illegal and apparently unconstitutional actions of BOP personnel - in the face of notice of their illegal actions, I was not released on that date and remain illegally detained without authority of law.

Remedy

As positive law, including the regulations by which such law is administered, upon these facts and circumstances, mandated my release no later than midnight of February 12, 2013, and because every day of continued detention is wholly arbitrary, capricious, illegal and apparently unconstitutional, the Office of the Director of the Bureau of Prisons should immediately order its General Counsel to coordinate a prompt investigation into this matter with the Office of Legal Counsel, the Assistant Attorney General of Department of Justice's Criminal Division⁹ and any other department or office that may be required, and to:

8. See 1986 Parole Review Summary (Exhibit C) ("reach[ing] ultimate recommendation to continue for 15 year reconsideration hearing because in June, 2001, Kahl will have served about 18 years 4 months and the panel does not feel that is an excessive sanction" for the instant offense). See also 1988 Parole Review Summary (Exhibit D)(same). Section 4206(a)-(c) together with the rules, regulations and guidelines created a "presumptive parole date." Montoya v. U.S. Parole Comm'n, 908 F.2d 635, 637 (10th Cir. 1990). See 43 Fed. Reg., No. 131, Monday, Sept. 18, 1978, p. 41411 and 44 Fed. Reg., No. 11, Tuesday, Jan. 16, 1979, p. 3404 (proposed and final rules establishing as part of the national parole policy a "presumptive date policy").

9. The Assistant AF over the DOJ's Criminal Division has full authority to resolve this matter if no other single entity does. See 28 C.F.R. § 0.55(o).

ORDER or CAUSE TO ORDER all BOP personnel at every level to correct my mandatory parole release date to the original date of February 12, 2013 immediately and to take immediate action to enforce it; and to

ORDER or CAUSE TO ORDER my immediate release with a nunc pro tunc provision to my official, legal and legally affirmed 2/3rds/30-year mandatory release date of February 12, 2013; and to

PROVIDE any and all statutes and regulations to me by which the BOP has purported to rest its authority to alter my sentence and mandatory release date.

All factual matter asserted herein are true and correct to my knowledge and I so declare under the terms and requirements of 28 U.S.C. § 1746.

Yorie Von Kahl
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