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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
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6 **IN RE: REQUESTS FOR RETROACTIVE**
7 **APPLICATION OF U.S.S.G. AMENDMENT**
8 **821 PURSUANT TO 18 U.S.C. § 3582(c)(2)**

AMENDED GENERAL ORDER 2023-

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10 On August 24, 2023, the United States Sentencing Commission authorized
11 retroactive application of United States Sentencing Commission Guideline Amendment
12 821 relating to criminal history. Part A of Amendment 821 limits the overall criminal
13 history impact of "Status Points" under § 4A1.1. Part B, Subpart 1 of Amendment 821
14 creates a new Chapter Four guideline at § 4C1.1 decreasing by two the offense levels
15 for defendants who did not receive any criminal history points and whose instant
16 offense did not involve specific aggravating factors. These amendments become
17 retroactive effective February 1, 2024 ("Effective Date").

18 **Appointment of FPD:** In the interests of justice and the efficient administration
19 of both the Court's docket and public resources, the Court orders that, pursuant to the
20 provisions of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1) and (c), the Office of
21 the Federal Public Defender for the District of Nevada ("FPD") is hereby presumptively
22 appointed to represent any defendant previously determined to have been entitled to
23 appointment of counsel, or who is now entitled to appointment of counsel, to determine
24 whether that defendant may qualify for retroactive relief under Amendment 821, and to
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1 present any requests relating thereto to the Court for adjudication that the FPD deems
2 appropriate under Amendment 821. This Order does not confer additional rights.

3 **Conflict:** If the FPD has a prohibitive conflict and may not represent an
4 individual defendant, the FPD will move to request that CJA counsel be appointed to
5 represent the defendant in accordance with the regular procedures of the District of
6 Nevada for the appointment of counsel.

7 **Pro Se Filings:** In any case in which a defendant has filed either a letter or
8 motion requesting relief under Amendment 821, prior to its Effective Date, the FPD's
9 office will be alerted of that filing by the Clerk of the Court and disposition of that filing
10 will be stayed pending the Effective Date.

11 If counsel for a defendant determines that defendant is not eligible for a
12 sentence reduction under the retroactive provisions of Amendment 821, defense
13 counsel must: (1) communicate that determination to the defendant; and (2) file a
14 notice indicating as such with the Court within 30 days of the pro se motion or letter. If
15 defense counsel determines that a defendant is ineligible for a sentencing reduction
16 under Amendment 821, the Government does not need to file a response. If counsel
17 for the defendant determines the defendant is eligible for relief, a Contested Motion or
18 Joint Stipulation will follow within 30 days of the pro se motion being filed.

19 **Joint Stipulation:** If the parties reach an agreement concerning a discretionary
20 sentence reduction, a Joint Stipulation regarding the proposed amended sentence will
21 be filed. The Joint Stipulation will contain a statement by defense counsel that he/she
22 has communicated with the defendant and that the defendant consents to the
23 proposed resolution. The Joint Stipulation must set forth the defendant's sentencing
24 range under the amended Guidelines as calculated by the parties and the proposed
25 sentence. No hearing will be required in cases where the parties file a Joint Stipulation
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1 and the Court adopts the jointly proposed sentence. If the Court disagrees with the
2 proposed sentence in the parties' Joint Stipulation, the Court will permit the defendant
3 to participate telephonically at a hearing scheduled by the Court to address the
4 appropriate sentence. The Court may in its discretion order the defendant's physical
5 presence.

6 **Contested Motions:** In contested cases, defense counsel must file a Section
7 3582(c)(2) motion. Within fourteen calendar days of the filing of the Section 3582(c)(2)
8 motion by defense counsel, the Government must file a response. The defense may
9 file a reply within seven calendar days of the Government's response.

10 In cases where the parties do not reach agreement, unless waived by the
11 defendant, the defendant must appear telephonically in any hearing that addresses the
12 merits of the Section 3582(c)(2) motion. The Court may, in its discretion, order the
13 defendant's physical presence.

14 **Amendment 821 Report:** At the request of the Government and/or defense
15 counsel, Probation must prepare an Amendment 821 Report to assist the parties and
16 the Court in determining eligibility and the appropriateness and length of a
17 discretionary sentence reduction. Once Probation has been notified of a Joint
18 Stipulation or Contested Motion being filed with the Court, Probation must file the
19 Amendment 821 Report with the Court via CM/ECF.

20 **Form AO 247:** If the Court grants the Joint Stipulation or otherwise amends a
21 defendant's sentence, the Court will direct the filing of the first page of Form AO 247.
22 The second page of Form AO 247 will be completed for internal use. A copy of the
23 completed Form AO 247 will be provided to Probation.

24 **Authorized Disclosures:** The United States Probation Office and the United
25 States District Court Clerk's Office are authorized to disclose to the FPD, successor
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1 counsel, and the United States Attorney's Office, upon request, documents from the
2 defendants' case files not otherwise available through the judiciary's Public Access to
3 the Court Electronic Records ("PACER") service to determine defendants' eligibility for
4 relief, to evaluate conflicts, and to file and litigate any petitions, motions, or applications
5 under Amendment 821. The Probation Office and the Clerk's Office may disclose any
6 such documents, including plea agreements, Presentence Investigation Reports,
7 judgments, statement of reasons, Sentry reports, and any sealed documents pertinent
8 to Amendment 821 and sentencing. No counsel may further distribute such documents
9 unless so ordered by the Court.

10 DATED THIS 18th Day of December 2023.

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14 MIRANDA M. DU, CHIEF JUDGE
15 UNITED STATES DISTRICT COURT
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