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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**IN RE: REQUESTS FOR RETROACTIVE
APPLICATION OF U.S.S.G. AMENDMENT
821 PURSUANT TO 18 U.S.C. § 3582(c)(2)**

**SECOND AMENDED GENERAL
ORDER 2023-09**

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

Appointment of FPD: In the interests of justice and the efficient administration of both the Court's docket and public resources, the Court orders that, under the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1) and (c), the Office of the Federal Public Defender for the District of Nevada ("FPD") is hereby presumptively appointed to represent any defendant previously determined to have been entitled to appointment of counsel, or who is now entitled to appointment of counsel, to determine whether that defendant may qualify for retroactive relief under Amendment 821, and to

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, the FPD's office will be alerted of that
9 filing by the Clerk of the Court.

10 If defense counsel, whether FPD or CJA counsel, determines that a defendant
11 is not eligible for a sentence reduction under the retroactive provisions of Amendment
12 821, defense counsel must: (1) communicate that determination to the client; (2) file a
13 notice on the docket within 30 days of the filing date of the pro se motion or letter
14 providing the reason why the request for a sentence reduction cannot be granted; and
15 (3) include in the submission filed on the docket a confirmation that defense counsel
16 has advised the client about the reason why they do not qualify for a reduction. If
17 defense counsel determines that a defendant is ineligible for a sentencing reduction
18 under Amendment 821, the Government does not need to file a response. However,
19 the presiding judge may order the Government to file a response. If counsel for the
20 defendant determines the defendant is eligible for relief, a Contested Motion or Joint
21 Stipulation will follow within 30 days of the pro se motion being filed.

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

9 **Contested Motions:** In contested cases, defense counsel must file a Section
10 3582(c)(2) motion. Within fourteen calendar days of the filing of the Section 3582(c)(2)
11 motion by defense counsel, the Government must file a response. The defense may
12 file a reply within seven calendar days of the Government's response.

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

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

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

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

14 DATED THIS 5th Day of March 2024.

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18 MIRANDA M. DU, CHIEF JUDGE
19 UNITED STATES DISTRICT COURT
20 DISTRICT OF NEVADA
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