

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

**IN THE MATTER OF

ESTABLISHING A PROCEDURE
FOR COMPASSIONATE RELEASE
MOTIONS UNDER THE
FIRST STEP ACT**

STANDING ORDER 20-06

This Standing Order is to establish a procedure for submission and consideration of compassionate release motions under the First Step Act, 18 U.S.C. § 3582(d)(1)(A), in the wake of the spread of the COVID-19 virus into the federal prison system. The Court's previous Standing Order 19-01 addressed only motions under Section 404 and not those seeking compassionate release under the First Step Act. 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 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 FPD will communicate a recommendation to inmates interested in compassionate release that they immediately submit requests for compassionate release to the warden of the facility in which they are detained, if they have not done so already. These communications will include the recommendation that the prisoner describe their proposed release plan.

3. 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.

4. The FPD (or CJA panel counsel) and U.S. Attorney shall discuss in good faith and within two business days of filing all motions for compassionate release to place them into one of four categories:

- a. High Priority Cases where there exists some combination of: (i) medical issues that correspond to the categories outlined in the commentary to U.S.S.G. § 1.B.1.13; (ii) recognized COVID-19 risk factors in the inmate's medical history; and/or (iii) imprisonment in a federal facility known to have a serious COVID-19 outbreak in its population. If there is no issue with granting compassionate release, the FPD (or CJA panel counsel) and U.S. Attorney are to notify the Court and the Probation Office forthwith.
- b. Intermediate Priority Cases where identified medical issues and/or COVID-19 risk factors and/or institutional concerns are less extreme than High Priority Cases.
- c. Low Priority Cases where there are no identifiable medical issues or COVID-19 risk factors.
- d. Unknown Risk Cases where there is a lack of sufficient information to categorize the request for compassionate release.

The FPD (or CJA panel counsel) and U.S. Attorney shall immediately report the categorization of cases to the Clerk of Court and the Probation Office.

5. 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. The Probation Office when notified of a High Priority Case shall immediately gather and provide to counsel and the Court any information it can obtain from the Bureau of Prisons (BOP) or other sources on the inmate's projected release date, medical history, BOP custody records, and anything filed with or considered by the BOP with the inmate's administrative request, if any, for early release. The Probation Office shall gather and provide to counsel and the Court the same material in a prompt manner for Intermediate Priority Cases. The Probation Office may disclose all such information by filing the material in CM/ECF under seal in the inmate's criminal case file. 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.

6. In High Priority Cases where there is a dispute over whether the motion for compassionate release should be granted, the briefing schedule, subject to receipt of material from BOP and the Probation Office, shall be: (a) three business days for any supplemental briefing (if the inmate made the initial request pro se); (b) three business days for the U.S. Attorney's response; and (c) two business days for any reply.

7. In Intermediate Priority Cases where there is a dispute over whether the motion for compassionate release should be granted, the briefing schedule, subject to receipt of material from BOP and the Probation Office, shall be: (a) seven business days for any supplemental briefing on behalf of the inmate; (b) seven business days for the U.S. Attorney's response; and (c) three business days for any reply.

8. In Low Priority Cases, the FPD may choose to submit supplemental briefing or not, but must notify the Clerk of Court whether it will or will not be submitting supplemental briefing. The FPD may inform the inmate that the FPD will not represent them and that they may proceed pro se, seek pro bono representation, or retain counsel.

9. For cases with insufficient detail or information to allow categorization, the FPD (or CJA panel counsel) shall work with the inmate, inmate's family, and the Probation Office to obtain information to discuss with the U.S. Attorney to determine into which category the motion for compassionate release should be placed.

10. 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.

11. The FPD should seek to identify and represent those inmates whom the FPD reasonably believes are eligible for an early compassionate release from custodial sentences imposed in the District of South Dakota, but shall work in good faith to limit its inquiries to such cases. The FPD (or CJA panel counsel), U.S. Attorney, and Probation Office shall cooperate fully in this endeavor so that persons eligible for relief are identified and represented in an efficient and orderly manner.

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

Dated this 1st day of May, 2020.



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