

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

IN THE MATTER OF:
REPRESENTATION IN
BORDEN V. UNITED STATES,
141 S.CT. 1817 (2021) CASES

22-MC-00004-12

ADMINISTRATIVE ORDER

Pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. §§ 3006(a)(1) and (c), the Office of the Federal Public Defender for the District of New Mexico (FPD) is appointed to research and investigate whether certain incarcerated defendants qualify for relief under 28 U.S.C. § 2255 and *Borden v. United States*, 141 S.Ct. 1817 (2021). The United States Sentencing Commission (USSC) provided a list of individuals who may be impacted by *Borden*. The Court will transmit the USSC List to the FPD but makes no determination as to whether any listed defendant is entitled to relief and/or the appointment of counsel.

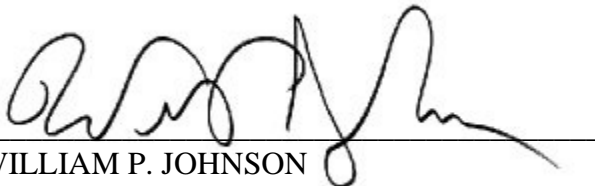
The FPD is granted access to Presentence Investigation Reports (PSRs), Judgments in a Criminal Case (JCCs), including sealed JCCs, and Statements of Reasons (SORs) for the purpose of determining eligibility for *Borden* relief, and for determining whether a conflict of interest precludes the FPD from representing a defendant. The Office of the Clerk of Court (Clerk's Office) has added Kurt Mayer (FPD Designee) as a case participant in every case on the USSC List for the purpose of researching and investigating eligibility for *Borden* relief. The United States Probation Office for the District of New Mexico (USPO) shall ensure that PSRs, JCCs, and SORs appear on the docket for each case on the USSC List, and the FPD Designee shall have access to those documents. The FPD Designee may also request access to PSRs, JCCs, and SORs from the USPO in cases that do not appear on the USSC List, provided an informed investigation

shows a reasonable possibility that the defendants may be eligible for relief under *Borden*. The FPD must do so on a case-by-case basis or using a reasonably tailored list of cases. To avoid undue burden, expansive or categorical requests - such as requests that the USPO disclose/upload documents in all cases involving sentences under a particular statute - shall not be permitted absent a demonstration of good cause and further order of the Court.

When the FPD forms a good faith basis, through its investigation, that a defendant may be entitled to *Borden* relief, it shall file a motion to appoint counsel. The FPD may file an omnibus motion to appoint *Borden* counsel in this administrative case directed at a group of Defendants, with an email copy to the Chief Judge's chambers, or file motions to appoint *Borden* counsel on a case-by-case basis. Any such motion must specify whether the individual Defendant seeks appointment of the FPD or a CJA panel attorney, based on a FPD conflict.

Finally, the FPD is hereby given notice that defendants must obtain permission from the United States Court of Appeals for the Tenth Circuit to file a second or successive § 2255 claim based on *Borden* **before** initiating a § 2255 proceeding in this Court. *See* 28 U.S.C. § 2244(b)(3)(A). Defendants represented by counsel shall follow the proper procedural steps set out in the statutes and rules governing § 2255 proceedings to obtain relief based on *Borden*, and the FPD shall incorporate those procedural requirements in formulating a plan to handle *Borden* claims.

IT IS SO ORDERED this 9th day of February, 2022.


WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

Notices

[1:22-mc-00004 Administrative Orders](#)

U.S. District Court

United States District Court - District of New Mexico

Notice of Electronic Filing

The following transaction was entered on 2/9/2022 at 4:12 PM MST and filed on 2/9/2022

Case Name: Administrative Orders

Case Number: [1:22-mc-00004](#)

Filer:

Document Number: [12](#)

Docket Text:

ADMINISTRATIVE ORDER: In the Matter of Representation in Borden V. United States, 141 S.CT. 1817 (2021) Cases (cg)

1:22-mc-00004 Notice has been electronically mailed to:

1:22-mc-00004 Notice has been delivered by fax to:

1:22-mc-00004 Notice has been delivered by USPS to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1167529506 [Date=2/9/2022] [FileNumber=11788117-0]
][7173403ecc0673ae30bf9ac572b872ee5d45cef93c9f624a0e40a44d1d423420fe0
0e31703a3d410bb0248b14e44bcc0912d54419ebd5e962fdec7d0047f1e77]]