

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MICHAEL DANIELS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 15-CV-1440-JPS

ORDER

On March 19, 2016, Petitioner filed an amended motion to vacate, set aside, or correct his sentence, in which he challenged the residual clause in the Sentencing Guidelines and his designation as a “career offender” at his sentencing hearings. (Docket #9). The Court denied his motion on June 16, 2017 but granted a certification of appealability. (Docket #22). Petitioner filed a notice of appeal on August 9, 2017. (Docket #24). On November 16, 2018, Respondent filed an unopposed motion to supplement the record on appeal with a letter from the Probation Office. (Docket #33).

Motions to modify the record pursuant to Federal Rule of Appellate Procedure 10(e) must be presented first to the district court. 7th Cir. R. 10(b). “The district court’s ruling on the motion must be included as part of the record, and a notice of the order must be sent to the court of appeals.” *Id.* Courts may supplement a record on appeal “when the supplemental material would provide helpful context.” *Crockett v. Hulick*, 542 F.3d 1183, 1188 n.3 (7th Cir. 2008); *Coleman v. Hardy*, 628 F.3d 314, 315 n.1 (7th Cir. 2010).

Respondent states that the new correspondence from the Probation Office will provide useful context to the Seventh Circuit in adjudicating the

appeal in light of the case's long procedural history. (Docket #33 at 2-3). Petitioner does not oppose the motion. The letter that Respondent moves to include in the record explains that Petitioner was incorrectly classified as a career offender, which affected his criminal history category, but did not affect his total offense level or the guideline imprisonment range. (Docket #33-1 at 2). The letter also discusses whether the designation affects his security classification by the Bureau of Prisons. *Id.* at 3-4. This letter may provide helpful context for the appeal.

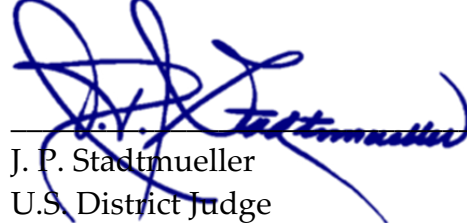
Accordingly,

IT IS ORDERED that Respondent's unopposed motion to supplement the record on appeal (Docket #33) be and the same is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the recent correspondence from the United States Probation Office (Docket #33-1) be and the same is hereby **ADMITTED** in the record.

Dated at Milwaukee, Wisconsin, this 21st day of November, 2018.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge