

# UNITED STATES DISTRICT COURT

for the

Scott William Faul,

*Petitioner*

v.

Mark W. King, Warden,

*Respondent*

*(name of warden or authorized person having custody of petitioner)*

Case No.

*27.*  
[Number supplied was  
0:23-cv-01337-MSA-JFD]  
*(Supplied by Clerk of Court)*

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

### Personal Information

1. (a) Your full name: Scott William Faul  
(b) Other names you have used: \_\_\_\_\_
2. Place of confinement:  
(a) Name of institution: Sandstone Federal Correctional Institution  
(b) Address: 2300 County Road 29; P.O. Box 1000  
Sandstone, MN 55072  
(c) Your identification number: Reg. No. 04564-059
3. Are you currently being held on orders by:  
☒ Federal authorities      ☐ State authorities      ☐ Other - explain: \_\_\_\_\_
4. Are you currently:  
☐ A pretrial detainee (waiting for trial on criminal charges)  
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
If you are currently serving a sentence, provide:  
(a) Name and location of court that sentenced you: District of North Dakota,  
Southeastern Division; Fargo, North Dakota  
(b) Docket number of criminal case: C3-83-16  
(c) Date of sentencing: June 24, 1983  
☐ Being held on an immigration charge  
☐ Other (explain): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Decision or Action You Are Challenging

5. What are you challenging in this petition:
- ☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
  - ☐ Pretrial detention
  - ☐ Immigration detention
  - ☐ Detainer
  - ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
  - ☐ Disciplinary proceedings
  - ☐ Other (*explain*): \_\_\_\_\_
6. Provide more information about the decision or action you are challenging:
- (a) Name and location of the agency or court: United States Parole Commission,  
90 K Street, N.E., Third Floor, Washington, DC 20530
  - (b) Docket number, case number, or opinion number: \_\_\_\_\_
  - (c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):  
January 31, 2023 Notice of Action; and, April 18, 2023 Appeal  
Notice of Action.
  - (d) Date of the decision or action: January 31, 2023 and April 18, 2023.

### Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: See attached petition.

(2) Date of filing: March 1, 2023.

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: See attached petition.

(5) Date of result: April 18, 2023.

(6) Issues raised: See attached petition.

(b) If you answered "No," explain why you did not appeal: \_\_\_\_\_

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a second appeal: \_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal: \_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_



- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: \_\_\_\_\_

(b) Date of the removal or reinstatement order: \_\_\_\_\_

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

- (a) Kind of petition, motion, or application: \_\_\_\_\_
- (b) Name of the authority, agency, or court: \_\_\_\_\_
- \_\_\_\_\_
- (c) Date of filing: \_\_\_\_\_
- (d) Docket number, case number, or opinion number: \_\_\_\_\_
- (e) Result: \_\_\_\_\_
- (f) Date of result: \_\_\_\_\_
- (g) Issues raised: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** The Commission is violating Faul's Fifth Amendment  
right to due process because its "likelihood of recidivism"  
determination lacks a rational basis.

\_\_\_\_\_

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

See attached petition.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

**GROUND TWO:** The Commission is violating Faul's First Amendment rights by using Faul's dislike for the government as a material factor for denying Faul's parole.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

See attached petition.

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes

☐ No

**GROUND THREE:** 18 U.S.C. § 4206(d)'s recidivism clause is void for vagueness under the Fifth Amendment both facially and as applied to Faul.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

See attached petition.

(b) Did you present Ground Three in all appeals that were available to you?

☒ Yes

☐ No

GROUND FOUR: 18 U.S.C. § 4206(d)'s recidivism clause violates the  
First Amendment as applied to Faul.

(a) Supporting facts (Be brief. Do not cite cases or law.):

See attached petition.

(b) Did you present Ground Four in all appeals that were available to you?

☒ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

#### Request for Relief

15. State exactly what you want the court to do: WHEREFORE, Petitioner prays that the  
Court grant this petition and order Faul's immediate release from  
imprisonment to parole.

**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

May 10, 2023

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: May 10, 2023

Scott William Faul

*Signature of Petitioner*

*Signature of Attorney or other authorized person, if any*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

Scott William Faul,  
Petitioner,

v.

Mark W. King, Warden,  
Respondent.

Case No.

8.7  
Number supplied was  
0123-cv-01337-MJD-JFD

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Petition For Writ Of Habeas Corpus  
Pursuant To 28 U.S.C. § 2241

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The Court should order Petitioner Scott Faul's release from imprisonment to parole because the Parole Commission's (Commission) decision denying Faul's mandatory parole violated Faul's First and Fifth Amendment rights or, in the alternative, 18 U.S.C. § 4206(d)'s recidivism clause violates the First and Fifth Amendments.

I. Introduction.

According to attorney Ralph Vinje:

I am one of the attorneys who represented one of Scott Faul's co-defendants. Of all of the people involved in that incident, I believe that Scott Faul was the one who suffered most as a result of the actions of law enforcement.

After the car in which he was riding was stopped by police, all of them in unmarked cars and none of them in uniform, Scott, who was not wanted for anything by the law, tried to run off into the woods. He was forced back into the circle by a U.S. Marshal and people began shooting at him. In reaction thereto, he fired over their heads.

As I stated, I was at the trial. I am firmly convinced

that none of the woundings or killings were a direct result of anything that Scott Faul did.

I realize he was convicted of two counts of murder, however, I do not believe he personally did anything to cause those deaths.

Scott Faul has served a great deal of time for a relatively innocent act and his unfortunate circumstance of having been in the company of the Kahl family at the time an attempt was made to arrest Gordon.

I truly believe that parole would be in the best interest of Scott Faul and of the country.

October 31, 2002 letter by Ralph Vinje, See Ex. A.

On February 13, 1983, the U.S. Marshals Service, aided by several local law enforcement officers, attempted to execute a misdemeanor probation violation warrant on Gordon Wendel Kahl - an experienced gunman and decorated World War II veteran who is reported to have publicly stated on several occasions that he would not peaceably return to federal prison. Having ridden along for a meeting, Petitioner Scott Faul was on his way home with the Gordon Kahl family when the marshals attempted to execute their warrant. The marshals ambushed the party that was traveling down the rural country road by Medina, North Dakota. It was clear that something bad was going to happen. Faul attempted to escape the standoff, but he was cut off by Marshal Wigglesworth, who probably mistook Faul for Gordon Kahl. Faul was pinned into the kill zone when a shot rang out. A blaze of gunfire erupted over the next 15 seconds. When the smoke cleared, two marshals were dead, one was grievously injured, two local law enforcement officers had suffered gunshot wounds and Gordon Kahl's son, Yorie Von Kahl, was grievously injured. Faul

rushed Yorie Kahl to the hospital and then fled the area to avoid further threats or violence. Gordon Kahl disarmed the surviving law enforcement officers and then fled. Faul self surrendered the next day after negotiating a peaceable surrender. Gordon Kahl stayed on the run until he was found and killed in Arkansas.

For forty years, Faul has maintained his innocence while acknowledging the deep tragedy of the events of February 13, 1983. Faul agrees with then Chief Eighth Circuit Judge Lay's dissent in his appeal, in which Judge Lay concluded that Faul "did not and could not receive a fair trial in the District of North Dakota." United States v. Faul, 748 F. 2d 1204, 1223 (8th Cir. 1984). See Ex. B. Faul agrees with Bud Warren, former U.S. Marshal for the District of North Dakota, who contributed to a lawmen's report concluding that, "aside from the violation of orders from superiors, had the U.S. Marshals used proper **basic** arrest policies and tactics, the arrest of Kahl most probably could have been carried out without a violent confrontation." See Faul v. Lejeune, No. 22-cv-2993 (MJD/JFD) (D. Minn.), Doc. 14, Filed 2-21-23, Reply Ex. B at 8 (emphasis in original). Faul agrees with Steve Schnabel and Darrell Graf - local law enforcement officers, one of whom suffered gunshot wounds that day - who have concluded that Faul was more a victim of regrettable circumstances than a culpable individual. See Exs. C and D. Faul agrees with defense attorney Ralph Vinje that "Faul has served a great deal of time" for "his unfortunate circumstance of having been in the company of the Kahl family at the time an attempt was made to arrest Gordon." See Ex. A. Faul



agrees with defense attorney Irvin Nodland, who stated that "Scott would be successful in completing any parole period he might be required to serve." See Ex. E. Faul agrees with and appreciates the many letters of support he has received over the years in support of his release.

Faul's first meaningful opportunity to be released from imprisonment was his 2002 discretionary parole hearing. In advance of that hearing, the Commission conducted an intensive review of Faul's pre-incarceration personal characteristics and his institutional record. Based on this review, the Hearing Examiner determined that Faul had no probability of recidivism.

The Hearing Examiner stated:

So, you could serve another 5 to 10 years in custody before the commission will act to release you ... not because probably you are any kind of threat to the community or any of those other kinds of things ... be like, um, the chances of you doing anything illegal if you were released today is virtually nill. Um, they would probably never hear a squeak out of you again. I'm sure you're not a risk. That's not the issue. Risk is not the issue with you. It's accountability. Um, how much time should you spend in prison for being involved in this incident. Even though there's nothing to indicate that you were specifically convicted of shooting anybody or killing anybody, that you were not involved in some overt act that led to the death of somebody. As your attorney understood and expressed, and as I said initially, the fact of the matter is you were there....

Excerpt from Transcript of 2002 Parole Hearing, See Exhibit F attached hereto, at 004.

To summarize the Commission's determination, Faul was denied discretionary parole because of accountability, though it was acknowledged that Faul had no risk of recidivism. The Commission affirmed the Hearing Examiner's determination without modifying

the Hearing Examiner's comments regarding recidivism.

Since the 2002 discretionary parole hearing, Faul's probability of recidivism has been assessed 10 times via the Attorney General's PATTERN tool. As background, the PATTERN tool was developed in consultation with academic recidivism researchers and is updated annually. Inmates are assessed under the PATTERN tool twice a year. The PATTERN tool considers and weighs the following factors: (1) Current Age; (2) Walsh Conviction; (3) Violent Offense; (4) Criminal History Points; (5) History of Escapes; (6) History of Violence; (7) Education Score; (8) Drug Program Status; (9) All Incident Reports (120 Months); (10) Serious Incident Reports (120 Months); (11) Time Since Last Incident Report; (12) Time Since Last Serious Incident Report; (13) Financial Responsibility Program Refuse; (14) Programs Completed; and, (15) Work Programs. See FSA Recidivism Risk Assessment (PATTERN 01.03.00), Ex. G. For more background on the PATTERN tool and its scientific basis, Faul directs the Court to the July 19, 2019 publication from the United States Department of Justice, Office of the Attorney General, titled, "The First Step Act of 2018: Risk and Needs Assessment System."

In each of the Attorney General's 10 assessments, Faul has been scored as having a "minimum" probability of recidivism - the lowest possible PATTERN score. See FSA Time Credit Assessment, 01-19-2023, Ex. H. Inmates with minimum PATTERN scores are encouraged to participate in productive activities - a lengthy list supplied in 18 U.S.C. § 3635(3)(C), including, "a prison job, including through a prison work program" - so as to maintain

their minimal probability of recidivism. Faul has maintained consistent employment during his 40 years of imprisonment and has thus stayed productive that entire time.

The Commission scheduled Faul's mandatory parole hearing for January 25, 2023. In advance of that hearing, Faul asked his case manager, Jacob Anderson, to review his file to see if there were any materials that would suggest recidivism, so that Faul could address any such concerns through programming or other measures. Case Manager Anderson's response was, "I don't see anything [in your central file] that would indicate you would be a security risk or have any evidence that you would commit any crimes." See INMATE REQUEST TO STAFF, April 26, 2022, Ex. I.

Based on the 2002 parole hearing, the Attorney General's consistent "minimum" recidivism assessments, and Case Manager Anderson's review of Faul's file, Faul did not understand there to be an issue regarding his probability of recidivism.

The Commission concluded otherwise. On January 31, 2023, the Commission issued a Notice of Action denying Faul mandatory parole based on its conclusion that there was a "reasonable likelihood that [Faul] will commit any Federal, State or local crime." See Notice of Action, January 31, 2023, Ex. J. Faul appealed the Commission's decision to the National Appeals Board. See Appeal, March 1, 2023, Ex. K. The National Appeals Board affirmed the Commission's decision. See Appeal Notice of Action, April 18, 2023, Ex. L. The Board cited the following factors in affirming the Commission's decision:

First, the Commission noted the seriousness of your

offense conduct which involved radical anti-government actions that led to the death and serious injury of several federal law enforcement officers. Second, you continue to deny your crimes and doubt that the evidence presented at your trial was truly sufficient to convict you. You also minimize the actions you took that day, paint yourself as the true victim, and deny the legitimacy of the U.S. Government, the court system, and law enforcement officers involved in your case. All these factors influenced the Commission's decision that you would reoffend if released. Parole requires acquiescence to the authority of both the Parole Commission and U.S. Probation Officers who will supervise you, and the court system in general which sentenced you. Your failure to respect or even acknowledge the authority of these entities is concerning and provides sufficient reason to deny parole. The Commission also noted that you have not programmed sufficiently to address the criminal behavior you have thus far exhibited. It has been recommended that you participate in more programming to reduce the likelihood that you would commit another crime if released and the Board echoes this recommendation.

Appeal Notice of Action, Ex. L. Faul now brings this action under 28 U.S.C. § 2241.

## II. Argument.

The Court should order Faul's immediate release from imprisonment to parole because the Commission is violating Faul's Fifth and First Amendment rights. Moreover, 18 U.S.C. § 4206(d)'s recidivism clause violates the First and Fifth Amendments.

- A. The Commission is violating Faul's Fifth Amendment right to due process because its "likelihood of recidivism" determination lacks a rational basis.

The Commission violates Fifth Amendment due process when its determinations lack a rational basis. Jones v. Turner, 903 F. 2d 1178, 1184 (8th Cir. 1990). The Commission's determination that Faul has a reasonable likelihood of recidivism lacks a rational basis and thus violates Faul's Fifth Amendment right to due

process.

1. Background.

Faul is an "old law" prisoner and is subject to the parole system. In related litigation, Faul v. Lejeune, No. 22-cv-2993 (MJD/JFD) (D. Minn.), the government conceded that Faul is eligible for mandatory parole consideration under 18 U.S.C. § 4206(d). Section 4206(d) provides in relevant part that a prisoner must be paroled unless the Commission determines that there is a "reasonable probability that he will commit any Federal, State or local crime." 18 U.S.C. § 4206(d). The Commission determined that there is a reasonable likelihood that Faul will commit a future crime, and thus denied Faul's mandatory parole.

2. Argument.

The Commission's recidivism determination lacks a rational basis. There is no rational basis for concluding that a 70 year old family man who farmed until February 13, 1983 and who has not committed a crime in 40 years has a "reasonable probability" of recidivism. See United States v. Linsley, No. 88-cr-413-CRB, 2020 U.S. Dist. LEXIS 127488, at \*9 (N.D. Cal. July 20, 2020) (ordering release of inmate with life sentence and extensive criminal history and stating, "Mr. Linsley is now 73 years old. He is very unlikely to recidivate.") (citing USSC, The Effects of Aging on Recidivism Among Federal Offenders (Dec. 2017)).

As for the Commission's recidivism determination, there is no rational basis for using an inmate's belief in his innocence as a factor contributing to a likelihood of recidivism. Also, there

is no rational connection between an inmate's approval (or lack of approval) for the federal government and his likelihood of recidivism. Relatedly, the Commission has no rational basis for failing to consider factors (e.g., age, criminal history, etc.) that are uniformly used in recidivism models.

The Commission's recidivism determination lacks a rational basis for the additional reason that it is in direct conflict with the Attorney General's 10 assessments of Faul's recidivism, Case Manager Anderson's assessment of Faul's recidivism, and the Commission's 2002 assessment of Faul's recidivism. The Commission has not identified any reason why its recent determination is at direct odds with all prior assessments.

Finally, the Commission's recidivism determination lacks a rational basis because it is based on inaccurate facts. Gambino v. Morris, 134 F. 3d 156, 164 (3rd Cir. 1998). The Commission states that Faul's dim view of the federal government will result in him disobeying government orders during his parole, yet it ignores that Faul has been a model inmate during his 40-year term of imprisonment. Faul's institutional record provides support for the fact that Faul obeys government orders notwithstanding his personal political views. According to Faul's institutional record:

Inmate Faul earned his high school diploma prior to his incarceration in the Bureau of Prisons. He has completed two educational classes during his current term of incarceration, and has also completed two Release Preparation Program (RPP) classes (see above listed classes). In addition to the above listed classes, inmate Faul has certificates of completion for the following classes: Nutritional Health II, Personality & Goal Setting, Principles For Success, Introduction to

Community Skills, Communication Part II, and Personality and Stress Control. Faul has been awarded "cube of the week" on two occasions for his extraordinary cleanliness and sanitation standards. He has also been awarded for his "Outstanding Work Performance" for his superior work performance while employed in UNICOR and for assisting in stripping and waxing floors in the AW Complex area. Faul has at least 20 work performance ratings where he was given bonus pay for exceeding work standards, and being a good worker. He is on the waiting list for the Release Orientation Preparation pre-release seminar, and FSA Money Smart for Older Adults, and FSA Anger Management. It is expected that he will continue to program and complete additional educational classes prior to his release.

See Progress Report, Ex. M.

The Commission states that Faul's programming has been insufficient, yet it ignores that Faul has completed all of the programming that his case manager has assigned to him, including the anger management course, which Faul successfully completed in 2022. See FCI-Sandstone CBT Priority Practice Group Entitled: Anger Management, Ex. N. The Commission states that Faul does not accept his guilt, but ignores that Faul has repeatedly acknowledged the tragedy of the events of February 13, 1983 and the harm it inflicted on everyone involved.

The Commission is violating Faul's Fifth Amendment due process rights by denying Faul's mandatory parole without a rational basis. The Court should remedy this circumstance by ordering Faul's immediate release from imprisonment to parole.

B. The Commission is violating Faul's First Amendment rights by using Faul's dislike for the government as a material factor for denying Faul's parole.

The Commission is violating Faul's First Amendment rights by using Faul's dislike for the government as a material factor for denying Faul's parole. The First Amendment prohibits the

government from taking adverse action against a person based on the exercise of First Amendment protected activity when the adverse action would chill a person of ordinary firmness. Revels v. Vincenz, 382 F. 3d 870, 876 (8th Cir. 2004).

The Commission is taking adverse action against Faul on account of his participation in First Amendment protected activity. The Commission denied Faul release from prison because Faul holds anti-government views and has expressed those views in petitioning activity before the Commission and the courts. Holding and expressing negative views about the government is First Amendment protected activity. R.A.V. v. St Paul, 505 U.S. 377, 418 (1992). The Commission's Notice of Action and its Appeal Notice of Action identify Faul's participation in this First Amendment protected activity as a reason for maintaining Faul's imprisonment. See Notice of Action, January 31, 2023, Ex. J; and, Appeal Notice of Action, April 18, 2023, Ex. L. Imprisonment is an adverse action that would chill a person of ordinary firmness.

The Commission is violating Faul's First Amendment rights. The Court should remedy this circumstance by ordering Faul's immediate release from imprisonment to parole.

C. 18 U.S.C. § 4206(d)'s recidivism clause is void for vagueness under the Fifth Amendment both facially and as applied to Faul.

A statute is void for vagueness under the Fifth Amendment if it is (1) so vague that it fails to give ordinary people fair notice of the conduct it punishes, or (2) so standardless that it invites arbitrary enforcement. Johnson v. United States, 576 U.S.



591, 595 (2015).

1. 18 U.S.C. § 4206(d)'s recidivism clause is void because it fails to give ordinary people fair notice of the conduct it prohibits.

Section 4206(d)'s recidivism clause prevents a prisoner from being released from imprisonment to parole if there is a "reasonable probability that he will commit any Federal, State or local crime." 18 U.S.C. § 4206(d). The recidivism clause provides no notice of what conduct a prisoner must refrain from (or engage in) to avoid the "reasonable probability" finding. The statute is void on its face.

Certainly, nothing in the statute suggests that one must have a certain view about the government to avoid the "reasonable probability" finding. Or that someone with consistent minimum recidivism assessments could plausibly be deemed to have a "reasonable probability" of recidivism. Or that it would be necessary to participate in programming beyond that what has been recommended by a prisoner's case manager based on the case manager's assessment of the prisoner's recidivism reduction needs. The statute is void as applied to Faul.

2. 18 U.S.C. § 4206(d)'s recidivism clause is void because it is so standardless that it invites arbitrary enforcement.

The recidivism clause permits the Commission to deny parole if it determines that a prisoner has a "reasonable probability" of committing any Federal, State or local crime. Section 4206(d) contains no standards by which the Commission is to make its recidivism determination. It is thus purely arbitrary and is void for vagueness on its face.

As applied to Faul, the recidivism clause is so standardless that it permits the Commission to determine that Faul has a "reasonable probability" of recidivism notwithstanding that Faul has been deemed to have a minimum probability of recidivism by the Attorney General, no probability of recidivism by his case manager, and no probability of recidivism by the Commission itself in 2002. The recidivism clause's vagueness allows the Commission to use the recidivism determination as a pretext for "accountability" or "[because] you were there," as the Hearing Examiner put it in 2002. Excerpts from Transcript of 2002 Parole Hearing, See Ex. F at 004 and 005. The recidivism clause is void for vagueness as applied to Faul.

Section 4206(d)'s recidivism clause is void for vagueness on its face and as applied to Faul. Certainly, section 4206(d)'s recidivism clause is more standardless and provides less notice of what conduct it prohibits than the residual clause struck down in Johnson. The recidivism clause is unenforceable against Faul; the Court should order Faul's immediate release from imprisonment to parole.

D. 18 U.S.C. § 4206(d)'s recidivism clause violates the First Amendment as applied to Faul.

The Supreme Court's recent decision in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. \_\_\_, 213 L. Ed. 2d 387 (2022) clarified the standard for reviewing laws that restrict constitutionally protected activity. Though Bruen involved a Second Amendment challenge, the Court expressly noted that the "Second Amendment standard accords with how we protect other

constitutional rights" and cited First Amendment decisions to make the point. Id. at 409.

Under Bruen, the standard for applying the First Amendment is as follows: When the First Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of regulating expressive activity.

The First Amendment's plain text covers Faul's conduct. The First Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment I.

The Commission invoked the recidivism clause based on Faul's "own words" in petitions he filed with the Commission and in the Courts. See Faul v. Lejeune, No. 22-cv-2993 (MJD/JFD) (D. Minn.), Doc. 12-21, Filed 02-10-23, Government Exhibit 21 at 11 and 12. Yet, petitioning the government for relief is activity covered by the First Amendment's plain text. See Amendment I. So too is expressing views about government officials. See id. Faul has shown that 18 U.S.C. § 4206(d)'s recidivism clause restricts activity protected by the First Amendment's plain text.

The burden thus falls on the Government to show that the recidivism clause is consistent with the Nation's historical tradition of regulating First Amendment-protected activity. The Government cannot do so. Criticizing government officials is as

American as apple pie. Even name calling is firmly rooted in our Nation's history and tradition of political discourse. Ask "Lyin" Ted Cruz, "Lil" Marco Rubio, "Low Energy" Jeb Bush, or "Crooked" Hillary Clinton. This conduct may not be tasteful to all, but United States laws that restrict it violate the First Amendment.

As closing points, Faul's criticism of certain government officials should not take away from his respect and admiration for others - including Chief Judge Lay and United States Marshal Bud Warren. Moreover, Faul hopes that this filing demonstrates his respect for the Court and his acceptance of its authority. Finally, Faul is a farmer; like other farmers, he may sit around and criticize the government, but also like other farmers, at the end of the day he is just going to go out and plant his wheat.

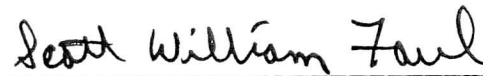
The recidivism clause violates the First Amendment as applied to Faul. The Court should order Faul's immediate release from imprisonment to parole.

### III. Conclusion.

The Court should grant this petition.

Respectfully submitted,

Date: May 10, 2023



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Scott William Faul

Affidavit And Certificate

I, the undersigned affiant, certify under the penalty of perjury that all the facts and circumstances in the foregoing instrument are true and correct. I further certify that I served one copy of this instrument on the Clerk of this Court, to be served through the ECF system, on this 10th day of May, 2023, by placing with the AM legal mail officer a copy for mailing with first class postage prepaid.

Affiant Scott William Faul  
Scott William Faul  
Reg. No. 04564-059  
F.C.I. Sandstone  
P.O. Box 1000  
Sandstone, MN 55072

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

Scott William Faul,  
Petitioner,

v.

Mark W. King, Warden,  
Respondent.

2.70  
[Number supplied was]  
Case No. 0:23-cv-01337-MJD-JFD

DECLARATION OF SCOTT WILLIAM FAUL

I, Scott William Faul, am the habeas corpus Petitioner in the above captioned case and do hereby declare and state as follows:

1. Attached as Exhibit A is a true and correct copy of an October 31, 2002 letter by Ralph Vinje.

2. Attached as Exhibit B is a true and correct copy of the dissent in United States v. Faul, 748 F. 2d 1204 (8th Cir. 1984).

3. Attached as Exhibit C is a true and correct copy of a December 3, 2002 letter by Steve Schnabel.

4. Attached as Exhibit D is a true and correct copy of a letter by Darrell Graf for Faul's 2002 parole consideration.

5. Attached as Exhibit E is a true and correct copy of a November 11, 2002 letter by Irvin Nodland.

6. Attached as Exhibit F is a true and correct copy of excerpts from a transcript of Faul's 2002 parole hearing.

7. Attached as Exhibit G is a true and correct copy of Faul's November 15, 2022 FSA Recidivism Risk Assessment.

8. Attached as Exhibit H is a true and correct copy of Faul's FSA Time Credit Assessment as of 01-19-2023.

9. Attached as Exhibit I is a true and correct copy of Faul's April 26, 2022 INMATE REQUEST TO STAFF.

10. Attached as Exhibit J is a true and correct copy of a January 31, 2023 Notice of Action.

11. Attached as Exhibit K is a true and correct copy of Faul's March 1, 2023 APPEAL to the Parole Commission.

12. Attached as Exhibit L is a true and correct copy of an April 18, 2023 Appeal Notice of Action.

13. Attached as Exhibit M is a true and correct copy of Faul's March 7, 2022 Progress Report.

14. Attached as Exhibit N is a true and correct copy of Faul's Anger Management certificate awarded in 2022.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 10<sup>th</sup> day of May, 2023.

Scott William Faul

Scott William Faul  
Reg. No. 04564-059  
F.C.I. Sandstone  
P.O. Box 1000  
Sandstone, MN 55072



## VINJE LAW FIRM

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### Attorneys

Ralph A. Vinje  
Chad R. McCabe\*  
\*Also Licensed in MN

### Legal Assistants

Jen J. Defoe, CLA  
Renee Svihl

October 31, 2002

Jill Wendlandt  
Federal Correctional Institution  
P.O. Box 500  
Oxford, WI 53952

RE: Scott Faul, 04564-059

Dear Sir/Madam:

I am one of the attorneys who represented one of Scott Faul's co-defendants. Of all of the people involved in that incident, I believe that Scott Faul was the one who suffered most as a result of the actions of law enforcement.

After the car in which he was riding was stopped by police, all of them in unmarked cars and none of them in uniform, Scott, who was not wanted for anything by the law, tried to run off into the woods. He was forced back into the circle by a U.S. Marshal and people began shooting at him. In reaction thereto, he fired above their heads.

As I stated, I was at the trial. I am firmly convinced that none of the woundings or killings were a direct result of anything that Scott Faul did.

I realize he was convicted of two counts of murder, however, I do not believe he personally did anything to cause those deaths.

Scott Faul has served a great deal of time for a relatively innocent act and his unfortunate circumstance of having been in the company of the Kahl family at the time an attempt was made to arrest Gordon.

I truly believe that parole would be in the best interest of Scott Faul and of the country.

Sincerely,

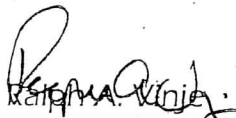
  
Ralph A. Vinje  
Attorney at Law

Exhibit A



United States of America, Appellee, v. Scott Faul, Appellant; United States of America, Appellee, v. Yorie Von Kahl, Appellant; United States of America, Appellee, v. David Ronald Broer a/k/a, David Ronald Brewer, Appellant

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

748 F.2d 1204; 1984 U.S. App. LEXIS 16912

Nos. 83-1912, 83-1913, 83-1914

November 7, 1984, Decided

May 14, 1984, Submitted

Counsel

Warren C. Sogard, Irvin B. Nodland & Ralph A. Vinje, for Appellant.  
Lynn E. Crooks, AUSA, for Appellee.

Judges: Lay, Chief Judge, Ross and Fagg, Circuit Judges. Lay, Chief Judge, dissenting.

Dissent

Dissent by: LAY

LAY, Chief Judge, dissenting.

I respectfully dissent. The record amply demonstrates the defendants did not and could not receive a fair trial in the District of North Dakota. At the time of trial there existed in that district "so great a prejudice against the defendants that [they could] not obtain a fair and impartial {748 F.2d 1224} trial at any place fixed by law for holding court in that district." Fed. R. Crim. P. 21(a).

The issue on review of a district court's ruling on a motion to change venue is whether the trial court has abused its discretion. *E.g., Rizzo v. United States*, 304 F.2d 810, 817 (8th Cir.), *cert. denied*, 371 U.S. 890, 9 L. Ed. 2d 123, 83 S. Ct. 188 (1962). The district court in the present case, however, failed to rule on the defendants' venue change request. The usual deference to a district court's determination that a change of venue was unnecessary is thus not warranted in this case.

Regardless of whether the district court ruled implicitly {1984 U.S. App. LEXIS 57} or merely denied de facto a change of venue, the majority's analysis focuses incorrectly on constitutional principles. In federal court, a federal defendant's right to an impartial jury is protected under our supervisory authority.

The Supreme Court has considered in several cases the question of whether a trial court denied a defendant his due process rights in refusing to grant a change of venue. *See Murphy v. Florida*, 421 U.S. 794, 95 S. Ct. 2031, 44 L. Ed. 2d 589 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 16 L. Ed. 2d 600, 86 S. Ct. 1507 (1966); *Estes v. Texas*, 381 U.S. 532, 14 L. Ed. 2d 543, 85 S. Ct. 1628 (1965); *Rideau v. Louisiana*, 373 U.S. 723, 10 L. Ed. 2d 663, 83 S. Ct. 1417 (1963); *Irvin v. Dowd*, 366 U.S. 717, 6 L. Ed. 2d 751, 81 S. Ct. 1639 (1961). Each of these decisions, however, was a review of a state criminal prosecution. Because each defendant alleged a violation of his fourteenth amendment rights, the Court's analysis was necessarily constitutional in scope. In determining whether a state criminal procedure is constitutionally defective, federal courts give great deference {1984 U.S. App. LEXIS 58} to the state tribunal's evaluation. A federal court generally will not interfere unless the factual context and trial procedure were so egregious as to demonstrate an inherent denial of due process. The Supreme Court presumed such due process denials in the *Sheppard*, *Estes*, and *Rideau* cases. *See also Murphy*, 421 U.S. at 798-99.

A more stringent standard governs the review of a federal district court's refusal to grant a change of venue under Fed. R. Crim. P. 21(a). Appellate evaluation of a denied change of venue request in a federal prosecution is based on "the exercise of [its] supervisory power to formulate and apply

proper standards for enforcement of the criminal law in the federal courts,' and not as a matter of constitutional compulsion." *Murphy*, 421 U.S. at 797, *quoting Marshall v. United States*, 360 U.S. 310, 313, 3 L. Ed. 2d 1250, 79 S. Ct. 1171 (1959). *Cf. Marshall*, 360 U.S. 310, 3 L. Ed. 2d 1250, 79 S. Ct. 1171 (reversing, in the exercise of its supervisory power, defendant's federal criminal conviction where jurors were exposed to information detailing defendant's previous convictions).

**{1984 U.S. App. LEXIS 59}** As the Supreme Court recognized in *Murphy*, criteria developed under federal supervisory powers to evaluate the fairness of a defendant's trial do not apply to the due process review of state criminal trial procedures. See *Murphy*, 421 U.S. at 798. 1

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See also *Murphy v. Florida*, 421 U.S. 794, 803-04, 44 L. Ed. 2d 589, 95 S. Ct. 2031 (1975) (Burger, C.J., concurring) ("Although I would not hesitate to reverse petitioner's conviction in the exercise of our supervisory powers, were this a federal case, I agree with the Court that the circumstances of petitioner's trial did not rise to the level of a violation of the Due Process Clause \* \* \*"); *United States v. Provenzano*, 620 F.2d 985, 995-96 (3d Cir.), *cert. denied*, 449 U.S. 899, 101 S. Ct. 267, 66 L. Ed. 2d 129 (1980); *United States v. Haldeman*, 181 U.S. App. D.C. 254, 559 F.2d 31, 145-50 (D.C. Cir. 1976) (MacKinnon, J., dissenting), *cert. denied*, 431 U.S. 933, 97 S. Ct. 2641, 53 L. Ed. 2d 250, *reh'g denied*, 433 U.S. 916, 97 S. Ct. 2992, 53 L. Ed. 2d 1103 (1977); *cf. Rideau v. Louisiana*, 373 U.S. 723, 728, 10 L. Ed. 2d 663, 83 S. Ct. 1417 (Clark, J., dissenting) ("If this case arose in a federal court, over which we exercise supervisory powers, I would vote to reverse the judgment before us. \* \* It goes without saying, however, that there is a very significant difference between matters within the scope of our supervisory power and matters which reach the level of constitutional dimension.") (citations omitted).

**{1984 U.S. App. LEXIS 60}** Under the more protective federal standard, "jurors' assurances that they could **{748 F.2d 1225}** maintain impartiality in spite of the news articles[.]" *Murphy v. Florida*, 421 U.S. 794, 797, 44 L. Ed. 2d 589, 95 S. Ct. 2031 (1975), does not, alone, answer a federal defendant's allegation that he or she could not have obtained a fair trial in a particular district. Rather, venirepersons' exposure to "information with a high potential for prejudice," *id.*, in combination with other factors discussed below, may justify a new trial or reversal of a defendant's conviction. This test is not a subjective evaluation by either the trial or the appellate court. The determination of potential prejudice under federal supervisory powers is an objective appraisal of many factors -- not merely a post hoc analysis of the voir dire examinations.

Although Fed. R. Crim. P. 21(a) does not provide clear guidelines for evaluating prejudice in a federal prosecution, certainly the Rule presumes prejudice in extreme cases where "the totality of circumstances [indicates] that petitioner's trial was not fundamentally fair." *Murphy*, 421 U.S. at 799; *Cf. Marshall v. United States*, 360 U.S. 310, 311-12, 3 L. Ed. 2d 1250, 79 S. Ct. 1171 (1959). **{1984 U.S. App. LEXIS 61}** (using its supervisory power to grant a new trial where jurors were exposed to news articles containing information previously ruled prejudicial and inadmissible). The majority, however, limits its evaluation of juror prejudice to the voir dire examinations and the district court's admonitions of fairness to the prospective jurors. 2 Where heightened emotions related to the crime pervade the general community, voir dire evidence of impartiality is not a sufficient guarantee of a fair trial. See *Murphy*, 421 U.S. at 799. Given the sensational character of the facts of this case, the jurors' indications that they could act as neutral fact finders are not an adequate assurance that the defendants Faul, Kahl, and Broer received a fair trial in the District of North Dakota. As the First Circuit Court of Appeals observed in *Delaney v. United States*, 199 F.2d 107, 112-13 (1st Cir. 1952):

One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, **{1984 U.S. App. LEXIS 62}** engendered by a pervasive pre-trial publicity.

Contrary to the majority's method of evaluation, the voir dire examination is not a factor of greater weight than other considerations. Indeed, factors such as community size and extent of publicity may reveal the unreliability of voir dire testimony. See American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Fair Trial and Free Press* 127 (1968). Review of the voir dire examination is but one factor in a review of a district court's denial of a motion for change of venue. Other factors should also be considered, such as the extent of circulation of publicity concerning the event in the community, the severity and sensationalism of the offense, the familiarity of the jurors with the individuals involved, the length of time between the publicity and the trial, the prospective jurors' exposure to the publicity, the connection of government officials with the release of the publicity, and the character and size of the district from which jurors will be selected. 3 Applying {748 F.2d 1226} these considerations to the circumstances that led to the prosecutions of defendants Faul, Kahl, and Broer, I find it impossible to conclude that the defendants could have received a fair trial in the District of North Dakota.

State courts considering motions for changes of venue employ similar factors. Voir dire results are not the sole element in an analysis of the existence of potential juror prejudice. In *Houle v. N.D. Dist. Court, Burleigh County, S. Central Judicial Dist.*, 293 N.W.2d 872, 873 (N.D. 1980) (citations omitted), the Supreme Court of North Dakota stated:

Thus, the ultimate question to be decided by the court is whether or not it is possible to select a fair and impartial jury. The explanatory notes to Rule 21, N.D.R. Crim. P., list four factors to be considered by the Court in determining whether or not pretrial publicity renders it impossible to select a fair and impartial jury: (1) whether or not the publicity was recent, widespread, and highly damaging to the defendant; (2) whether or not the prosecution was responsible for the objectionable material, or if it emanated from independent sources; (3) whether or not an inconvenience to the prosecution and the administration of justice will result from a change of venue or continuance; and (4) whether or not a substantially better panel can be sworn at another time or place.

This Court recently added four more factors to assist in judicial determinations of whether or not pretrial publicity warrants a change of venue. These additional considerations are: (1) the nature and gravity of the offense; (2) the size of the community; (3) the status of the defendant in the community; and (4) the popularity and prominence of the victim.

See also *State v. Engel*, 289 N.W.2d 204, 206 (N.D. 1980); *State v. Fallis*, 205 Neb. 465, 288 N.W.2d 281, 284 (Neb. 1980); *Olson v. N.D. Dist. Court, Richland County, Third Judicial Dist.*, 271 N.W.2d 574, 579-80 (N.D. 1978); cf. *State v. Thompson*, 266 Minn. 385, 123 N.W.2d 378, 380 (1963) (per curiam) quoting *State ex rel. Warner v. Dist. Court*, 156 Minn. 394, 194 N.W. 876, 878 (1923) ("... (sic) It is not necessary that \*\*\* the ends of justice require the change. It is sufficient that they would be "promoted."") (emphasis in original). The same factors should be considered in evaluating venue change motions under our federal supervisory powers. Cf. *St. Paul Fire & Marine Ins. Co. v. Commodity Credit Corp.*, 474 F.2d 192, 198 (5th Cir. 1973) ("For guides to the 'law of independent federal judicial decision,' \*\*\* we look principally to federal decisions in nondiversity cases, but without blinders to persuasive analogies from state law.") (citation omitted).

{1984 U.S. App. LEXIS 64} The deaths that occurred during the February 13, 1983, confrontation were needless and tragic. 4 Outpourings of sympathy for the losses suffered by the families of the deceased Marshals came from across the nation. The issue in this case, however, is whether the living defendants, Scott Faul, age 29, Yorie Von Kahl, the 23 year-old son of Gordon, and 43 year-old David Broer received a fair and impartial trial. This question requires a recounting of the historical facts leading Gordon Kahl, his family, and followers to the bloody February 13 gun battle.

The violence and killings did not end on February 13, 1983. Gordon Kahl and a local law enforcement officer were killed a few months later in another armed confrontation in Arkansas. See *United States v. Udey*, 748 F.2d 1231 (8th Cir. 1984).

Gordon Kahl was a "tax protester" and a member of an extremist organization known as the Posse Comitatus. Kahl was convicted in 1977 in the federal district court for the Western District of Texas {1984 U.S. App. LEXIS 65} on two counts for failure to file income taxes. Kahl served a one-year sentence in Leavenworth Federal Prison and was placed on probation for five years. After serving his sentence, Kahl apparently returned to his North Dakota farm in 1979. In 1980, Kahl was summoned to appear in federal court on a charge that he had violated his probation in failing to file required monthly probation reports. In March of 1981, the United States Marshal for the District of North Dakota received a parole warrant from a district of Texas indicating that Kahl was in violation of his parole. After learning from Texas authorities that Kahl could be dangerous, the Marshal arranged a meeting with Kahl to attempt to resolve the matter peacefully. 5 The Marshal testified that he did not attempt to arrest Kahl at this "meeting of the minds." The meeting did not convince Kahl to submit voluntarily to the Marshal. 6

5

The Marshal also sought out Kahl at a church meeting, but, deciding that the "circumstances were not [right]," did not attempt to arrest Kahl.

6

Deputy United States Marshal Harold C. Warren testified that Marshal Muir told him that Muir had been instructed by his superiors in Washington, D.C. to cease attempting to apprehend Gordon Kahl. Kahl's minor violation was not deemed worth the expense and time necessary to execute successfully the warrant for his arrest.

{1984 U.S. App. LEXIS 66} On February 13, 1983, Gordon Kahl, the three defendants, and others were peacefully assembled at the Medina Medical Clinic in Medina, North Dakota. The group noticed that they were under surveillance. Scott Faul became uneasy, because he had information that an all points bulletin (APB) had been issued on his car. This APB was later determined to be an attempt to locate a car believed to have been used by Gordon Kahl. The group left the Clinic in separate cars, and soon encountered a roadblock created by unmarked police vehicles. When the defendants attempted to turn around in a driveway, they were blocked by a Ram Charger. Faul testified {748 F.2d 1227} on direct examination that he did not recognize either the truck blocking his car as a police vehicle or the persons in the truck as police officers. Faul further testified "someone started screaming at us and the man that had the shotgun pointing at me yelled, 'your [sic] going to die,' and I was waiting and my head was pounding kind of like I could feel every heart beat and I thought everyone [sic] would be my last one." Transcript of Proceedings, Volume XIII at 175-76. Yorie Kahl gave similar testimony. Faul denied connecting {1984 U.S. App. LEXIS 67} the armed barricade with the outstanding warrant on Gordon Kahl. The gunfire began shortly thereafter. From February 14, 1983, to March 29, 1983, the *Fargo Forum*, circulation 56,500, printed 68 news stories and 22 pictures related to the criminal matter in issue. Approximately one-third of these articles and pictures were on the front page. Television and radio coverage was extensive. Descriptions of Gordon Kahl's fanaticism, the violent and unique nature of the crime, and feelings of sympathy for the dead United States Marshals created feelings of hostility against the defendants. Marshal Muir was one of the most respected law enforcement officers in the area. Deputy Marshal Cheshire was also well-liked and respected. According to two news articles, a total of over 1100 people attended the funeral services of the Marshals. The cold-blooded killing of Cheshire heightened the agitation, not only in the small peace-loving farm community, but throughout the state. The Governor of North Dakota directed that all state, county, and local flags be flown at half-mast in remembrance of the two deceased Marshals. Funeral eulogies and editorials



condemning the killings and paying{1984 U.S. App. LEXIS 68} tribute to Muir and Cheshire were printed in the district's largest selling newspaper. Anger and shock thus spread across the entire District of North Dakota.

Much of the publicity linked the defendants with Gordon Kahl's fanaticism and ruthlessness. Many news articles focused on Gordon Kahl's association with the radical Posse Comitatus, and left an impression that all the defendants were involved with the Posse Comitatus. Pre-trial Fargo *Forum* articles included in the record clearly demonstrate the media-created connection between the defendants and Gordon Kahl:

2/14/83: "Two U.S. marshals were killed \* \* \* while trying to arrest a probation violater [sic]. \* \* \* Gordon Kahl \* \* \*. Police said they had arrested Kahl's son, Yorie \* \* \*."

2/15/83: "Emotionally charged meeting of civil liberty advocates \* \* \* some members \* \* \* headed into a shootout \* \* \*. One of the fugitives \* \* \* Scott Faul. \* \* \* Gordon Kahl \* \* \* the other fugitive is known to have headed more formally organized posses \* \* \*. Broer \* \* \* drove away from the scene \* \* \*"

2/15/83: "**Hunt for fugitives.** \* \* \* Gordon Kahl \* \* \* a tax protestor [sic] and parole violator, and{1984 U.S. App. LEXIS 69} \* \* \* Scott W. Faul. \* \* \* Kahl's 23-year-old son, Yorivon, also is in government custody. \* \* \* [A] known enclave for the tax protestor [sic] group that Kahl and the others are presumed to be members."

2/15/83: "[A] violent end to a trial that had led them astray of the law before, mainly because of their unconventional views about taxes. Both Gordon Kahl, 63, and Scott Faul, 29, have been found guilty of tax evasion. Acquaintances said Kahl and Faul threatened to turn violent \* \* \*."

2/15/83: "**They're still shooting out here . . . We need help**' \* \* \* Yorie Kahl, 23, who had bullet wounds in the stomach and arm \* \* \* 'How can this happen in little Medina, North Dakota?' \* \* \*."

2/16/83: "An assault \* \* \* by about 100 heavily-armed law enforcement officers \* \* \* to find 63-year-old fugitive Gordon Kahl \* \* \*. Just hours after another suspect in the slayings, Scott W. Faul \* \* \* surrendered to authorities. \* \* \* The one suspect not being held in the jail is Kahl's 23-year-old son Yorivon, who was wounded \* \* \*."

2/16/83: "**Kahl house in shambles after search** \* \* \* Kahl is wanted in connection with a roadblock shootout with government {1984 U.S. App. LEXIS 70} {748 F.2d 1228} officers \* \* \* Kahl's son Yori, 23, [was] wounded \* \* \*."

2/16/83: "**Shootout said to resemble TV gun battle** \* \* \* [a local law enforcement officer] Kapp observed a car known to be driven by Gordon Kahl \* \* \*. [The officers] spotted a car belonging to David Broer \* \* \* 'The first shot fired, [stated the affidavit of one officer] was from Yorivon Kahl, which appeared to have hit Deputy U.S. Marshal Cheshire.' \* \* \* Faul \* \* \* assisted Yorivon Kahl into Schnable's squad car \* \* \*."

2/16/83: "Law enforcement officers, equipped with an armored personnel carrier and automatic weapons, were preparing to make a sweep of the Kahl farm to determine if the 63-year-old fugitive wanted in the slayings of two U.S. marshals was hiding somewhere on the property. \* \* \* Yori Kahl, 23, suffered two bullet wounds in the abdomen in the shootout \* \* \*."

2/17/83: "**Slain U.S. law officer eulogized.**"

2/17/83: "**Sources say Kahl takes blame in letter** \* \* \* Suspects being held \* \* \* are \* \* \* David R. Broer \* \* \*. Kahl's son, Yorivon \* \* \* remains under armed guard at the Jamestown hospital. The 63-year-old Kahl, who has been characterized as a{1984 U.S. App. LEXIS 71} 'fanatic' anti-tax protestor \* \* \* The letter surfaced with Scott W. Faul \* \* \* another suspect in the slayings \* \* \* Kahl \* \* \* has been described as being a member of a paramilitary group called Posse Comitatus \* \* \*."

2/16/83: "Mrs. Kahl, wife of Gordon Kahl, the remaining fugitive among six people charged with the deaths of two federal marshals, broke into tears when she referred to her 23-year-old son, Yorivon, who was wounded in the incident."

2/18/83: "Two lawmen are dead and others in the Medina, N.D., shootout lie in hospitals, some

seriously wounded. The region and the nation are in shock over what happened last Sunday \*\*\* Who would have thought that an attempt to serve a warrant on a man wanted for probation violation in a federal tax case could result in such havoc." (*Forum* editorial).

2/18/83: "Dozens of heavily-armed law enforcement officers swept into Ashley, N.D., Thursday morning in another futile search for fugitive Gordon Kahl \*\*\* Kahl was active in a group called Posse Comitatus \*\*\* The wounded suspect, 23-year-old Yorivon Kahl, Gordon Kahl's son, was removed from the critical list \*\*\*."

2/19/83: **"Search for shootings' fugitive{1984 U.S. App. LEXIS 72} continues \*\*\*** Five people with Kahl when the shootings occurred, including his wife and son, have been arrested."

2/19/83: **"Hearing for five suspects in shooting tentatively set \*\*\*** The five suspects include fugitive Gordon Kahl's \*\*\* 23-year-old son Yorivon \*\*\* Scott W. Faul \*\*\* and David R. Broer \*\*\* A sixth suspect, Gordon Kahl \*\*\* remains at large \*\*\*."

2/20/83: "Kahl has claimed to be a member of the paramilitary tax-protest group, Posse Comitatus \* \* Five people with Kahl, including Yorivon, \*\*\* were arrested on murder charges. The other three [include] Scott Faul \*\*\* and David Broer \*\*\*."

2/21/83: "The task of finding fugitive Gordon Kahl, a tax protester accused in the slayings of two U.S. marshals, has settled into routine investigative work \*\*\* Kahl has been hunted since a brief gunbattle near Medina following a meeting of people sharing similar beliefs as Kahl, \*\*\* David Broer and Faul have been charged with murder."

2/22/83: "Kahl, a tax protester and probation violator, is the subject of a search in several western and midwestern states \*\*\*. Five other people are in custody in connection with the slayings, {1984 U.S. App. LEXIS 73} including \*\*\* his critically wounded son, Yorivon Kahl \*\*\* David Broer \*\*\* and Scott Faul \*\*\*."

2/23/83: **"Faul accused of 'executing' deputy marshal \*\*\*** during a 15-second gun battle with tax protester Gordon Kahl and five other suspects \*\*\*."

2/23/83: "Law enforcement officers found themselves at a tactical disadvantage just {748 F.2d 1229} prior to the shootout on Feb. 13, near Medina, N.D., with tax protester Gordon Kahl and five other suspects. \*\*\* Reardon said Faul then walked over to the vehicle where Cheshire lay wounded and upon reaching it, fired two shots at Cheshire."

2/24/83: **"Yorie Kahl formally charged in Jamestown hospital room \*\*\*** Kahl is the son of fugitive tax protester Gordon Kahl \*\*\* Preliminary hearings for four other defendants \*\*\* [Including] Scott Faul \*\*\* and David Broer \*\*\*."

2/24/83: "Kahl, whom federal law enforcement officers have identified as a key figure in the formation of posse units in central North Dakota, is being sought for the slaying of two U.S. marshals during a Feb. 13 shootout near Medina, N.D."

2/28/83: **"Manhunt for fugitive Kahl enters third week \*\*\*** His 23-year-old {1984 U.S. App. LEXIS 74} son Yorie is hospitalized \*\*\* and awaits a preliminary hearing on a murder charge. Four persons are in jail \*\*\*."

3/1/83: "No new developments in the search for fugitive Gordon Kahl \*\*\* Being held without bond are Scott Faul, 29, and David Broer \*\*\*. Gordon Kahl's 23-year-old son, Yorivon, remains under protective custody \*\*\*."

3/2/83: **"Yori Kahl moved to Clay County jail \*\*\*** Kahl is the son of fugitive Gordon Kahl, 63, a tax protester from Heaton, N.D. Gordon Kahl still is being sought by federal and state authorities."

3/3/83: **"Court delays hearing for Yori Kahl \*\*\*** Kahl, 23, is the son of fugitive tax protester Gordon Kahl \*\*\* The search for Gordon Kahl is in its third week. The U.S. Marshal Service has offered a \$25,000 reward for information leading to his arrest."

date \*: **"Details of alleged Kahl letter revealed \*\*\*** Kahl also praised the actions of his 23-year-old son Yorie Von Kahl and Scott Faul, during the gun battle."

\*

Indicates the date of the article was not found in the record.

**{1984 U.S. App. LEXIS 75}** 3/10/83: "Yorie Von Kahl, admitted he may have fired the first shot in the gun battle between tax protesters and law enforcement officers on Feb. 13 \*\*\* Kahl, the son of fugitive Gordon Kahl \*\*\* Two others facing the murder charges \*\*\* are Scott Faul, \*\*\* and David Broer \*\*\* Kahl's father also has been charged with murder and remains the subject of an intensive manhunt."

3/12/83: **"Grand jury indicts Kahl, five others** \*\*\* The 11-count indictment charges Kahl, 63, his son Yorie Von, 23, and Scott Faul, 29, with the murders \*\*\* David Broer, 43, on lesser charges \*\*\*"

3/13/83: "One month after a shootout that left two U.S. marshals dead, tax protester Gordon Kahl is still at large, and investigators blame his freedom on factors including sympathy for the 63-year-old fugitive. Kahl and five other people were indicted Friday \*\*\* Of the five indicted, only Kahl \*\*\* is still at large."

3/15/83: **"Medina shooting suspects arraigned** \*\*\* Yorie Von Kahl \*\*\* Scott Faul \*\*\* and David Broer \*\*\* A sixth suspect, Gordon Kahl, \*\*\* also has been charged with murder. He remains the subject of an intense manhunt \*\*\*."

3/19/83: **"A{1984 U.S. App. LEXIS 76}** federal judge in Texas had issued a warrant for Kahl's arrest in March 1981, and it was that warrant marshals unsuccessfully attempted to serve on Kahl nearly two years later. Instead of an arrest, a 15-second gunfight erupted, leaving two marshals dead and four others, including Kahl's 23-year-old son, Yorie Von Kahl, wounded."

3/19/83: "Both Faul and the younger Kahl were arrested shortly after the incident and have been charged with murder. The elder Kahl also faces murder charges but remains a fugitive."

3/24/83: **"Description of [Gordon] Kahl's car released** \*\*\* Three others have also been charged with murder in the slayings of U.S. marshals \*\*\* They were cut down by bullets as they tried to serve an arrest warrant on Kahl \*\*\*."

3/26/83: "Radio conversations transcribed by authorities have left a chilling record of the minutes preceding the Feb. 13 shootout \*\*\* The officers were trying to arrest fugitive Gordon Kahl \*\*\* Kahl's **{748 F.2d 1230}** vehicle was spotted outside the Medina Medical Clinic, where an informal group of so-called 'constitutional activists' was meeting \*\*\* Kahl, 63, his son Yorie, 23, and Faul, 29, all of Heaton, have been **{1984 U.S. App. LEXIS 77}** indicted by a federal grand jury on two counts of murder."

3/26/83: **"Judge asked [by prosecutor] to bar some subjects at shootout trial** \*\*\* Evidence concerning membership in anti-government, anti-tax or anti-law enforcement groups, such as Posse Comitatus \*\*\* by Gordon Kahl or any other defendants. \*\*\* [Yorie] Kahl and Faul have been charged with the murders of [Cheshire and Muir] \*\*\* The three other defendants who have been charged with lesser offenses [include] \*\*\* David Broer \*\*\* A sixth suspect, who also facing murder charges, Gordon Kahl \*\*\* remains a fugitive. \*\*\* [The prosecutor] acknowledged he may be premature in anticipating what evidence the defendants will attempt to offer at the trial. But he noted that several of the defendants have been portrayed in news media accounts as being tax protesters and members of vocally anti-government and anti-tax groups such as Posse Comitatus \*\*\* In particular, [he] noted a 16-page statement purportedly written by Gordon Kahl in which Kahl claims a religious right to resist arrest for any tax-related offenses. \*\*\* Public news stories indicate that perhaps several of the other defendants **{1984 U.S. App. LEXIS 78}** may share at least some of Gordon Kahl's views, \*\*\*."

3/27/83: **"Posse leader says 'task force' investigating shootout cover-up** \*\*\* Although Kahl is still at large, federal authorities have arrested five others in the case."

The origin of and responsibility for the February 13 armed confrontation was a significant issue in the case. 7 Although reasonable jurors could and did find that Faul, Kahl, and Broer were guilty of second degree murder, assault, and conspiracy, the evidence was not overwhelming. I accept the

factual findings of the jury. I believe, however, that those findings were tainted by prejudice that prevented the defendants from receiving a fair trial in the emotion-charged District of North Dakota.  
7

Two witnesses, a husband and wife who drove through Medina on February 13, testified that a police officer pulled them over and told them "there was going to be a shoot-out and this time the police were in the wrong." Transcript of Proceedings, Volume XIII, at 66, 85. Another witness, a local Medina man who was near the scene of the shootout, verified that a law officer told him, "there is a tax evader up there and now they are going to shoot him." Transcript of Proceedings, Volume IX, at 212-13.

**{1984 U.S. App. LEXIS 79}** The majority admits the news coverage was widespread but characterizes the media treatment as "largely factual in nature." This ignores the totality of circumstances. The emotionalism running through this rural district caused even "factual" reporting to fan the flames of the community's shock and anger. In this case the violence of the crime, the small town character of the community, and the connection made between all of the defendants and extremist protest groups should have been considered in the evaluation of whether the defendants received a fair trial. 8 As the American Bar Association Project on Standards for Criminal Justice observed:

There are \* \* \* difficulties with [a court denying a motion for change of venue **{748 F.2d 1231}** where a jury meets prevailing standards of impartiality]. Many existing standards of acceptability tolerate considerable knowledge of the case and even an opinion on the merits on the part of the prospective juror. And even under a more restrictive standard, there will remain the problem of obtaining accurate answers on *voir dire* -- is the juror consciously or subconsciously harboring prejudice against the accused resulting from **{1984 U.S. App. LEXIS 80}** widespread news coverage in the community? Thus if change of venue \* \* \* [is] to be of value, [it] should not turn on the results of the *voir dire*; rather [it] should constitute [an] independent [remedy] designed to assure fair trial when news coverage has raised substantial doubts about the effectiveness of the *voir dire* standing alone. American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Fair Trial and Free Press* 127 (1968).

8

As a factor in our supervisory review of the district court's denial of the defendants' motion for change of venue, an examination of the *voir dire* testimony reveals the impact of the pre-trial publicity concerning this case. Explaining why he had followed closely the news reports of the Medina incident, one excused venireperson testified:

Well, you know, you hear about this in other states and, but North Dakota it's unusual and I just couldn't believe something like that would happen. Transcript of Proceedings, Vol. II, at 125. A second *voir dire* examination, typical of the testimony of those excused, further demonstrates the influence of the extensive media coverage:

Q: Is there anything about the report of these cases, this case, that caused you to have a special interest in it and thereby to follow news reports relating to it?

A: It was big news, crime against the federal agent.

Q: You considered it to be big news and as such, and because of the nature of the incident, it is something that --

A: Yes.

Q: -- caused you to follow the reports relating to it?

A: Yes.



Q: Has anything that you have heard or read about this case in following these reports caused you to form an opinion as to the innocence or guilt of any of the defendants in the case?

\* \* \*

A: Yes, sir. It's a very strong opinion.

\* \* \*

Q: You feel if you were selected as a juror in the case it would be very difficult for you to set aside or disregard the opinion that you have formed?

A: Yes, sir. *Id.* at 171-72.

Each of the chosen jurors also was exposed to the extensive news coverage. Several of the jurors actually subscribed to the *Forum*. One of the selected jurors admitted that at an earlier date his "mind [was] pretty well set," *id.*, at 91, although he did not claim to have any opinion at the time of the voir dire examination. Another selected juror also testified that he had formed an opinion, albeit "nothing that I would consider a strong opinion." Transcript of Proceeding, Vol. III, at 165.

The majority's statement that only 27% of the jurors attributed their partiality to media coverage is misleading. The majority admits that of the 114 original venirepersons, twenty-eight were excused before voir dire on the basis of hardship. Another venireperson was excused for hardship later in the proceeding and four others were never considered. Seventy-eight prospective jurors actually underwent voir dire. Thirty-nine, or one-half, were excused as potentially partial due to pretrial publicity or knowledge of persons involved in the prosecution. This statistic should be a factor considered in an evaluation of defendants' request for a change of venue. Indeed, even if the analysis was limited to a review of the voir dire examinations, a 50% partiality rate sufficiently demonstrated the need for a change of venue in this case.

**{1984 U.S. App. LEXIS 81}** "Substantial doubts" have been raised about the effectiveness of the voir dire examinations as a barometer of jury impartiality in this case. Under any standard of review, the district court wrongly failed to grant the defendants' request for a change of venue. In the exercise of this court's supervisory powers, the defendants' convictions should be vacated and a new trial should be granted in a district remote from that of North Dakota.

STEVE SCHNABEL

03 December 2002

Ms. Jill Wendlandt  
Attn: Parole Examiner  
Federal Correctional Institute  
P.O. Box 5000  
Oxford, WI 53952

RE: Scott Faul #04564-059

Dear Ms. Wendlandt and Examiners,

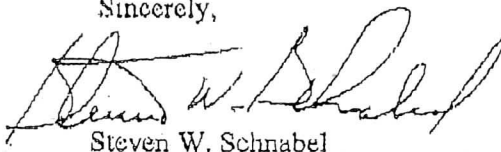
I was a member of the Medina, ND Police Department in 1983, and directly involved in the arrest attempt of Gordon Kahl, which resulted in Scott Faul being arrested and eventually sent to your facility.

I have co-authored a book titled "It's All About Power" which lays out the events leading up to, including and after the arrest attempt in Medina in 1983. While doing our research for this book (published in 1999), we learned many things pertaining to this case, which were not brought up during the trial. Based on our research, I believe that Scott Faul was a victim of circumstance, torn between helping his friends or trusting people he did not know. Scott also knew that there was an All Points Bulletin put out which included a description of his car and his cars license plate number. This APB stated his car was in a particular location on a certain day when in fact, it was not. The accumulation of many events leading up to the main event on February 13, 1983 I believe put Scott Faul where he is today.

Given all that I know about this case, I believe that Scott Faul has paid his debt for the decisions he made that day. I believe that Scott Faul does not pose any kind of threat to our society and if paroled, will cooperate fully with his parole officer and strictly follow the conditions of his parole. I also believe Scott Faul will do whatever it takes to become gainfully employed and be a positive contributor to our society.

Thank you for taking this consideration.

Sincerely,



Steven W. Schnabel

Exhibit C

## DARRELL G. GRAF

Ms. Jill Wendlandt  
Attn: Parole Examiner  
Federal Correctional Institute  
P.O. Box 5000  
Oxford WI 53952

RE: Scott Faul # 04564-059

Dear Ms. Wendlandt and Examiners;

I was the Police Chief of Medina, North Dakota in 1983, during the time a series of events took place which resulted in Scott Faul being sent to your facility.

The events surrounding the entire case were so absurd for a small North Dakota community, that in many instances opinions were formed prior to the evidence being examined. I was one of those that had unfounded opinions regarding that case and the involvement of Mr. Faul.

During the late 1990's, while writing a book regarding this case, a great deal of evidence surfaced which had been suppressed over the years by emotionally charged individuals and officials. He was indeed at the wrong place at the wrong time. At the time of the event, I believed Scott was a perpetrator. But now I believe he was trying to escape a terrible situation that he was roped into. My opinion is the result of digging and examining evidence for 2 years prior to the publication of the book "It's All About POWER!"

Had this trial been done after the emotions had simmered, I know, and have a signed affidavit from a juror indicating, there would either have been an acquittal or at a minimum, a hung jury.

Based on what I know about Scott Faul, I have the following statements:

1. I do not believe Scott Faul would be a threat of ANY KIND to our free society.
2. I do not believe Scott Faul would be involved in ANY criminal activity if he was to be released
3. I believe Scott Faul would fully cooperate with his parole conditions
4. I believe Scott Faul would become gainfully employed and be an asset to society

Sincerely,

Darrell Graf

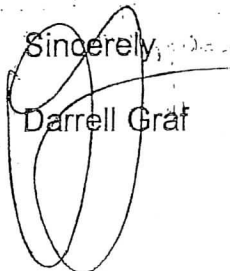


Exhibit D

# NODLAND LAW OFFICES

Irvin B. Nodland, P.C.

Chad C. Nodland, P.C.

109 North Fourth Street, Suite 300

P.O. Box 640

Bismarck, North Dakota 58502-0640

November 11, 2002

TELEPHONE: 701-222-3030

FAX: 701-222-3586

Jill Wendlandt  
Federal Correctional Institution  
PO Box 500  
Oxford WI 53952

Re: Scott Faul No. 04564-059

Dear Ms. Wendlandt:

I am writing behalf of Scott Faul. It is my understanding Scott will appear before the Board in December. I wish to voice my support for the granting of parole to him at this time.

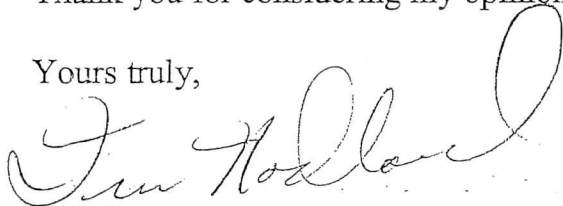
I was Scott's defense lawyer at the time of his trial and during his initial appeals. It is difficult for me, as his defense lawyer, to address the considerations I know are now before the Board for review. This is because I have extremely intense feelings about his original defense that remain with me to this day and I know those feelings are really not relevant to the issues before the Board at this time.

Suffice it to say that I feel confident that if given the opportunity Scott would be successful in completing any parole period he might be required to serve. If there is any role I could play in his re-entry into free society I would be more than willing to make that effort.

Scott and I have communicated off and on over the years by telephone and letter. There has never been anything in these communications that has suggested to me he would be a danger to others or that there is some instability that ought to be cause for concern.

Thank you for considering my opinion.

Yours truly,



Irvin B. Nodland

IBN:pao

Exhibit E

*Introduction*

This pamphlet contains excerpts taken directly from Scott Faul's 2002 parole hearing transcripts. The whole hearing can not be fit into this pamphlet, but can be found in it's entirety at [ScottFaul.com](http://ScottFaul.com). What we

have included in this pamphlet sheds light on the political nature of Scott Faul's incarceration. It is undeniably a confession of government's willingness to put the well being of the government above the well being of the citizen masses.

This willingness to avoid justice for the advancement of the Federal Government is not unknown to any of us. We have all questioned the motivations and actions of our Federal System at some time and most often a majority of the time. If this were not true, people would vote **for** a candidate more often than they vote **against** one.

*Introduction*

Even before Scott applied for Parole, our belief was that Scott should be released. This belief came from our extensive research of his case and the love my wife holds for her Father.

**Credibility is always an issue.** It has been difficult to convince others of the merits of Scott's case because, of course, we are Scott's family. This does not, however, negate the facts and terms of his incarceration. Scott is a political prisoner and in this 2002 parole hearing tape, government admits it.

Thank you for taking the time to read this pamphlet. I hope that these excerpts will shed some light on the motivations surrounding this tragedy.

The photo on the cover of this flyer is of the Faul Family taken on 11-23-86. The scripture reminds us that our children will be affected by our decisions. This is one of Scott's greatest fears. He fears that because of his absence his children have not learned all that he was supposed to teach them.



**Numbers 14**

<sup>18</sup> "The LORD is slow to anger, abounding in love and forgiving sin and rebellion. Yet he does not leave the guilty unpunished; he punishes the children for the sin of the fathers to the third and fourth generation."

## *The Parole*

### *Publicity*

Publicity has never been a friend to Scott or any of his co-defendants. The media was so biased in its portrayal of the defendants that the Fargo Forum actually recovered it's entire circulation on February 15, 1983, and reprinted the issue because the government did not approve of one article's portrayal of the US Marshall's arrest tactics. This type of one sided coverage is still slandering Scott's reputation and silencing his pleas for relief.

"Clearly you've served more than 100 plus months. And also, um, you know I wouldn't know, and it's not surprising to you, that, that the case is very notorious, um...I mean they've made television movies and books and, and certainly I'm well aware of many of the co-defendants in this case...we've heard of these individuals. Ah, they have, most of them have appeared before the parole commission I believe, but none the less, it's, it's quite, it, it's a case that got a lot of attention let's put it...even 20 years later, it's still, a lot of discussion and a lot of people

### *Publicity*

*still know or recognize this particular incident, which is not necessarily good for you or anybody involved in the incident."*

Sam Robertson(SF) - US Parole Commission

Please take note of the first line of this quote. Mr. Robertson is stating that Scott's sentence has a minimum fulfillment of 100 months. At the time of this interview, Scott had already served 238 months. Sam is saying that Scott has fulfilled that requirement.

### *My Our There...*

This next excerpt starts with Scott(SF) expressing his regrets. In the middle of this, Mr. Robertson cuts him off and concedes that Scott probably could not have done anything different in this scenario. He goes on to state that this is a matter of "you're there" and "you're on the wrong side". Scott was not on any side. He was getting a ride home, after a meeting, from some friends.

### *My Our There...*

SF: "... Looking back on it, I can, I can see that, ah, you know, I should have done something different that day, you know. And I, ah, I don't know exactly what I could have done or should have done, but I certainly, you know, considered many times how, ah, I wish I would have done something different..."

SR: I don't know, actually, you're right. The way this scenario is, I mean you're involved in some stuff where there's inevitably going to be a confrontation with law enforcement, um, whether you intended to do anything or not, people are armed with firearms and then that shooting occurs. And you're there. And you're on the wrong side when the shooting occurs. So, given that, if anybody takes a bullet, or anybody gets hurt, you've just boughten in, in, and I don't, what you could have done at that point. Probably nothing. I mean, once that scenario developed in terms of your culpability and the fact that being named as a conspirator or contributing



## *The Parole*

*Myur There...*

to that, um, certainly it, you know, anything that you did after that or continued association or involvement with firearms or firing back. In complicit to that degree would certainly be damning. I don't know if you shot anybody or you hit anybody or any of those other things, but, um, you know, you look at this as a, it's kind of an O.K. Corral kind of thing--this shootout, we all know there was a lot of dead bodies and most of them police officers and marshals, and they take a dim view of that... a REAL dim view. Um, and not to mention the, ah, the issue, um, the underlying issue's here, you know the tax protests. Um, the, the most serious, and you've probably heard this before, but the, you know, the greatest threat to the country is not people with guns, it's people who refuse to pay taxes. And there's nothing that can undermine, you know, your government quicker than people not contributing to funding it, and they are really viewed as a serious threat, and that was just part of it, but then, you know, these other things really got

*Myur There...*

out of hand. So, um, but I understand how these things can occur, I mean, based on politics and points of view, and whatever, and then unfortunately it escalates into violence, and once it gets to that point, then you're, you're in a highly difficult situation. As you have been, because you've been in prison now for 20 years because of that. "

I would like to point out that Mr. Robertson makes a distinction between people with guns and people that don't pay taxes. The question I am raising is... Was the denial of Scott's parole based on his opinion [that our current system of taxation is unfair and illegal]?

Mr. Robertson is making the assumption that Scott did not pay his taxes. This assumption is wrong and is based solely on the reports that Scott protested taxation. Our right to protest is protected by Article 1 of the US Constitution and protesting is one of our means to assure that our US laws and policies reflect the wishes of the citizens of this great country.

Remember, our country was founded by people who opposed excessive taxation.

## *The Grudge*

In this next quote Mr. Robertson blames Scott for Waco and Randy Weaver. Scott knew none of these people. The only parallel is that in all three of these cases, the Federal Government attacked civilians. In both the Weaver case and in Waco, the actions of the Federal officers were investigated and wrong doings were found. It is of my opinion that the same type of investigation would have been brought against the officers involved in Scott's case had they not lost the shootout they started.

SR: "All right. I said when we started this thing, no surprise to you, in a tough, a notorious case. Um, people on both sides have different views at this point, but [inaudible] when you talk about, there's confrontations with law enforcement and other individuals. You know, there's the Waco, there's the Randy Weaver thing, it goes back to North Dakota and different kinds of things, and it seems to the level of being almost [inaudible] to talking about, which is not necessarily again healthy for you when these things are being bantered about still in the media and people talk about them and they focus on them, and there's also some things in terms of, ah,

## *The Parole*

### *The Grudge*

the individuals involved, and the me memory of this, and, ah, you know clearly it has become an institutional thing. It's like... the, the case involved in, now I can't remember but, the shooting in North Dakota with the FBI agents... Pelier. Um, it's become institutionalized among law enforcement in the community that, you know, that there is no tolerance for people that shoot federal officers or cops or those kinds of things. Um, that's what that Pelier thing's about, and that's what this is about. Um, somebody has wrote in and said, I've read so many letters recently, and they said something that they were sure that the, that the marshal's service, not necessarily the individuals, because a lot of people don't know anything about this stuff. You know, they just mention it, and automatically, you know, they have a grudge or they look at it as, as some kind of an issue, you know. Either you're on the right side or you're on the wrong side, and you're on the wrong side. "

Is Law Enforcement's feelings toward Scott influencing the Parole Commission's decisions?

### *It's bad as it can get*

In this next section, Mr. Robertson acknowledges that Scott is not a threat to society.

".....So, you could serve another 5 to 10 years in custody before the commission will act to release you... **NOT** because probably you are any kind of threat to the community or any of those other kinds of things... be like, um, the chances of you doing anything illegal if you were released today is virtually nil. Um, they would probably never hear a squeak out of you again. I'm sure you're not a risk. That's not the issue. Risk is not the issue with you. It's accountability. Um, how much time should you spend in prison for being involved in this incident. Even though there's nothing to indicate that you were specifically convicted of shooting anybody or killing anybody, that you were not involved in some overt act that led to the death of somebody. As your attorney understood and expressed, and as I said initially, the fact of the matter is you were there, and there meaning

### *It's bad as it can get*

something ensued where at least two marshals ended up dead, and a couple deputies on the ground with bullet holes in them. Um, about as bad as it can get, um, about as bad as it can get."

"You were there." This is the action that Scott is guilty of? The fact that Scott was at a meeting and getting a ride home from some ND farmer and his family is what Scott is so accountable for?

I know what you are thinking. You're thinking there is more to it than that. You are thinking that it is probably some other action that Scott is accountable for. Well, that might be true, but **this** Parole Commission's reasoning for denial of his release is **because Scott was there!**

If you think maybe Mr. Robertson just misspoke, here it is again worded a little different but with the same meaning.



## *The Parole*

*It's bad as it can get*

*...you're paying for the fact that you were there, and some decisions you made that led you to the point of being there, and some things probably beyond your control. Maybe some decisions the cops made to block the road at that particular date in time and to precipitate a confrontation...perhaps it was all unnecessary, it could have been resolved in some other manner. But, as your attorney said, none of that makes any difference after the shots are fired and the bodies are lying there. They, they don't, really, nobody's really concerned about how this happened, how it could have been avoided, who really contributed to this, what your culpability was, ah, the fact of the matter is that you were there, um, with a couple other guys with weapons in opposition to law enforcement, and shots were exchanged, and law enforcement lost that day in a sense. They lost that day, and then the next day after and, and for the rest of your life you lost, because now you're paying the price.*

## *Opposition*

Now we are getting to the real reason Scott is still in prison.

*... But, um, it is a tough case and it's still notorious and it's still, there's still a lot of opposition out there to paroling any of you guys involved in this, um, you know, those kinds of prosecutor kinds of sources and law enforcement and those kinds of people. So there's always going to be some opposition to it.*

Folks, this is political. No one has ever denied the fact that it is. It was politics before the Medina meeting, during the Medina meeting, leading up to the shootout and after. The trial was political, the sentencing, the appeals, and now... **The Parole.**

## *Conditions of Parole*

\$5 \$2.18 G RANTING OF PAROLE.

The granting of parole to an eligible prisoner rests in the discretion of the U.S. Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (*i.e.*, that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

# *The Parole*

## *Conditions of Parole*

These are the two questions that must be resolved by the Parole Commission.

- 1.) Would the release of Scott Paul **"depreciate the seriousness of his offense or promote disrespect for the law"**?

We expect our Laws to be one dimensional, to be above vengeance, politics, and other outside influences. We expect our Laws to perform one task...to execute Justice. Let me remind you of some of the statements you have read earlier...

*"it's a case that got a lot of attention... which is not necessarily good for you"*

*"the underlying issue's here, you know the tax protests...the greatest threat to the country is not people with guns, it's people who refuse to pay taxes...they are really viewed as a serious threat"*

*"You know, there's the Waco, there's the Randy Weaver thing, it goes back to North Dakota... which is not necessarily again healthy for you"*

## *Conditions of Parole*

*"Either you're on the right side or you're on the wrong side"*

*"Even though there's nothing to indicate that you were specifically convicted of shooting anybody or killing anybody...the fact of the matter is you were there"*

*"you're paying for the fact that you were there...some things probably beyond your control...some decisions the cops made...it could have been resolved in some other manner"*

*"nobody's really concerned about how this happened, how it could have been avoided, who really contributed to this, what your culpability was, ah, the fact of the matter is that you were there"*

*"there's still a lot of opposition out there to paroling any of you guys...those kinds of prosecutor kinds of sources and law enforcement and those kinds of people"*

## *Conditions of Parole*

**Disrespect?** How could this kind of reasoning promote disrespect? (I'm being a little facetious here)

**"Seriousness of his offense."** Scott has been in prison for 22 years.

- 2.) Would the release of Scott Paul **"jeopardize the public welfare"**?

No. Scott's release would not jeopardize the public welfare.

*"not because probably you are any kind of threat to the community or any of those other kinds of things...be like, um, the chances of you doing anything illegal if you were released today is virtually nil. Um, they would probably never hear a squeak out of you again. I'm sure you're not a risk."*

Anyone who reads this pamphlet, please visit ScottPaul.com and read the **whole** transcripts of this proceeding. We understand how difficult it is to believe some of the points that we bring before you. It is important that you see, for yourselves, that we have taken great care not to remove from context any of the statements we have cited.

# FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number:04564-059, Last Name:FAUL

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 04564-059

Inmate Name

Last.....: FAUL

First.....: SCOTT

Middle.....:

Suffix.....:

Gender.....: MALE

Risk Level Inmate.....: R-MIN

General Level.....: R-MIN (-1)

Violent Level.....: R-MIN (4)

Security Level Inmate: HIGH

Security Level Fac1...: LOW

Responsible Facility.: SST

Start Incarceration...: 06/24/1983

## PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	69	0	0
Walsh w/Conviction	FALSE	0	0
Violent Offense (PATTERN)	TRUE	5	7
Criminal History Points	2	8	3
History of Escapes	0	0	0
History of Violence	1	1	2
Education Score	HighSchoolDegreeOrGED	-2	-2
Drug Program Status	NoNeed	-6	-3
All Incident Reports (120 Months)	0	0	0
Serious Incident Reports (120 Months)	0	0	0
Time Since Last Incident Report	199	0	0
Time Since Last Serious Incident Report	332	0	0
FRP Refuse	FALSE	0	0
Programs Completed	2	-6	-2
Work Programs	1	-1	-1
	Total	-1	4

Exhibit G

# FSA Time Credit Assessment

Register Number:04564-059, Last Name:FAUL

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number.....: 04564-059  
Inmate Name  
Last.....: FAUL  
First.....: SCOTT  
Middle.....:  
Suffix.....:  
Gender.....: MALE  
Start Incarceration: 06-24-1983

Responsible Facility: SST  
Assessment Date.....: 01-19-2023  
Period Start/Stop...: 12-21-2018 to 01-19-2023  
Accrued Pgm Days.....: 0  
Disallowed Pgm Days.: 0  
FTC Towards RRC/HC...: 0  
FTC Towards Release.: 0  
Can Apply FTC.....: No

Start	Stop	Pgm Status	Pgm Days
12-21-2018	01-19-2023	ineligible	0

## FSA ineligible

Facility	Category	Assignment	Start	Stop
SST	FSA	FTC INELIG	11-30-2019 1527	CURRENT
SST	FSA	INELIG AUT	12-17-2019 1248	CURRENT

#	Start	Stop	Status	Risk Assignment	Risk Asn Start	Factor
001	12-21-2018	06-19-2019	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
002	06-19-2019	12-16-2019	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
003	12-16-2019	06-13-2020	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
004	06-13-2020	12-10-2020	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
005	12-10-2020	06-08-2021	ACTUAL	FSA R-MIN	04-28-2021 1209	10
006	06-08-2021	12-05-2021	ACTUAL	FSA R-MIN	04-28-2021 1209	10
007	12-05-2021	03-05-2022	ACTUAL	FSA R-MIN	04-28-2021 1209	15
008	03-05-2022	06-03-2022	ACTUAL	FSA R-MIN	12-10-2021 1228	15
009	06-03-2022	09-01-2022	ACTUAL	FSA R-MIN	05-30-2022 1407	15
010	09-01-2022	02-14-2023	ACTUAL	FSA R-MIN	05-30-2022 1407	15

Exhibit H

SEP 98

## INMATE REQUEST TO STAFF

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Mr. Anderson, Case Manager	DATE: April 26, 2022
FROM: Scott Faul	REGISTER NO.: 04564-059
WORK ASSIGNMENT: Rec PM	UNIT: K-3

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.

This request is in regard to the upcoming parole hearing scheduled for May 5, 2022. In advance of that hearing, please conduct a thorough review of my entire central file in all sections to identify any evidence that I will commit any Federal, state or local crime in the future.

If there is anything that could even remotely be considered to be such evidence, please inform me of what it is prior to the parole hearing.

Thank you.

*Scott Faul*

(Do not write below this line)

## DISPOSITION:

You have maintained clear conduct since March 2006. I don't see anything that would indicate you would be a security risk or have any evidence that you would commit any crimes. I intend to submit you for 12 mths RRC placement when I am allowed to.

Signature Staff Member <i>J. Anderson</i>	Date 4-26-2022
--	-------------------

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

FILE IN SECTION 6 UNLESS APPROPRIATE FOR PRIVACY FOLDER

**SECTION 6**

Exhibit I

U.S. Department of Justice  
United States Parole Commission  
90 K Street, N.E., 3<sup>rd</sup> Floor  
Washington, D.C. 20530

## Notice of Action

Name: FAUL, SCOTT

Institution: Sandstone FCI

Register Number: 04564-059

Date: January 31, 2023

As a result of the hearing conducted on January 25, 2023, the following action was ordered:

Deny two-thirds parole. Continue to expiration. You will be scheduled for a statutory interim hearing in January 2025. At that time, you will again be considered for release pursuant to 18 U.S.C. §4206(d).

### REASONS:

After consideration of all factors and information presented, at this time, the Commission is denying your release under the standards at 18 U.S.C. §4206(d) for the following reasons: The Commission has determined that there is a reasonable likelihood that you will commit any Federal, State or local crime. You were part of a violent anti-government group responsible for the murder and serious injury of several federal law enforcement officers. You continue to deny your crimes, claim yourself and your conspirators are the victims, and deny the legitimacy of the U.S. Government, law enforcement, and the judiciary. Your own words show that you would not obey the requirements of your release. You have not completed any programming to address your rehabilitation such as victim impact or criminal thinking and have shown no interest in completing such programming, further emphasizing that you see no issues with your history of violence and have no intention of improving your thoughts and behaviors.

As required by law, you have been scheduled for a statutory interim hearing in January 2025.

THIS DECISION IS APPEALABLE TO THE NATIONAL APPEALS BOARD. All Appeals must be submitted within 30 days of the Notice of Action. The appeal form may be obtained from your case manager and is also available at <https://www.justice.gov/sites/default/files/uspc/legacy/2013/02/26/formi22.pdf>

Copies of this Notice are sent to your institution and to your supervising officer. In certain cases, copies may also be sent to the sentencing court. You are responsible for advising any others you wish to notify.

cc:

CMC

Sandstone FCI

Kettle River Road

Sandstone, MN 55072

FAUL, SCOTT Reg. No. 04564-059

Page 1 of 2

Exhibit J-001

U.S. Department of Justice  
United States Parole Commission  
90 K Street, N.E., 3<sup>rd</sup> Floor  
Washington, D.C. 20530

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## Notice of Action

U.S. Probation Office  
District of North Dakota  
655 First Avenue North  
370 U.S. Courthouse  
Fargo, ND 58102

mdd



## APPEAL

U.S. Department of Justice  
United States Parole Commission

Name Scott William Faul

Register No. 04564-059 Institution Sandstone FCI

I received a Notice of Action dated January 31, 2023 and appeal that decision that is void.

Scott William Faul  
(Signature)

March 1, 2023  
(Date)

### INSTRUCTIONS:

**Procedures.** The appeal must be mailed to the Commission within 30 days from the date on the Notice of Action. The permissible grounds for appeal are described below. On page two of this form you must provide a brief summary of all the grounds for your appeal. On page three of this form you must provide a statement of the facts and reasons in support of each ground identified in your summary. Continuation pages are permitted for longer appeals. You may provide any additional information in an addendum to your appeal. The Commission may refuse to consider any appeal which does not follow this format. The appeal will be decided on the record, and you will be notified of the Commission's decision through a Notice of Action. Do not submit multiple copies of your appeal, and do not submit documents which are in the Commission's file.

**Mailing address.** You should mail the appeal to U.S. Parole Commission, Appeals Unit, 90 K Street, N.E., 3<sup>rd</sup> Floor, Washington, D.C. 20530.

### Permissible grounds for appeal.

- (a) The Commission relied on erroneous information, and the actual facts justify a different decision.
- (b) There was significant information in existence but not known to me at the time of the hearing, and a different decision would have resulted if the information had been presented.
- (c) The Commission made a procedural error in my case, and a different decision would have resulted if the correct procedure had been followed.
- (d) The Commission applied a statute or regulation incorrectly (e.g., in determining my period of imprisonment as a supervised release violator, and/or my further term of supervised release).
- (e) The Commission made an error in applying the guidelines (error in offense severity rating, salient factor score, and/or calculating time in custody).
- (f) A decision outside the guidelines was not supported by the reasons or facts stated in the Notice of Action.
- (g) There are especially mitigating circumstances in my case which justify a different decision.



## SUMMARY OF GROUNDS FOR APPEAL

**Instructions:** Briefly describe the error which you believe to have occurred, or the specific reason for the Commission to give you a different decision. You do not need to repeat the "ground for appeal" (from Page 1) which applies. Try to list your most important grounds for appeal first.

**Ground One:** The Commission exceeded its jurisdiction by holding a hearing when Scott  
Faul waived further parole consideration, and when Faul has served the sentence at  
issue in the parole hearing.

**Ground Two:** Scott Faul's position is that there was no valid hearing. For the sake of  
completeness, Faul addresses the findings in the Notice of Action. In addition to  
being void, the Commission's findings are arbitrary and capricious, are unsupported by  
evidence, do not consider dispositive conflicting evidence, and are vague and  
conclusory.

**Ground Three:** \_\_\_\_\_

**Ground Four:** \_\_\_\_\_

**Note:** You may present as many grounds for appeal as you believe necessary. If you have more grounds for appeal than you can summarize in the space provided, you may complete your summary on a continuation page.

## STATEMENT OF FACTS AND REASONS IN SUPPORT OF EACH GROUND FOR APPEAL

**Instructions:** Please present your grounds for appeal in the order in which they appear in your summary. For each ground of appeal, use the following format, first stating the facts that are relevant to deciding the ground you have identified, and then the reasons why you believe the Commission erred and/or should make a different decision. Use continuation pages in the same format.

**Ground One:** (Circle the applicable ground for appeal from Page 1: a b c d e f g ).

**Facts:** Scott Faul waived further parole consideration in his January 24, 2023 Parole Form I-24 (attached as Exhibit A). To avoid any confusion regarding his position, Faul appeared at the January 25, 2023 hearing to read his position into the record. Faul's position was (and is) that his sentence computation is being litigated in court, and if decided favorably to Faul, then any parole action would be moot, and if decided unfavorably to Faul, then he will sign up for parole consideration. Until Faul signs up for parole consideration, the Commission may not hold a hearing.

**Reasons:** The Commission lacks power to hold a parole hearing if the parole consideration is waived. The Commission should conclude that no hearing was lawfully held in this matter on January 25, 2023, and that Scott Faul can reapply for mandatory parole consideration when he is prepared for a meaningful hearing with adequate representation if he so chooses.

Ground Two: (Circle the applicable ground for appeal from Page 1: a b c d e f g ).

Facts: The Commission concluded that there is a reasonable likelihood that Faul will commit a future federal, state or local crime. Yet, the Attorney General, pursuant to the PATTERN assessment tool developed under the First Step Act, has concluded that Faul's probability of recidivism is minimum - and has done so every one of the ten times Faul has been assessed. Exhibit B. Faul's recidivism assessments are part of Faul's central file, and the Notice of Action is silent on what the Commission believes the Attorney General missed or why the Commission is departing from the Attorney General's accepted tool for assessing probability of recidivism. Indeed, the Commission did not even make the finding required by § 4206(d) of a "reasonable probability" of recidivism. The Notice of Action does not address the evidence in Faul's sworn communications to the Commission, in which Faul asserted objections to the facts relied on at the January 25, 2023 hearing.

Reasons: The findings in the Notice of Action are too vague, making it impossible to determine whether there is a rational basis in the record for the Commission's conclusions embodied in its statement of reasons. For example, the Notice of Action states that Faul's "words" show he will not obey the parole requirements, but does not identify those words. This is material because certain words - no matter how obnoxious - are First Amendment speech, petitioning activity, and associational activity. Finally, the Notice of Action ignores Faul's record over his 40 years in the BOP. Faul has been a model inmate, has taken programming recommended by his case manager and has done everything asked of him. Faul's conduct over the past 40 years is dispositive evidence that he will follow the law upon release.

U.S. Department of Justice  
United States Parole Commission

Notice of Hearing-Parole Application  
Representative and Disclosure Request

Name: FAUL, SCOTT

Date: January 24, 2023

Register No. 04564-059

Institution: FCI Sandstone, MN

Instructions: This form is to be furnished to and completed by every inmate prior to every scheduled hearing before the Parole Commission. It must be furnished at least 60 days in advance of the scheduled hearings unless such 60-day notice is waived by the inmate (see No. 1 below).

1. **Notice of Hearing:** Provided you have applied for parole in the space below, you will be given a hearing by officials of the U.S. Parole Commission on the docket of parole hearings scheduled for \_\_\_\_\_

If there are less than 60 days between the date of this notice and your hearing, your hearing will be postponed until the next docket of parole hearings at your institution *unless* you initial the following waiver:

       I received this form less than 60 days from the date of my hearing. However, I hereby waive my right to 60 (Initials) days advance notice of the hearing time and notice of my disclosure rights, and I request to be heard as scheduled.

2. **Application:** I hereby apply for parole, or have previously applied and still wish to be paroled:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

3. **Waiver of Parole/Parole Hearing:**

S.F. A. I wish to waive parole consideration at this time, <sup>subject to the conditions set forth in the January 24,</sup> ~~including release on mandatory parole if a two-thirds date~~  
(Initials) ~~has been calculated on my sentence.~~ 2023 letter attached hereto, and for the reasons stated therein.

       B. I wish to waive my scheduled Statutory Interim Hearing and have not incurred any Institutional Disciplinary  
(Initials) Committee infractions since my last hearing.

       C. I wish to waive the parole effective date or presumptive parole date previously determined by the  
(Initials) Commission. (Note: A previously waived parole date will be reinstated upon reapplication, provided no new adverse information exists in your case.)

Note: 1. If you waive parole or a parole hearing, any subsequent application or reapplication must be submitted at least 60 days prior to the first day of the month in which hearings are conducted at the institution where you are then confined.  
2. Revocation hearings cannot be waived. Hearings under 28 C.F.R. 2.28 (b-f) and rescission hearings can only be waived by waiver of the parole effective date or presumptive parole date previously determined by the Commission.

S.F. D. I do not waive the mandatory release that has already been mandated by  
operation of law, and I request that the parole certificate be issued.

Scott William Faul

January 24, 2023

Parole Form 1-24  
January 2015

Exhibit A-001  
Exhibit K-005

4. **Representative:** At your hearing you may have a representative of your choice (e.g., family member, friend, staff member, or attorney), who will be permitted to make a statement on your behalf at the close of the hearing. The name of your representative willing and able to appear should be written in below. Arrangements for the appearance of a representative must be made through your case manager.

Name of Representative: \_\_\_\_\_

If you do not wish a representative, initial the following waiver:

\_\_\_\_\_ I do not wish a representative at my hearing.  
(Initials)

5. **Disclosure of File Information:** You may review the reports and documents in your file which will be considered by the Commission, if you submit a request for disclosure on this form at least 30 days in advance of your hearing. (Note: Certain material which the Commission will consider may be exempt by law from disclosure. In such event, a summary of the material withheld from you will be furnished if you request to review your file.)

\_\_\_\_\_ I wish to inspect the disclosable material in my institutional file.  
(Initials)

\_\_\_\_\_ I wish to inspect any documents concerning me which the Parole Commission may have. I understand that in  
(Initials) most cases, the Commission will have no material, until after an initial hearing has been held. (If you request disclosure of Commission documents, you must do so on this form at least 30 days in advance of the hearing.)

Note: At review hearings, the Commission will only consider information about factors which have changed, or which may have changed, since your last parole hearing.

If you do not wish to request any disclosure, initial the following waiver:

\_\_\_\_\_ I do not wish to inspect my files before the hearing scheduled on this form.  
(Initials)

If you have inspected file material, initial below:

\_\_\_\_\_ I have reviewed the materials in my institutional file on \_\_\_\_\_, 20\_\_\_\_  
(Initials)

\_\_\_\_\_ I have reviewed the Parole Commission file material on \_\_\_\_\_, 20\_\_\_\_  
(Initials)

If you have not yet received disclosure of the file materials you requested or if there are less than 30 days between either of the above dates and your hearing, your hearing will be postponed until the next docket of parole hearings at your institution unless you initial the following waiver:

\_\_\_\_\_ I did not receive 30 days prehearing disclosure of the material I requested from my files. However, I hereby  
(Initials) waive my right to disclosure 30 days in advance of the hearing, and I request to be heard as scheduled.

Scott Faul  
Reg. No. 04564-059  
F.C.I. Sandstone  
P.O. Box 1000  
Sandstone, MN 55072

January 24, 2023

U.S. Parole Commission  
Third Floor  
90 K Street, NE  
Washington, DC 20530

Re: Scott Faul 04564-059  
Parole Certificate

Dear Commission,

Because the Commission has not even completed the disclosure requirements that are mandated by 18 U.S.C. § 4208, by supplying either in full or by summary the two October 19, 2017 letters in opposition to parole, no parole hearing can occur at this time.

Moreover, based on the impasse that has been reached in this case, the following facts will be noted:

(1) I was paroled by operation of law from my "life term" to my 10-year and 5-year term ("15") on February 14, 2013 when the Commission did not make a finding that one of the permissible reasons for denying mandatory parole existed.

(2) I accept that presumptive parole and acknowledge that, inclusive of earned good-time credits, I have thereafter served that "15" and more, leaving no further parole consideration to be lawfully had.

(3) This above-stated issue is presently being adjudicated in the United States District Court for the District of Minnesota (22-CV-2993 (MJD/JFD)).

(4) Any position that mandatory parole at this time is prevented by my "waiver" is untenable because the Commission can merely acknowledge that parole from the life term occurred in 2013, and, subsequent to that acknowledgment, can then issue a parole certificate memorializing the fact that I have been paroled "to a ... (consecutive) sentence[,]" as that option is illustrated in the United States Parole Commission Rules and Procedures Manual, APPENDIX 1 - STANDARD WORDING ON ORDERS [EXAMPLES].

Therefore, I accept and do not waive the presumptive mandatory parole that occurred from the life term by operation of law on February 14, 2013. Due to the ongoing litigation, meaningful hearing concerns, and because no lawful hearing can take place at this time at all (due to the fact that I have already served the entire amount of time required by law), I am hereby forced to take steps to prevent the Commission from causing any further erosion of my right to a fair, meaningful, and correct determination of the facts. Without waiving any release consideration, I hereby waive any further parole consideration. That leaves the

Commission with the sole responsibility (not waived) to deliver the mandatory parole certificate to the BOP for administrative purposes.

When considering whether to issue the requested parole certificate, I would ask that the Commission keep the following facts in mind:

- \* The DOJ attacked me on February 13, 1983 without cause (Inmate Request To Staff (IRTS) January 3, 2023 # 1; Affidavit Of Criminal Justice Professionals).

- \* The DOJ prevented a constitutionally sound trial when they obstructed my effective assistance of counsel by attacking my counsel of choice and driving him out of the state (Affidavit of Gerald LaFountain).

- \* The DOJ prevented a constitutionally sound trial by covering for juror August Pankow's association with the prosecutor (Affidavit of Jeff Jackson).

- \* The DOJ prevented a constitutionally sound trial by coaching and rehearsing the testimony of witness Vernon Wagner with participation by the trial judge on the eve of the day of his testimony (Affidavit of Vernon Wagner).

While some of these items of concern may carry with them a natural skepticism, we should pay close attention to one that is well stated by the late Honorable Chief Judge Donald Lay of the Eighth Circuit in his dissent. Regarding my "trial" in 1983, he said, in part: "The record amply demonstrates the defendants did not and could not receive a fair trial in the District of North Dakota." United States v. Faul, 748 F. 2d 1204 (8th Cir. 1984).

Thank you for your consideration of this letter.

Sincerely,



Scott William Faul

CC: File  
Monitors (future mailings)

## FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number:04564-059, Last Name:FAUL

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number: 04564-059  
 Inmate Name  
 Last.....: FAUL  
 First.....: SCOTT  
 Middle.....:  
 Suffix.....:  
 Gender.....: MALE

Risk Level Inmate.....: R-MIN  
 General Level.....: R-MIN (-1)  
 Violent Level.....: R-MIN (4)  
 Security Level Inmate: HIGH  
 Security Level Faci...: LOW  
 Responsible Facility.: SST  
 Start Incarceration...: 06/24/1983

## PATTERN Worksheet Summary

Item	- Value	- General Score	- Violent Score
Current Age	69	0	0
Walsh w/Conviction	FALSE	0	0
Violent Offense (PATTERN)	TRUE	5	7
Criminal History Points	2	8	3
History of Escapes	0	0	0
History of Violence	1	1	2
Education Score	HighSchoolDegreeOrGED	-2	-2
Drug Program Status	NoNeed	-6	-3
All Incident Reports (120 Months)	0	0	0
Serious Incident Reports (120 Months)	0	0	0
Time Since Last Incident Report	199	0	0
Time Since Last Serious Incident Report	332	0	0
FRP Refuse	FALSE	0	0
Programs Completed	2	-6	-2
Work Programs	1	-1	-1
	Total	-1	4



# FSA Time Credit Assessment

Register Number:04564-059, Last Name:FAUL

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Register Number.....: 04564-059

Inmate Name

Last.....: FAUL

First.....: SCOTT

Middle.....:

Suffix.....:

Gender.....: MALE

Start Incarceration: 06-24-1983

Responsible Facility: SST

Assessment Date.....: 01-19-2023

Period Start/Stop....: 12-21-2018 to 01-19-2023

Accrued Pgm Days.....: 0

Disallowed Pgm Days.: 0

FTC Towards RRC/HC...: 0

FTC Towards Release.: 0

Can Apply FTC.....: No

Start	Stop	Pgm Status	Pgm Days
12-21-2018	01-19-2023	ineligible	0

FSA ineligible

Facility	Category	Assignment	Start	Stop
SST	FSA	FTC INELIG	11-30-2019 1527	CURRENT
SST	FSA	INELIG AUT	12-17-2019 1248	CURRENT

#	Start	Stop	Status	Risk Assignment	Risk Asn Start	Factor
001	12-21-2018	06-19-2019	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
002	06-19-2019	12-16-2019	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
003	12-16-2019	06-13-2020	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
004	06-13-2020	12-10-2020	PRESUMPTIVE	FSA R-MIN	04-28-2021 1209	10
005	12-10-2020	06-08-2021	ACTUAL	FSA R-MIN	04-28-2021 1209	10
006	06-08-2021	12-05-2021	ACTUAL	FSA R-MIN	04-28-2021 1209	10
007	12-05-2021	03-05-2022	ACTUAL	FSA R-MIN	04-28-2021 1209	15
008	03-05-2022	06-03-2022	ACTUAL	FSA R-MIN	12-10-2021 1228	15
009	06-03-2022	09-01-2022	ACTUAL	FSA R-MIN	05-30-2022 1407	15
010	09-01-2022	02-14-2023	ACTUAL	FSA R-MIN	05-30-2022 1407	15

Assessment Date: 01-19-2023

(1)

Assessment# -2147395636  
Exhibit B-002  
Exhibit K-010

## Appeal Notice of Action

Name: **FAUL, SCOTT**

Institution: **Sandstone FCI**

Reg. No: **04564-059**

DCDC No:

Date: **April 18, 2023**

In the case of the above-named, the following action was ordered:

Affirm the previous decision.

### Reasons:

In your appeal, you claim that: (1) the Commission exceeded its authority by holding a hearing after you had waived parole consideration and (2) the Commission's Notice of Action denying you two-thirds (previously known as "mandatory" parole) was arbitrary and capricious and devoid of evidentiary support. For the following reasons, the National Appeals Board denies your appeal.

In your first ground on appeal, you argue that the Commission exceeded its jurisdiction and authority by holding a hearing after you had waived parole consideration. This Board upholds the Commission's decision to proceed in this matter as there was questionable evidence you truly waived parole consideration. In March of 2022, the Commission received an I-24 parole application evidencing what appeared to be your desire to be heard for parole consideration. However, upon closer examination, it was noted that you had modified the form so that it was ambiguous whether you wanted a parole hearing or not. The Commission scheduled you for a hearing in an abundance of caution and made it a two-thirds parole hearing since your "mandatory" date was fast approaching. However, before your hearing, you had your case manager send word that you would not participate due to what you perceived to be the Commission's failure to "follow proper procedures." Of note, you also refused to waive parole consideration. Your case manager indicated that "Inmate Faul again stated to me that the USPC is not following proper procedures, that he does not have to be present at the hearing for the USPC to take action, and that he is not waiving his hearing." The Commission postponed your hearing to review your record in greater detail and, months later, determined that since you had not waived parole consideration, the Commission needed to hold a hearing to determine whether you should be released on mandatory parole or whether there was a reasonable probability that you would reoffend. Another hearing was scheduled and, again, you attempted to request disclosures and dictate the admissible evidence at the hearing (which suggested that you desired to participate) and yet you also implied that failure to acquiesce to your demands would result in your refusal to attend in the hearing. You also submitted another I-24 where you refused to explicitly waive parole. It is clear to this Board that you have purposefully attempted to walk the line between participating in a hearing and fully waiving your right to parole. The best evidence of this is your I-24 dated January 24, 2023, whereby you indicated you were waiving parole but only "subject to the conditions set forth" in an attached letter. The Commission noted that this was not a valid waiver and proceeded with your hearing (the next day) on January 25, 2023. At that hearing, you did appear, read a statement, refused to participate any further, and indicated that you were waiving parole consideration but only subject to the conditions laid out in your letter. The Commission did not recognize those conditions and thus refused to accept the waiver. This left you with

## Appeal Notice of Action

a choice: either proceed with the hearing, refuse to participate, or provide an unequivocal waiver of parole. You opted to refuse to participate in the hearing and left the hearing room. Based on this, the Commission proceeded with the hearing in your absence. This Board finds no error in the Commission's decision to proceed in this matter. Had you unequivocally waived parole, no hearing would have been held. You failed to do this which left the Commission with no other option but to proceed. We also note that on numerous occasions at your hearing the Examiner pleaded with you to stay and make your best argument regarding why you should be paroled. You ignored these requests and still elected to leave the hearing room. In the future, if you truly desire to waive parole consideration, follow the proper procedures and do so unequivocally.

Your next argument on appeal attacks the Commission's decision denying you two-thirds parole. You argue that assessment tools utilized by the Attorney General's Office and the Bureau of Prisons have already determined your recidivism risk and, as such, the Commission is bound to accept this. You are in error. The Commission, and no other entity or agency, has been tasked with determining the parole suitability for its inmates. While there is nothing preventing the Commission from considering and weighing PATTERN assessment tools in determining risk, the Commission is not obligated to follow those findings. Indeed, your failure to argue this point at your hearing is another reason you should have participated as it would have afforded you an opportunity to argue these relevant facts.

This Board has examined the factors cited by the Commission and finds that they support the finding that there is a reasonable probability (also cited as a likelihood) that you would commit another crime if released. First, the Commission noted the seriousness of your offense conduct which involved radical anti-government actions that led to the death and serious injury of several federal law enforcement officers. Second, you continue to deny your crimes and doubt that the evidence presented at your trial was truly sufficient to convict you. You also minimize the actions you took that day, paint yourself as the true victim, and deny the legitimacy of the U.S. Government, the court system, and law enforcement officers involved in your case. All these factors influenced the Commission's decision that you would reoffend if released. Parole requires acquiescence to the authority of both the Parole Commission and U.S. Probation Officers who will supervise you, and the court system in general which sentenced you. Your failure to respect or even acknowledge the authority of these entities is concerning and provides sufficient reason to deny parole. The Commission also noted that you have not programmed sufficiently to address the criminal behavior you have thus far exhibited. It has been recommended that you participate in more programming to reduce the likelihood that you would commit another crime if released and the Board echoes this recommendation.

Lastly, this Board will encourage you to participate in your next two-thirds parole hearing in January 2025. At this hearing, you will again be assessed for release based on the standard enumerated in 18 U.S.C. § 4206(d). You will have an opportunity at this hearing, hopefully, to expressly disavow your past criminal conduct, provide evidence of superior programming to address your criminal behavior and convince the Commission that you would abide by the terms and conditions of parole if granted release. However, based upon the record before this Board, we find that the two-thirds parole hearing was properly held after you failed to appropriately waive your right to a hearing and the factors cited supported the Commission's finding. Thus, we dismiss your appeal and uphold the previous decision.

U.S. Department of Justice  
United States Parole Commission  
90 K Street, N.E., 3<sup>rd</sup> Floor  
Washington, D.C. 20530

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## Appeal Notice of Action

**THE ABOVE DECISION IS NOT APPEALABLE..**

Copies of this Notice are sent to your institution and to your supervising officer. In certain cases, copies may also be sent to the sentencing court. You are responsible for advising any others you wish to notify.

cc:

CMC  
Sandstone FCI  
Kettle River Road  
Sandstone, MN 55072

JEG



## Summary Reentry Plan - Progress Report

Dept. of Justice / Federal Bureau of Prisons  
Plan is for inmate: FAUL, SCOTT 04564-059

SEQUENCE: 00292507

Report Date: 03-07-2022



Facility: SST SANDSTONE FCI  
Name: FAUL, SCOTT  
Register No.: 04564-059  
Quarters: K31-005U  
Age: 68  
Date of Birth: 07-28-1953

Custody Level: IN  
Security Level: LOW  
Proj. Rel Date: 02-14-2023  
Release Method: TWO THIRDS  
DNA Status: OXF00286 / 01-09-2003

### Contact Information

#### Release contact & address

Scott Faul, ADULT SON  
404 Burke Ave., Harvey, ND 58341 US  
phone (home) : 701-324-5263

### Offenses and Sentences Imposed

Charge	Terms In Effect
2ND DEGREE MURDER OF FEDERAL OFFICERS & AIDING AND ABETTING(CT 1&2)-T18USC1111/1114/2	LIFE
FORCIBLY ASSAULTING&IMPEDING FEDERAL OFFICER BY DEADLY WEAPON & A&A(CT5,6,7,8); HARBORING & CONCEALMENT OF FUGITIVE & A&A (CT9); CONSPIRACY TO ASSAULT (CT11)-T18USC111/1114/2/1071/371	15 YEARS

Date Sentence Computation Began: 06-24-1983

Sentencing District: NORTH DAKOTA

Days FSGT / WSGT / DGCT

Days GCT or EGT / SGT

Time Served

+ Jail Credit - InOp Time

0 / 0 / 0

2197 0

Years: 39 Months: 0 Days:

+ 129 JC -0 InOp

### Detainers

Detaining Agency	Remarks
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NO DETAINER

### Program Plans

Inmate Faul arrived at FCI Sandstone on April 17, 2007. He is serving a life sentence for 2nd Degree Murder of Federal Officers & Aiding and Abetting (CT 1 & 2), Forcibly Assaulting & Impeding Federal Officer by Deadly Weapon & A&A (CT 5,6,7,8), Harboring & Concealing of Fugitive & A&A (CT9), and Conspiracy to Assault (CT 11). He has a projected release date of February 14, 2023, via two thirds. While incarcerated at FCI Sandstone, the Unit Team has recommended that he obtain a work assignment and receive good or better work evaluations; maintain clear conduct; and participate in educational, mental health, and recreational programming.

### Current FSA Assignments

Assignment	Description	Start
FTC INELIG	FTC-INELIGIBLE-REVIEWED	11-30-2019
INELIG AUT	FTC-INELIGIBLE OFF CODE - AUTO	12-17-2019
N-ANGER Y	NEED - ANGER/HOSTILITY YES	01-17-2022
N-ANTISO R	NEED - ANTISOCIAL PEERS REFUSE	01-17-2022
N-COGN TV R	NEED - COGNITIONS REFUSE	01-17-2022
N-DYSLEX N	NEED - DYSLEXIA NO	05-30-2021
N-EDUC N	NEED - EDUCATION NO	01-17-2022
N-FIN PV N	NEED - FINANCE/POVERTY NO	01-17-2022
N-FM/PAR N	NEED - FAMILY/PARENTING NO	01-17-2022
N-M HLTH N	NEED - MENTAL HEALTH NO	01-17-2022
N-MEDICL N	NEED - MEDICAL NO	01-17-2022
N-RLF N	NEED - REC/LEISURE/FITNESS NO	01-17-2022
N-SUB AB N	NEED - SUBSTANCE ABUSE NO	01-17-2022
N-TRAUMA R	NEED - TRAUMA REFUSE	01-17-2022
N-WORK Y	NEED - WORK YES	01-17-2022
R-MIN	MINIMUM RISK RECIDIVISM LEVEL	12-10-2021

### FSA Comments

Inmate Faul has been assessed under the Bureau of Prisons PATTERN scoring tool and is a Minimum Risk Recidivism level. He is not



## Summary Reentry Plan - Progress Report

Dept. of Justice / Federal Bureau of Prisons  
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eligible for Federal Time Credits. He has been placed of the waiting list for several FSA classes based on his needs assessment.

### Current Work Assignments

FacI	Assignment	Description	Start
SST	ED REC EVE	RECREATION EVENING 6:00 - 9:30	06-27-2017

### Work Assignment Summary

Inmate Faul is currently assigned to the Education/ Recreation work detail where he is responsible for the general maintenance of the recreation building, including snow removal and cutting the grass. Although there is no current work evaluation, his last work evaluation was a "good" rating.

### Current Education Information

FacI	Assignment	Description	Start
SST	ESL HAS	ENGLISH PROFICIENT	12-18-1991
SST	GED HAS	COMPLETED GED OR HS DIPLOMA	06-01-1991

### Education Courses

SubFacI	Action	Description	Start	Stop
SST	C	AMERICA'S NATIONAL PARKS II	10-08-2019	12-22-2019
SST	C	FOOD FOR THOUGHT: THE FOOD IND	04-08-2019	06-24-2019
SST	C	RPP5 UNIT PRE-RELEASE	04-23-2008	12-27-2012
SST	C	RPP1 POWER WALKING	07-07-2008	09-15-2008

### Education Information Summary

Inmate Faul earned his high school diploma prior to his incarceration in the Bureau of Prisons. He has completed two educational classes during his current term of incarceration, and has also completed two Release Preparation Program (RPP) classes (see above listed classes). In addition to the above listed classes, inmate Faul has certificates of completion for the following classes: Nutritional Health II, Personality & Goal Setting, Principles For Success, Introduction to Community Skills, Communication Part II, and Personality and Stress Control. Faul has been awarded "cube of the week" on two occasions for his extraordinary cleanliness and sanitation standards. He has also been awarded for his "Outstanding Work Performance" for his superior work performance while employed in UNICOR and for assisting in stripping and waxing floors in the AW Complex area. Faul has at least 20 work performance ratings where he was given bonus pay for exceeding work standards, and being a good worker. He is on the waiting list for the Release Orientation Preparation pre-release seminar, and FSA Money Smart for Older Adults, and FSA Anger Management. It is expected that he will continue to program and complete additional educational classes prior to his release.

### Discipline Reports

Hearing Date	Prohibited Acts
03-27-2006	305 : POSSESSING UNAUTHORIZED ITEM
03-28-1995	201 : FIGHTING WITH ANOTHER PERSON

### Discipline Summary

Inmate Faul has maintained clear conduct in the Bureau of Prisons since March 2006. The Unit team has recommended he continue to maintain clear conduct throughout the remainder of his current sentence.

### ARS Assignments

FacI	Assignment	Reason	Start	Stop
SST	A-DES	TRANSFER RECEIVED	04-17-2007	CURRENT
	A-DES	MOVEMENT NOT TRACKED	07-22-1991	04-17-2007
	A-DES	MOVEMENT NOT TRACKED	06-26-1991	07-12-1991
	A-DES	MOVEMENT NOT TRACKED	09-24-1986	06-26-1991
	A-DES	MOVEMENT NOT TRACKED	09-27-1983	09-18-1986
	A-DES	MOVEMENT NOT TRACKED	07-08-1983	09-09-1983

### Current Care Assignments

Assignment	Description	Start
CARE1	HEALTHY OR SIMPLE CHRONIC CARE	05-03-2007
CARE1-MH	CARE1-MENTAL HEALTH	07-06-2010

### Current Medical Duty Status Assignments

Assignment	Description	Start
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Assignment	Description	Start
C19-RCVRD	COVID-19 RECOVERED	12-22-2020
PAPER	LEGACY PAPER MEDICAL RECORD	04-08-2019
REG DUTY	NO MEDICAL RESTR--REGULAR DUTY	05-03-2007
YES F/S	CLEARED FOR FOOD SERVICE	05-03-2007

### Current PTP Assignments

Assignment	Description	Start
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NO ASSIGNMENTS

### Current Drug Assignments

Assignment	Description	Start
ED NONE	DRUG EDUCATION NONE	05-04-1994

### Physical and Mental Health Summary

Inmate Faul is currently assigned to regular duty, with no medical restrictions. He is a Care level 1 inmate, requiring only simple chronic care. He presents no history of drug or alcohol abuse.

### FRP Payment Plan

Most Recent Payment Plan
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\*\* NO FRP DETAILS \*\*

### Financial Responsibility Summary

Inmate Faul has no FRP obligation. He was not assessed a cost of Incarceration Fee.

### Release Planning

Inmate Faul's projected release date is February 14, 2023, via Two Thirds. Upon completion of his current sentence, he plans to secure housing in North Dakota. The Unit Team has recommended he obtain a copy of his birth certificate prior to his release from incarceration. If approved for parole, Unit Team would promptly submit for RRC placement, as Faul has been reviewed under the 2nd Chance Act and has been recommended for 12 months RRC placement.

### General Comments

Inmate Faul was sentenced in the District of North Dakota and is subject to a life term of supervision to follow his current sentence.

Certificate of Participation for

**Scott Faul #04564-059**

FCI-Sandstone CBT Priority Practice Group Entitled:

*Anger Management*

Awarded by:

*Michael Good, BvD, LP*

*Winter/Spring 2022*