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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAY FRANK TEMPLIN,

Defendant.

CR 05-09-H-DWN

**MOTION TO TERMINATE
OBLIGATION TO REGISTER
AS A SEX OFFENDER**

MOTION

COMES NOW the defendant Jay Frank Templin through his undersigned counsel and moves to terminate his obligation to register as a sex offender based on his federal conviction Court for possession of child pornography which arises in this.

GROUNDS

The grounds for this motion are that since his release from federal prison on August 7, 2008, Mr. Templin has maintained a record of clear conduct free of any violations of the law (state or federal), or violations of his supervised release, from

which he was released by the Court on August 15, 2013. (ECF No. 30). Consequently, under both Montana law and federal law Mr. Templin contends he is eligible for discharge from the obligation to register as a sex offender under the relevant state and federal statutes. *See* Mont. Code Ann. §46-23-506 and 34 U.S.C. §20195, which provide:

46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register until a petition is granted under subsection (3)(a); or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3)(b).

(3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have passed, petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. The petition must be granted if the defendant has not been convicted under subsection (2)(b).

(b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual offender and at any time after 25 years of registration for a level 2 sexual offender, an offender may petition the sentencing court or the district court for the judicial district in which

the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

- (i) the offender has remained a law-abiding citizen; and
- (ii) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

- (a) a violation of 45-5-503 if:
 - (i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or
 - (ii) at the time the offense occurred, the victim was under 12 years of age;
- (b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

- (c) a second or subsequent sexual offense that requires registration; or
- (d) a sexual offense and was designated as a sexually violent predator under 46-23-509.

Mont. Code Ann. §46-26-506
(emphasis added).

34 U.S.C. §20915:

§ 20915. Duration of registration requirement

(a) Full registration period. A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is--

- (1) 15 years, if the offender is a tier I sex offender;
- (2) 25 years, if the offender is a tier II sex offender; and
- (3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record.

(1) Clean record. The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by--

- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
- (B) not being convicted of any sex offense;
- (C) successfully completing any periods of supervised release, probation, and parole; and
- (D) successfully completing [of] an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.

(2) Period. In the case of--

- (A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and
- (B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this title, the

period during which the clean record shall be maintained is 25 years.

(3) Reduction. In the case of—

(A) a tier I sex offender, the reduction is 5 years;

(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.

34 U.S.C. §20915
(emphasis added).

GOVERNMENT’S POSITION

Defense counsel contacted Cyndee Peterson with the United States Attorney’s Office. Ms. Peterson stated that the United States Attorney’s Office takes no position on the request but defers to the discretion of the Court.

POSITION WITH THE STATE OF MONTANA

Lewis and Clark County Attorney Leo Gallagher was served with a copy of this motion via email. Mr. Gallagher was also contacted by phone but calls to him were never returned despite having left Mr. Gallagher explanatory voice-mail messages over several days regarding the content of this motion. Defense counsel has not heard back from Mr. Gallagher at the time of filing of this motion. Apparently Mr. Gallagher determined that it was unnecessary for him to respond to our requests for his position as Montana’s representative.

CONTACT WITH UNITED STATES PROBATION

Defense counsel contacted Eric Buehler with the United States Probation Office who stated that U.S. Probation defers to the Court and the applicable state law.

CONCLUSION

WHEREFORE, based on this motion and the brief in support of it (ECF No. 31) Mr. Templin prays the Court will terminate his obligation to register as a sex offender.

RESPECTFULLY SUBMITTED December 5, 2018.

/s/ Michael Donahoe
MICHAEL DONAHOE
Deputy Federal Defender
Counsel for Defendant

IV. CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on December 5, 2018, a copy of the foregoing document was served on the following persons by the following means:

1 CM-ECF

2 E-Mail

3 Mail

1. CLERK, UNITED STATES DISTRICT COURT

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/s/ Michael Donahoe
MICHAEL DONAHOE
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