

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:  
COMPASSIONATE RELEASE PROCEDURES  
AND APPOINTMENT OF COUNSEL

No. 20-MC-00004-30

**ADMINISTRATIVE ORDER**

This administrative order establishes procedures for handling motions for compassionate release, including the appointment of counsel. The First Step Act, PL 115-391, 132 Stat. 5194 (2018) amended 18 U.S.C. § 3582(c)(1)(A) to allow defendants to directly request compassionate release from a federal court after exhausting their administrative remedies. The Office of the Federal Public Defender (FPD) reports that it has been contacted by, or otherwise discovered, multiple defendants who may wish to file motions for compassionate release. By an Administrative Order entered June 16, 2020, the Court clarified there were no standing orders authorizing a blanket appointment of counsel to pursue compassionate release, but that judges have discretion to appoint counsel in individual cases. The Court establishes the following procedures for effectuating the discretionary appointment of counsel and handling compassionate release requests.

**Ex Parte Communication.** The Court **will not** entertain *ex parte* or other informal requests for the appointment of post-conviction counsel, nor will it consider *ex parte* or any other informal communication from the Federal Public Defender (FPD) or other attorneys requesting that the Court delay decision on a motion until it can be screened or otherwise considered for appointment of counsel. Requests for appointment of counsel to pursue compassionate release **must** be made by motion and only according to the procedure set forth below.

**Appointment of Counsel.** Pursuant to the Criminal Justice Act (CJA), 18 U.S.C. §§ 3006A(a)(1) and (c), the FPD may be appointed to represent any defendant convicted in this District, who was previously determined to have been entitled to appointment of counsel or is now indigent, to file a motion for compassionate release. If the FPD has a prohibitive conflict or determines there is good cause to seek a CJA appointment, a member of the CJA panel may be appointed to represent the defendant.

The decision to appoint counsel to pursue compassionate release is left to the discretion of each presiding judge. If the FPD discerns a defendant may have a **nonfrivolous** claim for compassionate release, the FPD shall file a limited motion requesting the appointment of counsel in the criminal case. The motion for appointment of counsel must briefly:

1. Explain the defendant's efforts to exhaust his or her administrative remedies as required by § 3582(c)(1)(A) and certify that the defendant has fully exhausted as required by Tenth Circuit law;
2. State the grounds for an appointment by describing the extraordinary and compelling reasons supporting the requested relief (*e.g.*, COVID-19 risk based on heart disease, terminal cancer, age of defendant, etc.); and
3. Specify whether defendant seeks representation by the FPD or CJA counsel.

The motion may be limited to the issue of appointment of counsel and need not include an entry of appearance on behalf of the defendant. In the case of a defendant who contacts their previously appointed CJA attorney to represent the defendant in pursuing compassionate release, the CJA attorney may also file a motion seeking reappointment in the criminal case.

The United States is not required to respond to the motion for appointment of counsel and, given the nature of the relief requested, the Court may not wait for a response.

Additionally, if the defendant files a *pro se* motion for compassionate release, and the FPD wishes to file a counseled amendment, a motion for appointment of counsel must be filed within seven (7) days of the defendant's original *pro se* motion. A request for additional time for screening may be considered by the Court, but **only** if made by formal motion. If the Court grants the motion for appointment of counsel, counsel for the defendant should withdraw the pending *pro se* motion, and file a new motion on the defendant's behalf. In cases where counsel has been appointed, the Court will only consider the motion filed by counsel. If the Court appoints CJA counsel, the Clerk's Office shall work with the CJA coordinating attorney to effectuate the appointment from the felony panel.

**Response to Motion.** Unless the Court orders otherwise, the United States is directed to respond to a motion for compassionate release within 14 days of its filing (or, if counsel is appointed after a *pro se* motion is filed, within 14 days of the counseled motion being filed). If the Court has already established deadlines pertaining to existing motions, those deadlines are not modified by this Order.

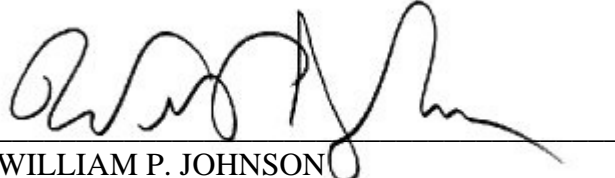
**Duties of the United States Probation Office.** The Probation and Pretrial Services (Probation) for the District of New Mexico shall disclose Presentence Investigation Reports, Judgments in a Criminal Case, and Statements of Reasons, if requested by the FPD, CJA counsel, privately retained counsel, or the United States.

The Court may ask Probation to prepare a report opining on a motion for compassionate release, but such report is not automatically required in each case. The report, if requested, will be filed as a restricted document in CM/ECF.

**Case Management.** All requests for compassionate release shall be filed in the original criminal case. If the presiding judge in the original proceeding is no longer serving as a judge in

this District, the case shall be reassigned on a random basis.

**IT IS SO ORDERED** this 13<sup>th</sup> day of August 2020.

A handwritten signature in black ink, appearing to read 'W.P. Johnson', is written over a horizontal line.

WILLIAM P. JOHNSON  
CHIEF UNITED STATES DISTRICT JUDGE

**Notices**

[1:20-mc-00004 Administrative Orders](#)

**U.S. District Court****United States District Court - District of New Mexico****Notice of Electronic Filing**

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**ADMINISTRATIVE ORDER: In the Matter of Compassionate Release Procedures and Appointment of Counsel (cg)**

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