

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**FILED**  
FEB 05 2019  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

In the matter of )  
)  
**DISTRICT PROTOCOL FOR** )  
**PROCESSING APPLICATIONS** )  
**UNDER FIRST STEP ACT § 404** )  
**(2018)** )  
\_\_\_\_\_ )

General Order No. 692

Section 404 of the First Step Act of 2018, PL 115-391, 132 Stat. 5194 (2018) authorizes retroactive application of Sections 2 & 3 of the Fair Sentencing Act of 2010 to offenses committed before August 3, 2010. Section 404(b) allows a defendant, Director of the Bureau of Prisons, the attorney for the Government, or the Court to move for resentencing under that section. In order to ensure an orderly and efficient consideration of applications under § 404(b), standard, District-wide procedures are desirable. Following consultation between the Court, the U.S. Attorney, U.S. Probation, the defense bar, and the Court Clerk, the Court adopts the following protocol for implementing Section 404.

(1) Intake and Identification of Candidates for Reduction. The Court appoints Federal Defenders of San Diego, Inc. (FSDSI) under 18 U.S.C. § 3006A(a)(1) & (c) to represent initially all potentially eligible candidates sentenced in the Southern District of California. FSDSI will maintain a central, master-list database of potential candidates derived from multiple source lists (Sentencing Commission’s list of potentially eligible defendants and lists of defendants who have individually contacted the Court, the U.S. Attorney, U.S. Probation, FSDSI, or CJA panel members inquiring about eligibility for this reduction). FSDSI will review the master list for facially ineligible cases under § 404(c) and then contact the remaining candidates to inform them of the application process in the District and to solicit additional information to conduct initial screening and advisal. The intake packet to be returned by defendants will include an advisal and waiver of conflict with FSDSI for the limited purposes of conducting a screening for eligibility and possibly entering into a joint recommendation for a reduction.

(2) Initial Screening of Candidates. FDSDI will use information provided by the candidates in their intake packets and materials provided by Probation to conduct an initial screening for eligibility. Probation and the Clerk are authorized and must provide without further order to FDSDI and U.S. Attorney representatives upon request sealed copies of the presentence reports, parties' sentencing summary charts, judgment and commitment orders, criminal history records, any sealed documents, and Statements of Reasons from sentencing for requested cases, as FDSDI identifies each lot of candidates. Probation must also provide FDSDI and the U.S. Attorney representatives a complete list, generated by Probation's data quality analyst from the PACTS database, of all known defendants sentenced for any drug offense on or before **June 21, 2012** (filing date of *Dorsey v. United States*, 567 U.S. 260 (2012)), whether still incarcerated or on supervised release. Per BOP policy, no PSR or Statement of Reasons will be provided to inmates. Review of eligibility will be based on these documents and any data provided by order of the Court from the U.S. Sentencing Commission. FDSDI will seek to process first those individuals whose scheduled and revised release dates place them closest to release, so that qualifying candidates obtain the full reduction due. FDSDI will cooperate with and facilitate efforts of those applicants who wish to proceed through their own attorneys. FDSDI will notify those candidates on the master list that it determines are ineligible.

(3) Consultation and Review by U.S. Attorney. On a periodic basis to be determined by the representatives of each agency, FDSDI will transmit to the designated representatives of the U.S. Attorney a list of candidates it has determined to be eligible for reduction in the current lot of screened cases. The representatives of the U.S. Attorney will review the current tranche of candidates and classify them into three categories: (a) cases approved for joint recommendation for reduction; (b) cases that are contested; and (c) individuals who do not qualify for appointed counsel or have an unwaivable conflict with FDSDI. In the event of a prohibitive conflict, the Court authorizes appointment of a member of the CJA panel to pursue an application for reduction.

(4) Processing of Cases After Consultation and Review. All cases—joint recommendations and contested cases—will be assigned to the original sentencing judge for calendaring in due course. In the event the original sentencing judge is unavailable, the Court will randomly reassign the case. For those in the above, third category of cases, FDSDI will contact the individuals and inform them of their options to proceed pro se or obtain alternative counsel (including panel members who are assigned to take conflict cases).

(a) Cases qualifying for a joint recommendation after consultation and review will have a standard, joint motion filed after notices of appearance have been filed in those cases. The standard motion must set out the information required to initiate an inquiry for a reduced sentence under § 404, including the original sentence and applicable Guidelines range, the basis for qualification under § 404, and the new Guidelines calculation and sentence recommended after application of the substance-amount levels comporting with the Fair Sentencing Act. Both parties will be given an opportunity before a final ruling to supplement the initial application to provide the Court with a basis to exercise discretion regarding the request.

(b) Cases that have been placed on the contested track will be calendared for briefing and hearings as required to dispose of the matter. FDSOI will continue to represent candidates in contested cases, unless an unwaivable conflict or financial ineligibility requires FDSOI to withdraw from the case.

(5) Disposition of Motions for Reduction. The assigned judge may summarily rule on a joint motion or order a hearing on it or a contested motion. If a motion for reduction is granted, the judge will enter an amended judgment and commitment order in that case reflecting the new sentence. If the motion is denied, the judge will set out reasons in the record sufficient to preclude successive motions under § 404(c).

(6) Ongoing Notification. The Court and Clerk's Office will promptly notify FDSOI of any pending and subsequently filed pro-se motions for relief under Section 404. FDSOI will periodically notify the U.S. Attorney representatives of its review results on potential cases for disposition as set out above.

\* \* \*

**IT IS SO ORDERED.**

Dated: 2-5-19



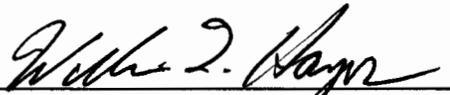
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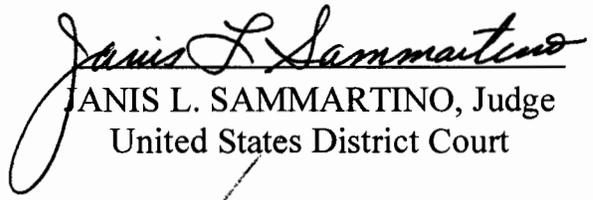
LARRY ALAN BURNS,  
Chief Judge  
United States District Court



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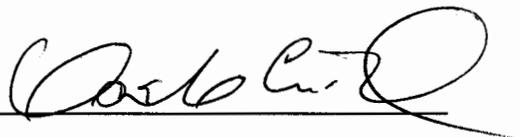
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United States District Court

  
WILLIAM Q. HAYES, Judge  
United States District Court

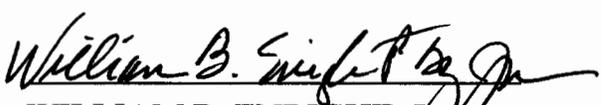
  
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United States District Court

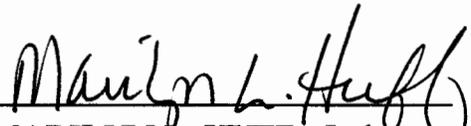
  
ANTHONY J. BATTAGLIA, Judge  
United States District Court

  
CATHY ANN BENCIVENGO,  
Judge  
United States District Judge

  
GONZALO P. CURIEL, Judge  
United States District Court

  
CYNTHIA A. BASHANT, Judge  
United States District Court

  
WILLIAM B. ENRIGHT, Judge  
United States District Court

  
MARILYN L. HUFF., Judge  
United States District Court

  
BARRY TED MOSKOWITZ,  
Judge  
United States District Court

  
JEFFREY T. MILLER, Judge  
United States District Court

  
THOMAS J. WHELAN, Judge  
United States District Court

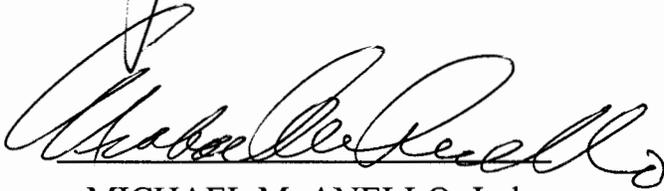
SEE ATTACHED  
M. JAMES LORENZ, Judge  
United States District Court



JOHN A. HOUSTON, Judge  
United States District Court

SEE ATTACHED

ROGER T. BENITEZ, Judge  
United States District Court



MICHAEL M. ANELLO, Judge  
United States District Court

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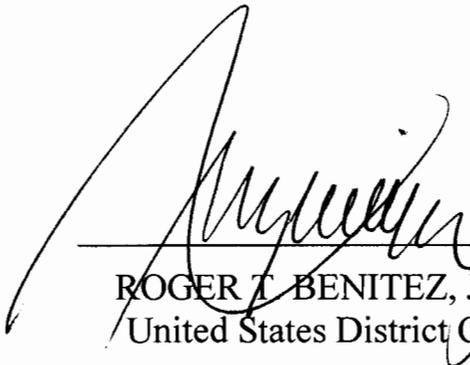
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