

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

In the matter of

APPOINTMENT OF COUNSEL
AND PROCEDURES FOR
COMPASSIONATE RELEASE
MOTIONS EFFECTIVE
OCTOBER 8th, 2020

**MISCELLANEOUS
GENERAL ORDER 20-30**

This Miscellaneous General Order supersedes¹ the Court's Miscellaneous General Order 20-14, which appointed counsel for compassionate release motions filed by defendants under 18 U.S.C. § 3582(c)(1)(A).

On December 21, 2018, the President signed into law the First Step Act of 2018, Pub. L. No 115-391, 132 Stat. 5194 (2018), which revised 18 U.S.C. § 3582(c)(1) to allow certain defendants to seek a reduction of their federal sentences. Specifically, defendants may now file motions for compassionate release with district courts after exhausting their administrative remedies. The Office of the Federal Public Defender for the District of Alaska (“FPD”) reports that it has been contacted by numerous federal defendants who wish to file motions for compassionate release in the District of Alaska pursuant to 18 U.S.C. § 3582(c)(1)(A).

On April 22, 2020, the Court issued Miscellaneous General Order 20-14, which appointed the FPD to represent defendants moving for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Specifically, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1) and (c), and because of the need to process motions or petitions efficiently, the Court appointed the FPD to represent any defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by the FPD at the district court level through the completion of sentencing, or who is now indigent, to determine whether the defendant is eligible to petition the Court for compassionate release in accordance with 18 U.S.C. § 3582(c)(1)(A) and to file any petitions, motions, or applications relating thereto.

¹ Changes from Miscellaneous General Order 20-14 are identified in bold and italics.

Due to the increasing number of compassionate release motions filed by pro se defendants in this District and other conflicts, the FPD has been unable to represent every defendant seeking compassionate release. Instead, attorneys serving on the Criminal Justice Act Panel for the District of Alaska (“CJA Attorneys”) have also been appointed to evaluate pro se compassionate release motions and to file any petitions, motions, or applications relating thereto.

Regardless of whether appointed counsel is from the FPD or is a CJA Attorney, however, pro se compassionate release motions remain pending before the Court, without an amended motion being filed, for various reasons, including communication barriers between defendants and appointed counsel and delays in obtaining defendants’ records from the Bureau of Prisons (“BOP”). Therefore, to increase judicial efficiency, conserve resources, and better manage the docket, the Court adopts the following procedures in responding to compassionate release motions:

1. Pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1) and (c), and because of the need to process motions or petitions efficiently, the Court appoints the FPD to represent any defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by the FPD at the district court level through the completion of sentencing, or who is now indigent, to determine whether the defendant is eligible to petition the Court for compassionate release in accordance with 18 U.S.C. § 3582(c)(1)(A) and to file any petitions, motions, or applications relating thereto. *The Clerk’s Office will notify the FPD within 2 days of the filing of a pro se motion or petition seeking compassionate release so the FPD can assume timely representation, if appropriate.*

2. In the event the FPD is unable to represent a defendant, the FPD may refer the case to CJA Attorneys to be appointed to determine whether the defendant is eligible to petition the Court for compassionate release and to file any petitions, motions, or applications relating thereto. *A CJA Attorney must file their notice of appearance relating to a compassionate release motion within 2 days of the referral.*

3. *Appointed counsel shall review and evaluate a defendant's eligibility for compassionate release and file either an amended motion for compassionate release, or a notice that no amended motion will be filed, within 30 days of the notice of appearance.*

4. The United States Probation Office for the District of Alaska and the Clerk's Office are authorized to disclose Presentence Investigation Reports, Modified Presentence Investigation Reports, Statements of Reasons, Judgments, and any relevant sealed documents to the FPD or appointed counsel to determine eligibility for compassionate release and preparing motions for compassionate release.

5. To enable the FPD or other appointed counsel to determine eligibility and prepare amended compassionate release motions, the Court directs the United States Attorney's Office for the District of Alaska to facilitate the process for appointed counsel to obtain the most recent and relevant documents, including, but not limited to: the defendant's medical records, progress report, sentence computation form, financial responsibility form, inmate education data, disciplinary data, and inmate profile. To the extent necessary, the appointed counsel will assist the defendant in executing a release form authorizing BOP to disclose institutional records to appointed counsel.

6. *If appointed counsel is unable to file an amended compassionate release motion within 30 days of the notice of appearance because of delays outside the attorney's control, then appointed counsel shall file a status report stating such within 30 days of the notice of appearance. At that time, counsel shall either request an extension of time, not to exceed 30 days, or voluntarily withdraw the pro se motion without prejudice to enable refiling of another compassionate release motion once all records and information have been received.*

7. *Generally, the Government need not respond to a compassionate release motion until appointed counsel files an amended motion or notice that none will be filed. The Government then has 14 days to respond pursuant to Local Criminal Rule 47.1(c). However, on the motion of a pro se defendant or appointed counsel, or sua sponte upon review of the pending motion(s) for compassionate release and supporting record, the Court may set an expedited briefing schedule. No reply may be filed unless requested by the Court, pursuant to Local Criminal Rule 47.1(d).*

8. *Extensions of time will be considered only upon a showing of good cause. It is the intent of the Court that the procedures outlined herein will help efficiently resolve motions for compassionate release. Setting anticipated timeframes and requiring response by the parties will ensure that all compassionate release motions are addressed and resolved in a timely manner.*

DATED this 8th day of October, 2020.

/s/ Timothy M. Burgess
Hon. Timothy M. Burgess
Chief United States District Judge

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