

FILED

JUL 14 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
E. ST. LOUIS OFFICE

In Re:)
Compassionate Release Provision of) **Administrative Order No. 265**
The First Step Act of 2018.) **(Fifth Amendment)**

FIFTH AMENDED ADMINISTRATIVE ORDER

This Fifth Amended Administrative Order amends and supersedes all prior versions of Administrative Order No. 265 delineating procedures for handling motions for compassionate release.

On December 21, 2018, the President signed into law Senate Bill 756, the First Step Act of 2018. Title VI, Section 603(b) of the First Step Act reforms (18 U.S.C. § 3582(c)(1)(A)) and allows a defendant to move a federal court for compassionate release “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.”

To ensure the efficient adjudication of compassionate release motions pursuant to Section 603(b) of the First Step Act, the undersigned, as Chief Judge, orders the following:

A. Preliminary Review and Response

1. Upon the filing of a motion for compassionate release, the Court will conduct a preliminary review to determine whether the motion is facially frivolous or premature. During the preliminary review process, the Court may permit amendment and/or request additional information.
2. If a motion survives preliminary review, the Court will enter an order directing the U.S. Attorney’s Office (“USAO”) to respond to the *pro se* compassionate release motion.
3. Alternatively, the Court may, in its discretion, appoint the Federal Public Defender’s Office (“FPD”) or a Criminal Justice Act Panel attorney (“CJA attorney”) as set forth in Section B, below.

B. Discretionary Appointment of Counsel

1. As a service to the affected defendants and the Court, the Federal Public Defender's Office ("FPD") is willing to enter its appearance on behalf of all defendants who file a *pro se* motion directly with this district court for compassionate relief pursuant to Section 603(b) of the First Step Act.
2. Pursuant to the provisions of the Criminal Justice Act, Title 18 U.S.C. § 3006A(a)(1) and (c), the Court may appoint the Office of the Federal Public Defender for the Southern District of Illinois to represent any defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by the Federal Public Defender's Office 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 Section 603(b) of the First Step Act of 2018 and to file any petitions, motions, or applications relating thereto. Should there be a conflict of interest involving any defendant and the FPD, the Court shall be notified, and the Federal Public Defender for the Eastern District of Missouri will be authorized to enter its appearance.
3. Due to the volume of motions being filed, upon motion or *sua sponte*, the Court may appoint a Criminal Justice Act Panel attorney ("CJA attorney") to represent a defendant seeking compassionate relief. A CJA attorney may receive a maximum of \$2,500 to handle these matters.

C. Procedure Upon Appointment of Counsel

1. Within seven days of an order appointing counsel, the FPD or CJA attorney shall enter an appearance.
2. To facilitate prompt identification and acquisition of all relevant records, upon entry of appearance, counsel for the defendant will identify which records maintained by the U.S. Bureau of Prisons should be requested, which may include medical records for the six-month period preceding the date of the motion for compassionate release was filed. Upon receipt of the list of documents and records sought by the defendant, the USAO, without delay, will forward the request to the U.S. Bureau of Prisons with a request that the records be returned to the USAO and defense counsel of record. Counsel for the inmate shall provide reciprocal discovery of any information relevant to

the motion for compassionate release to the USPO and the USAO.

1. Upon receipt of additional records about the inmate's condition, the FPD or CJA attorney shall file a supplement to the defendant's *pro se* motion or a statement indicating that the defendant's motion needs no supplementation. If the FPD or CJA attorney determines the defendant's motion is untimely or frivolous, the FPD or CJA attorney shall file a motion to withdraw. The FPD or CJA attorney also shall notify the defendant if it will not be filing a supplemental motion.
2. The USAO shall respond to a compassionate release motion filed by counsel within fourteen days.
3. After the USAO files its response to the motion, the Court may order the USPO to conduct a preliminary investigation to assist the Court in assessing determining if the defendant should be released to the community. The investigation will include identifying any pertinent updates to the defendant's history and characteristics since sentencing, the time remaining on the sentence, if additional conditions of supervised release are necessary to address the needs and/or risk of the defendant, and assessment of the release plan. The USPO shall complete a memo detailing the results of its investigation and disclose the memo to all parties.
4. If the FPD or CJA attorney files a motion to withdraw, the Court will determine whether a response to the *pro se* motion is required by the USAO and whether a preliminary investigation is needed from the USPO and, if so, set a deadline for the filing for each.

D. Additional Matters

1. If a motion survives preliminary review, the United States Probation Office ("USPO"), the USAO, the FPD or CJA attorney (if appointed), and the Clerk of Court are authorized to disclose copies of all relevant medical records,¹ judgments, presentence investigation reports, addenda, statements of reasons, and other relevant documents to the parties for the purpose of determining eligibility for relief.

¹ Under 45 C.F.R. § 164.512(e), this Administrative Order constitutes a "court order" for the disclosure of protected health information.

2. Pursuant to The Crime Victims' Rights Act, 18 U.S.C. § 3771, victims have the right to notice of "any public court proceeding" involving "the crime or of any release or escape of the accused" and the right to be heard "at any public proceeding" involving "release, plea, sentencing, or any parole proceeding." Therefore, the U.S. Attorney's Office is permitted to provide notice of any motion for compassionate release to any victim.
3. If a defendant writes the FPD requesting assistance in seeking compassionate release, the FPD shall forward the request to the Court which will file the letter as a motion seeking compassionate release unless the Court has already opened a case for the defendant.
4. All cases subject to this Order shall be assigned to the initial sentencing Judge, and if not available, by random reassignment by the Clerk of Court.

IT IS SO ORDERED.

DATED: July 14, 2021

A handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style and is positioned above a horizontal line.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge