

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE:           Motions for Retroactive Application of  
                  Amendment 821 to the Sentencing Guidelines**

**ADMINISTRATIVE ORDER**

1. On April 27, 2023, the Sentencing Commission voted to promulgate Amendment 821 to the Sentencing Guidelines. In part, this amendment alters the application of the Guidelines with respect to certain offenders who (a) earned criminal history “status points” based on commission of an offense while serving a criminal justice sentence, or (b) presented zero criminal history points at the time of sentencing. This amendment took effect on November 1, 2023.

2. Specifically, with regard to “status points,” under U.S.S.G. § 4A1.1, a defendant who committed the instant offense “while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status,” previously received two additional criminal history points. Amendment 821 amends Section 4A1.1 to: (1) eliminate such status points for any defendant who otherwise has six or fewer criminal history points; and (2) apply one point, instead of two, for defendants who otherwise present seven or more criminal history points.

3. With regard to “zero-point offenders,” the Commission’s amendment adds a new Section 4C1.1, which reduces by two offense levels the guideline range for defendants with zero criminal history points. The two-level reduction, however, is not

available under this provision to a defendant if one of the nine exceptions stated in the new guideline applies.

4. On August 24, 2023, the Commission voted to give retroactive effect to these two changes, as of November 1, 2023, subject to disapproval by Congress. In order to permit the orderly disposition of what is expected to be a substantial volume of motions for sentence reductions (possibly in the tens of thousands nationwide), the Commission decreed that while inmates will be able to file motions beginning on November 1, 2023, under 18 U.S.C. § 3582(c)(2), seeking a reduction in sentence based on the retroactive amendment, an individual whose request is granted by the Court may be released from prison no earlier than February 1, 2024.

5. The Court is advised that, to facilitate the orderly review of motions for sentence reduction in this district, and aid judicial efficiency, the United States Attorney's Office for this district (USAO), the Federal Community Defender Office for this district (the "Federal Defender"), and the Probation Office for this district intend to create a committee ("the committee") to review the files of defendants, organized by release date, who may be eligible for a sentence reduction, starting with those defendants who may be released on February 1, 2024. The plan of the USAO and the Federal Defender is to determine whether there is agreement that a defendant is eligible for a sentence reduction and such a reduction is appropriate, and if so, to submit a proposed order to this effect, thus significantly reducing the number of motions requiring further litigation.

6. The Court approves this plan, which has been employed effectively by these parties to address the application of previous retroactive guideline amendments of wide impact.

7. To promote the parties' plan, this Court, pursuant to 18 U.S.C. § 3006A, appoints the Federal Defender to represent all inmates potentially eligible for sentence reductions under Amendment 821 to the Sentencing Guidelines for the limited purpose of screening cases, assessing eligibility for relief, and notifying the defendants or their counsel of the status of their cases.

8. To facilitate this review, the Probation Office is directed to produce to the USAO and Federal Defender any list of potentially eligible inmates it may have, whether received from the Sentencing Commission or any other source. In addition, the USAO is directed to produce to the Federal Defender any list of potentially eligible inmates it may have. Any list of possibly eligible inmates initially produced by the Sentencing Commission shall be used only for purposes of identifying cases to review and shall not be produced to any party outside the committee.

9. The Clerk's Office shall notify the Federal Defender, via the Court's electronic filing system, of all future pro se motions to reduce sentence under 18 U.S.C. § 3582(c)(2) where such motions are clearly identifiable as seeking such relief. The Federal Defender must provide the Clerk's Office with an email address for delivery of such notifications. The Clerk's Office will make reasonable efforts to provide the Federal Defender with a list of cases in which pro se motions to reduce sentence under 18 U.S.C. § 3582(c)(2) were filed prior to the date of this Order.

10. The United States Probation Office is directed to disclose to the USAO and to the Federal Defender the judgment, statement of reasons, and presentence report of any defendant who might be eligible for a reduction of sentence based on the retroactive amendment, and any other relevant additional documents necessary for the review process.

11. The Clerk's Office is authorized to provide to the Federal Defender or assigned defense counsel, and the USAO, upon request, electronic access to any additional documents from a defendant's case file that are not otherwise available through the Public Access to Court Electronic Records (PACER) service to determine the defendant's eligibility and any conflicts; provided, however, that sealed documents will only be made accessible pursuant to court order. Specifically, the Clerk's Office may disclose U.S.S.G. § 5K1.1 motions and orders, motions and orders related to previous sentence reduction motions (under Fed. R. Crim. P. 35, 18 U.S.C. § 3582(c), Section 404 of the First Step Act, or any other provision), charging documents, notices of enhancement under 21 U.S.C. § 851, transcripts available pursuant to Judicial Conference policy, verdicts, and motions under 28 U.S.C. § 2255. The Federal Defender may not distribute such documents except to subsequently appointed or retained counsel, unless otherwise ordered by the Court. Subsequently appointed or retained counsel may not further distribute such documents, unless otherwise ordered by the Court.

12. The Federal Defender shall represent all inmates it previously represented who may be eligible for relief. If the Federal Defender believes an inmate may be eligible for relief whom it did not previously represent and the inmate is determined indigent, it shall

seek appointment with a qualifying financial affidavit for each inmate whom it seeks to represent.

13. If the Federal Defender believes that a particular defendant may be eligible for relief but a conflict exists that prohibits its representation of the defendant, and no prior counsel undertakes representation, the Federal Defender shall notify the assigned judge, who will consider appointing a member of the Criminal Justice Act panel of this district. The Federal Defender shall provide any subsequently appointed or retained counsel with all documents it has obtained pertinent to the matter. In accordance with the policy of the Federal Bureau of Prisons, no Presentence Investigation Reports, Modified Presentence Investigation Reports, or Statements of Reasons shall be provided to inmates.

14. In order to allow the committee sufficient time to conduct the review process and identify and prioritize the eligible defendants, and to arrange for the appointment of counsel, and to avoid unnecessary litigation and waste of judicial resources, all motions in this district based on the retroactive amendment are stayed until, and no Court will require a response by the government to a motion for relief based on the retroactive amendment any earlier than, January 15, 2024.

**SO ORDERED, this 8th day of November, 2023.**

**BY THE COURT:**

**/s/ Juan R. Sánchez**  
**THE HONORABLE JUAN R. SÁNCHEZ**  
**Chief United States District Court Judge**