

**N THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA**

**IN THE MATTER OF
REVISING THE PROCEDURE FOR
COMPASSIONATE RELEASE
MOTIONS UNDER THE
FIRST STEP ACT**

**STANDING ORDER
23-02**

This Standing Order is to revise the procedure for submission and consideration of compassionate release motions under the First Step Act, 18 U.S.C. § 3582(c)(1)(A). After consultation with the United States Attorney for the District of South Dakota (U.S. Attorney) and the Federal Public Defender for the Districts of North Dakota and South Dakota (FPD), the Court for good cause adopts the following procedure:

1. Pursuant to the Criminal Justice Act (CJA), 18 U.S.C. § 3006(a)(1) and (c), the FPD is hereby appointed to represent all defendants in criminal cases: (a) who previously were determined to be entitled to appointment of counsel or who are now indigent; and (b) who may be eligible to seek compassionate release under the First Step Act. If the FPD believes itself to have a conflict of interest or other inability to represent a person who qualifies under (a) and (b) above, the FPD shall notify the magistrate judge in the division where the case is pending so that the magistrate judge may consider the appointment of a CJA panel attorney.

2. The Clerk of Court shall screen all inmate filings to determine if the inmate is seeking compassionate release. When the Clerk of Court identifies such a request for compassionate release, the Clerk of Court shall file the request as a motion for compassionate release and notify the FPD, U.S. Attorney, and the District of South Dakota Probation and Pretrial Services Office (Probation Office) of the request. The FPD, U.S. Attorney, and Probation Office shall designate persons within those offices who are to receive notification. If an inmate misdirects a request for compassionate release to chambers, the FPD, U.S. Attorney,

or Probation Office, then that office shall immediately provide the request to the Clerk of Court for filing as a motion for compassionate release.

3. When a compassionate release motion is filed the Probation Office is authorized to disclose Presentence Investigation Reports, Statements of Reasons, Judgments, and any materials it might have related to the inmate's medical history to the FPD (or CJA panel counsel), and the U.S. Attorney. Consistent with the BOP policy, the inmate shall not receive a copy of the Presentence Investigation Report or other sensitive material. The FPD (or CJA panel counsel) shall coordinate with the inmate and the Probation Office on any proposed supervised release plans.

4. When a compassionate release motion is filed, the U.S. Attorney will obtain the movant's medical records, sentence computation data, inmate profile, inmate education data, inmate disciplinary data, and any requests for a reduction in sentence and the response thereto from the Bureau of Prisons and provide such records to the FPD (or CJA Panel counsel). The U.S. Attorney should file such information by filing the material in CM/ECF under seal in the movant's criminal case file.

5. The FPD (or CJA Panel counsel) will have 7 days from receipt of the above-described records from the Probation Office and U.S. Attorney to notify the Court as to whether it will appear on behalf of the movant. The FPD (or CJA panel counsel) will notify the Court by filing a "Notice of Intent to Supplement" or a "Notice of Intent to Not Supplement." The decision to appear on behalf of the movant shall be informed by the information provided pursuant to this Standing Order in connection with existing legal authority and precedent which includes, but is not limited to, U.S.S.G. § 1B1.13.

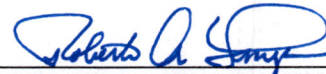
6. If the FPD (or CJA Panel counsel) indicates an intent to represent the movant, the briefing schedule shall be: (a) 14 days for the FPD's (or CJA Panel counsel's) supplemental briefing on behalf of the movant, (b) 14 days for the U.S. Attorney's response, and (c) 7 days for any reply.

7. If the FPD (or CJA Panel counsel) does not represent a pro se movant, the deadline for the government's response to the pro se motion is 30 days from the filing of the FPD's (or CJA Panel counsel's) "Notice of Intent Not to Supplement."

8. The presiding judge may enter an order to enlarge or contract the time frames set forth in this Standing Order to modify the procedure.

9. The FPD (or CJA panel counsel) and U.S. Attorney shall not disseminate outside of their office material received from BOP or the Probation Office concerning the inmate's medical records, presentence investigation report, or other private or confidential information, other than by filing under seal in CM/ECF. Such material shall be used only for the purposes of determining eligibility for compassionate release and possible release plan, and not for any other purpose.

Dated this 4th day of April, 2023.



ROBERTO A. LANGE, CHIEF JUDGE
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA