

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

IN RE: APPOINTMENT OF COUNSEL  
AND ACCESS TO CONFIDENTIAL  
DOCUMENTS IN CRIMINAL CASES  
POTENTIALLY AFFECTED BY THE  
FIRST STEP ACT OF 2018

STANDING ORDER BMM-13

On December 21, 2018, the President signed into law the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. This legislation provides grounds for certain defendants sentenced by this Court to seek a reduction in sentence pursuant to 18 U.S.C. § 3582(c). In order to efficiently process motions and petitions raising potential claims for relief under the 18 U.S.C. § 3582(c), the Court adopts the following procedure:

1) Pursuant to provisions of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1) and (c), the Court hereby appoints the Federal Defenders of Montana (“FDM”) to represent all criminal defendants who previously were determined eligible for appointment of counsel, or who are now indigent, and who may be eligible to seek a sentence reduction under any of the provisions of 18 U.S.C. § 3582(c). This appointment requires the FDM to undertake the following actions:

a) The FDM must conduct a preliminary screening of all criminal defendants who previously were determined eligible for appointment of counsel, or who are now indigent, to determine which defendants may qualify for

relief under 18 U.S.C. § 3582(c);

b) If, following the preliminary screening, the FDOM believes it has a conflict of interest or other inability to represent a defendant who may qualify for relief under 18 U.S.C. § 3582(c), the FDOM shall file a motion requesting appointment of counsel from the Criminal Justice Act (“CJA”) Panel;

c) Following the preliminary screening, the FDOM or CJA appointed counsel must communicate to those potentially qualifying defendants a recommendation immediately to submit a request for compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A), to the warden of the facility in which they are detained, if they have not already done so. FDOM or CJA appointed counsel must direct defendants in this recommendation to describe their proposed release plan in their request to the warden; and

d) The FDOM or CJA appointed counsel shall offer to seek any available relief for their client through appropriate pleadings, including petitions, motions, or applications relating thereto.

2) The Clerk of Court shall identify and promptly notify the FDOM of all currently pending pro se 18 U.S.C. § 3582(c)(1)(A) motions. Upon receipt of such notification, the FDOM shall pursue representation in accordance with Paragraphs 1(b) and 1(d).

3) The Clerk of Court is further directed to screen all incoming inmate

filings to determine if the inmate is seeking a sentencing reduction under 18 U.S.C. § 3582(c)(1)(A). When the Clerk of Court identifies such a request for sentence reduction, the Clerk of Court shall file the request accordingly and notify the FDOM, United States Attorney's Office ("USAO"), and the United States Probation Office for the District of Montana ("Probation Office") of the request. The FDOM, USAO, and Probation Office shall designate persons within those offices who are to receive this notification and shall inform the Clerk of Court of those designations. Upon receipt of such notification, the FDOM shall pursue representation in accordance with Paragraphs 1(b) and 1(d).

4) Upon request, the Probation Office is authorized to disclose presentence investigation reports, statements of reasons, and judgments to the FDOM and the USAO for the purpose of determining eligibility for relief under 18 U.S.C. § 3582(c). The FDOM shall provide the presentence investigation report, statement of reasons, and judgment to any subsequently appointed or retained counsel. In accordance with the policy of the Federal Bureau of Prisons, no presentence investigation reports or statements of reasons shall be provided to inmates.

5) Upon request, the Clerk of Court is authorized to disclose to the FDOM, appointed counsel, and/or the USAO, documents from a defendant's case file that are not otherwise available through the judiciary's Public Access to Court Electronic Records ("PACER") service, to allow counsel to determine the

defendant's eligibility for relief, the extent of relief, and any conflicts. The Clerk of Court is specifically authorized to disclose U.S.S.G. § 5K1.1 motions and orders, motions and orders related to Fed. R. Crim. P. 35, plea agreements, charging documents, notices of enhancement under 21 U.S.C. § 851, transcripts available pursuant to Judicial Conference policy, verdicts, orders related to U.S.S.G. Amendment 505, and motions under 28 U.S.C. § 2255 upon request. The FDOM may not distribute such documents except to subsequently appointed or retained counsel, unless otherwise ordered by the Court. Subsequently appointed or retained counsel may not further distribute such documents, unless otherwise ordered by the Court. If other documentation from the defendant's case file is needed that is not otherwise available through PACER, and is not identified herein, a motion should be filed with the presiding judge.

6) The FDOM, CJA appointed counsel, USAO, and the Probation Office shall cooperate fully in this endeavor so that persons eligible for relief under the law are identified and represented in an efficient and orderly manner.

DATED this 17th day of June, 2021.



Brian Morris, Chief District Judge  
United States District Court