

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN GENE MCCOY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Petitioner Brian Gene McCoy asks for leave to file the attached Petition for a Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner sought leave to proceed *in forma pauperis* in the United States Court of Appeals for the Eighth Circuit. His application was denied. This Court later issued an order granting Petitioner's motion for leave to proceed *in forma pauperis*, granting his petition for a writ of certiorari, vacating the judgment, and remanding for further consideration of *Sessions v. Dimaya*, 584 U.S. __ (2018). On remand, the court of appeals appointed counsel but did not address Petitioner's application for leave to proceed *in forma pauperis*.

The district court appointed counsel for Petitioner pursuant to the Criminal Justice Act, 18 U.S.C. §§ 3006A(a)(1) and (c). *See Standing Order; In the Matter of Providing Counsel for Persons Potentially Eligible for Relief under Johnson v. United States* (D.N.D. Oct. 28, 2015). Therefore no affidavit is attached. Sup. Ct. R. 39(1).

Dated this 29th day of December, 2020.

Respectfully submitted,

JASON J. TUPMAN
Federal Public Defender
By:

/s/ *Molly C. Quinn*

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**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

**IN THE MATTER OF PROVIDING
COUNSEL FOR PERSONS
POTENTIALLY ELIGIBLE FOR RELIEF
UNDER *JOHNSON V. UNITED STATES***

STANDING ORDER

Pursuant to the Criminal Justice Act at 18 U.S.C. §§ 3006A(a)(1) and (c), and finding that persons presently serving prison terms are financially eligible for appointed counsel under the provisions of that Act, the Office of the Federal Public Defender for the Districts of South Dakota and North Dakota is appointed to represent all defendants in criminal cases in this District who: (a) received any sentence which may be subject to reduction or modification as a result of the decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) and subsequent Court decisions; and (b) are in the custody of the Bureau of Prisons or in the custody of a state correctional system subject to a federal hold pursuant to such a sentence.

The purposes of this appointed representation are as follows:

- 1) To identify all persons with potential claims for relief under *Johnson v. United States*, 135 S. Ct. 2551 (2015), including persons who may have filed a pro se pleading for relief.
- 2) To seek any available sentencing relief for such persons through appropriate pleadings.
- 3) To prioritize those persons with a claim for relief which must be acted upon immediately.
- 4) To maintain communications with all such persons to learn their wishes and to advise them.
- 5) To identify any conflict of interest which would require the withdrawal of the Federal Public Defender and the appointment of new counsel.

To give effect to the purposes of this Order, the United States Probation Office for the District of North Dakota is authorized and directed to cooperate with the Office of the Federal Public Defender in identifying persons who meet the two criteria of inclusion set forth above and in providing the Federal Public Defender with relevant information about the affected persons, including copies of their Presentence Investigation Reports and any defense or prosecution objections thereto.

Dated this 28th day of October, 2015.

/s/ Ralph R. Erickson

Ralph R. Erickson, Chief Judge
United States District Court