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September 14, 2015

MEMORANDUM

To: All Federal Defenders
All Community Defenders

From: Cait Clarke 

RE: JOHNSON CASE CODING INSTRUCTIONS (INFORMATION)

I am writing to describe new case-opening codes for work arising out of the *Johnson* decision, the temporary weights that will be assigned to those codes, and the planned procedure to revisit those weights this statistical year (the 12 month period ending March 31, 2016), before they are finalized and reported for your office.

The *Johnson* decision has already provided welcome relief to many clients with active cases and on direct appeal. In addition, we all hope that *Johnson* habeas relief will be available to incarcerated clients as well. While we are all glad to have these opportunities, we recognize that this is significant additional work for many offices, and that some offices will have many more these cases than others. Given this importance of this new category of work, and the potential volume for these cases, the Defender Services Office consulted with the Case Weights Expert Panel¹ and the Defender Services Advisory Group to develop this guidance.

Informing this discussion was our recent experience in analogous types of cases: crack retroactivity, *Simmons*, and drugs minus two. We have learned from experience that case types such as these, that are potentially high volume, can cause distortions to case weights if not coded and weighted with great care.

The expert panel, DSAG, and DSO have agreed on an approach to *Johnson* cases that creates two case codes, assigns a temporary weight, and that compiles data to revisit that weight before the statistical year is finalized and reported.

The first code, JREV, will relate to case review. A large number of cases will need to be reviewed to determine if relief under *Johnson* is possible. On average, the time required to review any individual case for eligibility will be comparatively short. Some cases, of course, will require more detailed analysis and review of records. The vast majority of cases, however, will go through initial screening with relatively quick assessments as to potential eligibility.

¹ Reuben Cahn, Rene Valladares, and Terence Ward

The second code, JHAB, will be appropriate when an office is authorized to seek habeas relief for *Johnson* claims. It appears increasingly likely that the government will largely concede all but the furthest reaches of *Johnson*. Thus, most habeas petitions seeking *Johnson* relief will require substantially less work than the typical 2255 motion attacking a conviction or sentence. This distinction is important, because lumping *Johnson* habeas work into the “typical” non-capital habeas code would ultimately result in a serious dilution of that habeas weight.

JHAB is appropriate to open once a habeas petition is filed. In that event, the JREV case for that client should be closed, and a JHAB case should be opened for that client.

As noted above, temporary or provisional weights will be assigned to both of these case types. The JREV case type will have a provisional weight of 0.0424 (the same as CR 8710, Illegal Entry). The JHAB case type will have a provisional weight of 0.184 (the same as SI, *Simmons*—a type of unique habeas litigation related to a particular Supreme Court case).

When sufficient timekeeping data on these two new case types become available, DSO will calculate weights for them based on actual time using the method developed by RAND, like every other case type. These actual case weights will then **be applied retroactively** to each organization’s number of weighted case openings. We expect to be able to do this in time for the FY 2017 budgets (i.e., by the end of SY 2016).

Therefore, unless something unexpected happens, **the provisional weights will never be used to calculate actual staffing levels for your budget**. Instead, they represent our best estimate of the weight these cases will be assigned once we have data, and thus should give you a reasonable count of what your WCO will be once the actual weight is available.

I emphasize the importance of opening the *Johnson* cases under these two codes, and *only* under these two codes. Opening *Johnson* matters under different dData codes will dilute the time assigned to this important work, which will lower the final weight ultimately assigned. Incorrect case openings for *Johnson* work could also negatively impact the weights for other case types, such as non-capital habeas work.

DSO Staff appreciate your assistance in making sure that the important work done on *Johnson* cases is fairly and accurately documented, and correctly weighted. As always, if you have questions, please contact your organization’s budget analyst.

Cc: Administrative Officers