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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

Wendy R. Oliver, Clerk
U.S. District Court
W.D. OF TN, Memphis

In re: Potential Sentence)	
Reductions Under 18 U.S.C. § 3582(c))	Administrative Order No. <u>2023-31</u>
Due to Retroactive Criminal History)	
Guideline Amendment 821)	

Before the Court is the Sentencing Commission's retroactive application of Parts A and B, Subpart 1, of Amendment 821. *See* U.S.S.G. App. C., amend. No. 825; U.S.S.G. § 1B1.10, p.s. (eff. Nov. 1, 2023). Part A of the amendment addresses guideline § 4A1.1 (status points), decreasing them by one point for individuals with seven or more criminal history points and eliminating status points for those with six or fewer criminal history points. Subpart 1 of Part B creates a new § 4C1.1 guideline that provides a decrease of two offense levels for "Zero-Point Offenders" (no criminal history points) whose offense did not include specified aggravating factors.

In the interest of applying the retroactive amendment fairly, expeditiously, and without undue expenditure of judicial resources, the Court appoints the Federal Public Defender's Office to represent any defendant potentially eligible for a reduced sentence based on this retroactive amendment. Such appointment does not extend to cases where the Federal Public Defender's Office has conflicts of interest or to cases where other counsel has already been appointed or retained. The appointment will terminate upon the filing of a completion of review notice with an opinion that the defendant does not qualify for a reduced sentence, the district court's ruling on this issue, or the conclusion of the appellate process, unless otherwise ordered by the Court.

Accordingly, it is hereby **ORDERED** that the Federal Public Defender is appointed to represent any defendant potentially eligible for a reduction of sentence under 18 U.S.C. § 3582(c) based on the reductions authorized by Parts A and B, Subpart 1, of Guideline

Amendment No. 821 and Policy Statement § 1B1.10. This Order does not extend to a defendant (1) who has retained counsel or had other counsel appointed to pursue the reduction, or (2) whose case presents a conflict of interest preventing the Federal Public Defender from acting on the defendant's behalf.

The Probation Office is authorized to disclose the defendant's Presentence Investigation Reports, Judgments, and Statements of Reasons to the Federal Public Defender's Office and the U.S. Attorney's Office.

The Office of the Clerk of Court for the Western District of Tennessee ("Clerk's Office") is also authorized to disclose to the Federal Public Defender's Office and the U.S. Attorney's Office documents from the defendant's case file that are not otherwise available through the judiciary's Public Access to Court Electronic Records ("PACER") service to determine the defendant's eligibility, the extent for relief, and conflicts. Specifically, the Clerk's Office and presiding judge may disclose U.S.S.G. § 5K1.1 motions and orders, motions and orders related to Rule 35 of the Federal Rules of Criminal Procedure, plea agreements, charging documents, notices of enhancement under 18 U.S.C. § 851, verdicts, and motions under 28 U.S.C. § 2255. Unless otherwise ordered by the Court, the Federal Public Defender's Office may not disclose these materials to others other than the defendant at issue, except it may disclose the necessary documents to subsequently appointed counsel.

See Attachment A for the Protocol to be followed in these matters.

FOR THE COURT, this 3rd day of November, 2023.



SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

Attachment A

Protocol for 3582(c) Motions based on Amendment 821 (Criminal History) Western District of Tennessee November 3, 2023

1. The Federal Public Defender ("FPD") will initiate the review of cases potentially eligible for the retroactive application of Amendment 821 based on "the lists" provided by the United States Sentencing Commission ("USSC"). Recognizing that the lists may not be exhaustive, the FPD will also review/field inquiries from individuals who do not appear on the USSC lists. Decision Trees will be utilized to determine the application of Amendment 821.
2. Once a case has been identified as being eligible, the FPD will proceed in accordance with the Court's Administrative Order on this issue ("Admin. Order") for defendants previously represented by appointed counsel or will contact prior retained counsel. If retained counsel is no longer representing the defendant, the FPD will proceed in accordance with the Admin. Order.
3. The FPD will file a "Motion to Reduce Sentence - 2023 USSC Amendment" once a case is identified as being eligible. Filing this motion will automatically set the USSC23 case flag, the event code created for these matters.
4. Upon notice of the filing, the U.S. Probation Office ("USPO") will conduct its review and, if warranted, complete a USSG § 1B1.10 (Reduction in term of imprisonment as a result of an amended guideline range) Report, filed using the event "1B1.10 Report on Eligibility for Reduced Sentence - 2023 USSC Amendment." This event will have the same restrictions as the Presentence Report event. The event will set a deadline for the United States Attorney's Office ("USAO"), named "Response USSC23," 21 days after the filing date. This date will appear in the docket text. Upon receipt of the §1B1.10 report, the Court will not act for 21 days to allow the Government and defense counsel time to enter a stipulation or to make objections. The Government and defense counsel shall respond to the § 1B1.10 report within 21 days. Either party may request additional time from the Court, if necessary. Every Monday, each district judge's case manager will receive a scheduled report of "Response USSC23" deadlines occurring in the upcoming week.
5. If the parties provide a stipulation agreeing to the sentence reduction, the Court may take immediate action.
6. Absent any objections or requests for a continuance, the Court may deny relief, may enter an amended judgment that reduces the sentence, or may schedule a conference or hearing for counsel, as it deems necessary after the 21-day disclosure period has lapsed. Pursuant to 18 U.S.C. § 3582(c)(2), when a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has been subsequently lowered by the Sentencing Commission, the Court is authorized to reduce a sentence based on a motion filed by the defendant or the

Director of the Bureau of Prisons, or on its own motion. Therefore, the Court may deem the § 1B1.10 report as the Court's motion and act. The Court should complete an AO Judgment Form 247, regardless of the defendant's eligibility. **In all cases in which a reduced sentence is ordered, the Court shall include an effective date no earlier than February 1, 2024, on the Judgment Form 247.**

7. In cases where the Court intends for the defendant to be immediately released on February 1, 2024, the Court shall pronounce a sentence of time served (with a 2/1/24 effective date), rather than a specified number of months on the Judgment Form 247.
8. In the event the FPD determines a defendant is ineligible, a Notice of 821 Review will be filed by the FPD utilizing the event "Notice of 821 Review Completion." Neither the USPO nor the USAO will be required to respond unless requested by the Court.
9. If a defendant has been determined to be ineligible by the FPD and subsequently files a *pro se* motion, neither the USPO nor the USAO will be required to respond unless directed by the Court.
10. If a defendant serving a prison sentence files a motion or mails a letter directly to the Clerk of Court inquiring about filing motions under Amendment 821, the Clerk's Office will file a "Motion to Reduce Sentence - 2023 USSC Amendment." Filing this motion will automatically set the USSC23 case flag for reporting purposes. The Clerk's Office will not attempt to construe whether a letter from a prisoner is a motion. Instead, chambers shall determine if the letter is not a motion and can terminate it accordingly. The FPD will contact the defendant to ask whether they have retained counsel or, if not, if they want to have counsel appointed. The filing of the motion and/or docketing of the letter will start the process outlined in paragraphs 2 through 8.
11. If a judge receives a letter directly from a defendant regarding 18 U.S.C. § 3582(c), the Clerk's Office will file a "Motion to Reduce Sentence - 2023 USSC Amendment." Filing this motion will automatically set the USSC23 flag for reporting purposes. It will again be up to chambers, not the Clerk's Office, to determine whether such a letter is a motion and whether it should be terminated. The FPD will start the process outlined in paragraphs 2 through 8 upon the filing of the motion by the Clerk's Office.
12. If the USAO receives a *pro se* motion for relief under Amendment 821, the USAO will forward/email the motion to the Clerk of Court at email address IntakeTNWD@tnwd.uscourts.gov. The Clerk's Office will docket the motion utilizing the "Motion to Reduce Sentence - 2023 USSC Amendment." The filing of the motion will start the process outlined in paragraphs 2 through 8. The USAO will not be required to respond to *pro se* motions until they have been reviewed and amended or adopted by defense counsel or upon order of the Court.
13. The Court should consult with the FPD and USAO prior to ordering a defendant to appear in person for a hearing.