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DISTRICT COURT OF GUAM

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**JEANNE G. QUINATA**  
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

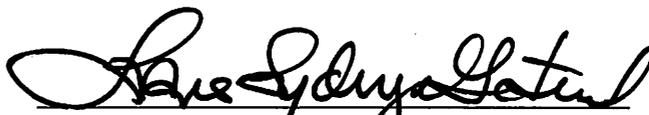
In Re:

PROTOCOL FOR REQUESTS FOR  
DISCRETIONARY SENTENCE  
REDUCTIONS BASED ON  
GUIDELINE AMENDMENT 782

GENERAL ORDER NO. 15-0002

On January 29, 2015, the United States Attorney's Office and the Office of the Federal Public Defender jointly submitted to the court the attached memorandum and requested that this court adopt uniform procedures for litigating motions under 18 U.S.C. § 3582(c), seeking relief under Amendment 782 to the United States Sentencing Guidelines. After having reviewed the memorandum, the court hereby **ADOPTS** the protocol contained therein.

**SO ORDERED** this 5th day of February, 2015.



Chief Judge Frances Tyngco-Gatewood  
U.S. District Court of Guam

## Memorandum

Date: January 29, 2015

To: The Honorable Frances Tydingco-Gatewood  
Chief Judge, U.S. District Court, District of Guam

From: John T. Gorman, Federal Public Defender  
Alicia A. Limtiaco, United States Attorney

Re: Proposed Protocol for Requests for Discretionary Sentence Reductions Based On  
Guideline Amendment 782

By this memorandum, the United States Attorney's Office ("USAO") and the Office of the Federal Public Defender ("FPD") together request that this Court adopt uniform procedures for litigating motions under 18 U.S.C. § 3582(c) seeking relief under Amendment 782 to the United States Sentencing Guidelines, which is expected to take effect on November 1, 2014. In consultation with the United States Probation Department ("Probation"), the USAO and the FPD have drafted the following proposed procedures.

### A. Background

On April 30, 2014, the U.S. Sentencing Commission promulgated and submitted to Congress proposed amendments to the U.S. Sentencing Guidelines (U.S.S.G.). One proposed amendment (Amendment 782) would lower drug offense levels across all drug types, resulting in lower advisory guideline sentencing ranges for many drug offenders. *See* Amendments to the Sentencing Guidelines, April 30, 2014, available at: [http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430\\_RF\\_Amendments.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430_RF_Amendments.pdf). In the commentary to the proposed amendment, the Commission explains:

[Amendment 782] reduces by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties, resulting in corresponding guideline ranges that include the mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five-year statutory minimum are assigned a base offense level of 24 (51 to 63 months at Criminal History Category I, which includes the five-year (60 month) statutory minimum for such offenses), and offenses involving drug quantities that trigger a ten-year statutory minimum are assigned a base offense level of 30 (97 to 121 months at Criminal History Category I, which includes the ten-year (120 month) statutory minimum for such offenses). Offense levels for quantities above and below the mandatory minimum threshold quantities similarly are adjusted downward by two levels, except that the minimum base offense level of 6 and the maximum base offense level of 38 for most drug types is retained, as are previously existing

minimum and maximum base offense levels for particular drug types.

The amendment also makes parallel changes to the quantity tables in § 201.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), which apply to offenses involving chemical precursors of controlled substances. § 201.11 is generally structured to provide offense levels that are tied to, but less severe than, the base offense levels in §2D1.1 for offenses involving the final product.

On July 18, 2014, the Commission further proposed an amendment to U.S.S.G. § 1B1.10. Under that amendment, which is also expected to take effect on November 1, 2014, judges will, with certain limitations, be given the discretion to extend the sentence reduction embodied in Amendment 782 to offenders currently in prison pursuant to 18 U.S.C. § 3582(c)(2).<sup>1</sup> See Amendments to the Sentencing Guidelines (Preliminary), July 18, 2014, available at [http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly/amendments/20140718\\_RFP\\_Amendments\\_Retroactivity.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly/amendments/20140718_RFP_Amendments_Retroactivity.pdf). In the commentary to the proposed amendment, the Commission explains that Amendment 782 will be listed in U.S.S.G. § 1B1.10(d) as an amendment that may be available for retroactive application, subject to a special instruction that "[t]he court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later." The Commission further explains that:

The proposed amendment also provides a new application note clarifying that this special instruction does not preclude the court from conducting sentence reduction proceedings and entering orders before November 1, 2015, provided that any order reducing the defendant's term of imprisonment has an effective date of November 1, 2015, or later.

In preparation for Amendment 782, the Sentencing Commission's Office of Research and Data prepared a list of federal offenders sentenced in the District of Guam whom the Commission estimates are eligible to seek a sentence reduction. On October 4, 2014, the Commission provided that list to Chief Judge Tydingco-Gatewood, who in turn provided it to the USAO, FPO, and Probation. See Exhibit 1. Based on their initial cursory review of the list, the USAO and FPD believe it is likely that the list is both under inclusive (i.e., that it omits federal prisoners who are eligible for the reduction) and over inclusive (i.e., that it includes federal

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<sup>1</sup> 18 U.S.C. § 3582(c)(2) provides, in relevant part, that [t]he court may not modify a term of imprisonment once it has been imposed except that \* \* \* in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

prisoners who are not eligible for the reduction).

In addition to the 25 federal prisoners on the list assembled by the Commission, the USAO and FPD anticipate that more federal offenders who were sentenced in the District of Guam will seek sentencing reductions under Amendment 782.

**B. Case Processing Under 18 U.S.C. §3582(c)(2)**

The goals of this proposed protocol are

- to determine, as efficiently as possible, which prisoners are and which prisoners are not statutorily eligible under 18 U.S.C. § 3582(c)(2) to seek a sentence reduction pursuant to Amendment 782;
- to identify, as efficiently as possible, those prisoners for whom the USAO and FPD agree that a sentence reduction is both statutorily authorized and appropriate, and to provide the Court sufficient information to evaluate joint recommendations for reductions;
- to provide a framework for the Court to resolve cases in which the USAO and FPD disagree about either a) whether the defendant is statutorily eligible for a reduction, or b) whether the discretionary reduction is appropriate.

The proposed protocol that follows provides a framework for evaluating and processing requests for sentence reductions for both the prisoners listed on the list provided by the Commission, and other prisoners who file pro se motions seeking sentence reductions.

The proposed guidelines amendment took effect November 1, 2014, and thus the Court has jurisdiction to consider motions for sentence reductions pursuant to that amendment now. The USAO and FPD request that the Court adopt this proposed protocol as soon as practicable so that our offices can begin collecting information, evaluating cases, and preparing stipulations and motions that can be filed after November 1, 2014. The USAO and FPD believe the proposed protocol will be beneficial to their offices, the Court, and the eligible defendants. In particular, because the Bureau of Prisons is likely to be inundated with requests for information from offices around the country after November 1, 2014, beginning the process now will greatly increase efficiency. As the Court now has jurisdiction, both the USAO and FPD believe the Court can begin issuing the initial appointment orders described below, so that the USAO, FPD, and Probation can begin their work.

**1. Prisoners on the Commission's List of Individuals Who May Be Eligible for a Sentence Reduction under Amendment 782.**

The USAO and FPD propose that the sentences of the 25 federal prisoners

identified by the Commission as possibly eligible for a sentence reduction under Amendment 782 be evaluated and considered in the order of their possible release date. The Commission's list includes 8 federal prisoners whom the Commission believes may be statutorily eligible for a reduction which, if granted, could make them eligible for release on November 1, 2015. The USAO and FPD propose to begin with those 8 individuals and, when review of that group is complete, to work their way down the list in groups of 10-15.

The FPD will review the list and determine whether they would have conflicts representing any of those individuals. Where there is no conflict, the FPD will file a motion to initiate the litigation.

The Court will issue an Order on Motion, appointing the FPD to represent the defendant nunc pro tunc to the date of the filing of the Motion and setting forth dates and responsibilities for reviewing the prisoner's sentence. *See* Exhibit 2 (Proposed Order on Motion).<sup>2</sup> Specifically, the Order will direct Probation to make its own determination whether the defendant is statutorily eligible for a sentence reduction under Amendment 782, and to provide that determination (in a 2014 Drug Retroactive Sentencing Worksheet), along with the defendant's original PSR, to the FPD and USAO; direct Probation to generate the defendant's current "inmate profile" (also called a "Sentry Report") and be available to meet and confer with the USAO and FPD about that report, and permit the parties to request the defendant's more in-depth BOP Progress and Disciplinary Reports; and direct the FPD to file any appropriate motion or stipulation, and the USAO to respond to counsel's motion for a sentencing reduction.

This Proposed Order is significant in three ways. First, it does not require Probation to obtain the defendant's full BOP Progress and Disciplinary Reports in every case, but rather directs Probation to obtain those reports only upon request of the USAO or FPD. In some cases (for example, where the prisoner was sentenced to a still-applicable statutory minimum term of imprisonment), it will be clear from a review of the PSR and other available documents that the prisoner is not statutorily eligible for relief. In other cases (where, for example, the prisoner's Sentry Report reflects the absence of any disciplinary actions against the prisoner), the USAO and FPD may agree that the information on the Sentry Report is sufficient to support a joint recommendation for a sentence reduction. This modification, directing Probation to obtain the Progress and Disciplinary Reports only in cases where the USAO or FPD requests it, will reduce unnecessary work for Probation (and the BOP) and increase efficiency, while still ensuring that the parties have access to all the information they believe they need to make their recommendations.

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<sup>2</sup> Appointments can be made under the Criminal Justice Act, 18 U.S.C. §3006A(a)(1) and (c). Although defendants do not have a constitutional or statutory right to counsel in proceedings under 18 U.S.C. § 3582(c), *see United States v. Townsend*, 98 F.3d 510, 512-513 (9th Cir. 1996), the USAO does not object to such appointments in these cases and, indeed, appreciates the FPD's willingness to take on this responsibility, which will undoubtedly assist the Court.

Second, the Proposed Order grants the USAO, FPD, and Probation much more time to complete their ordered tasks. These longer time periods are necessary due to the larger number of potentially eligible prisoners, and are especially necessary at the outset because the parties will be evaluating a large number of cases all at once. We emphasize, however, that because the Commission has directed that no sentence reduction may take effect before November 1, 2015, these longer time limits will not cause any delay in relief to any prisoner for whom such relief is granted. The USAO and FPD anticipate that in mid-2015, after handling the large, initial group of prisoners who are potentially eligible for release in November 2015, they may propose shorter time limits to the Court.

Third, the Proposed Order (and protocol) does not include language about hearings on the motions. The USAO and FPD anticipate that in some cases, they will agree about whether a hearing is necessary and appropriate (and whether and how the defendants should participate), and in other cases they will disagree. The USAO and FPD anticipate that, in cases of disagreement, they will make their arguments to the Court, and the Court will decide those issues on a case-by-case basis.

As the FPD reviews the cases on the Commission's list (beginning with the first group of 8 prisoners), it will advise the Court of any individuals for whom a conflict precludes representation by the FPD. In those cases, the Court will appoint CJA counsel and issue a similar Order. *See* Exhibit 3 (Proposed Order - CJA).

## **2. Cases in Which the Defendant Has Filed a Request (Letter or Motion) For a Sentence Reduction under Amendment 782.**

In any case in which a defendant files either a letter or motion requesting relief under Amendment 782, the Court will issue an Order appointing the FPD and providing for the timetable for resolution (including Probation's preparation of the 2014 Drug Retroactive Sentencing Worksheet assessing whether the defendant is statutorily eligible for a sentence reduction under Amendment 782). *See* Exhibit 4 (Proposed Order on Pro Se Request). If the FPD is unable to accept the appointment due to a current conflict, the FPD will advise the Court and the Court will appoint CJA counsel. No response to defendant's pro se motion shall be required of the government until the FPD has determined whether the defendant is eligible for a sentence reduction.<sup>3</sup>

If counsel for the defendant determines that the defendant is not eligible for a sentence reduction under the retroactive provisions of the Guidelines amendments, counsel shall

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<sup>3</sup> To avoid the confusion that often arises with automatically generated "response due" dates on cm-ecf, it would be helpful if the Clerk's Office could create a new docketing event, *e.g.*, "Motion to Reduce Sentence re Amendment 782- 18:3582" that does not generate a response due date.

(1) communicate that determination to the defendant; and (2) move to withdraw as counsel for the defendant.

If defense counsel files a motion to withdraw, the Court will review Probation's 2014 Drug Retroactive Sentencing Worksheet and determine whether a response from the USAO to the defendant's pro se motion is necessary, or whether (in light of the FPD's withdrawal and Probation's 2014 Drug Retroactive Sentencing Worksheet) the Court can rule on the motion without requiring a government response. If the Court determines that a response from the USAO is warranted, it shall order one.

### **3. Joint Stipulations and Waivers**

If the parties reach an agreement concerning a discretionary sentence reduction, a Joint Stipulation regarding the amended sentence will be filed along with a Declaration from the defendant consenting to the entry of an amended sentence and setting forth any appropriate waivers. *See* Exhibit 5 (Joint Stipulation); Exhibit 6 (Defendant's Declaration). The Joint Stipulation will contain a certification by defense counsel that counsel has communicated with the defendant and that the defendant consents to the proposed resolution. The Joint Stipulation shall set forth the amended Guidelines sentencing range as calculated by the parties and any agreement to a particular sentence.

# EXHIBIT 1

## ESTIMATED RETROACTIVE ELIGIBLE DRUG TRAFFICKING OFFENDERS FOUND WITHIN USSC DATAFILES DISTRICT OF GUAM

Defendant's Name	Doc. #	Date Sentenced	FBI Number	Marshal Number	PAGTS Number	Citizen Status	Judge's Name	Probation Office	Current Projected Release Date	BSI Release Date
Flores, Freddie Robert	9500034	11/17/1995		01088093		U.S.	Unpingco, John S.	Agana	02/08/2016	11/01/2015
Yoo, Kum Soon	0800020	05/26/2009	36620957	02843093	1938	U.S.	Tydingco-Gatewood, Frances	Agana	01/23/2017	11/01/2015
Cole, Sean Michael	0500039	03/06/2006	708713EA14	02552093	1563	U.S.	Robart, James L.	Agana	12/27/2015	11/01/2015
Sheny, Robert	0900014	02/11/2010	836802EB3	02934093	2049	U.S.	Tydingco-Gatewood, Frances	Agana	04/28/2016	11/01/2015
Johnson, Anthony Kenneth	9500115	04/17/1998	659765EA2	01161093		U.S.	Unpingco, John S.	Agana	01/20/2020	11/01/2015
Mantanona, Prudencio	9800310	05/25/1999	53238NA1	00316093		U.S.	Unpingco, John S.	Agana	12/30/2024	11/01/2015
Abisia, Rolando	9600089	05/27/1997		01286093		U.S.	Unpingco, John S.	Agana	12/27/2022	11/01/2015
Mancilla, Marlon M.	9800196	01/15/1999	724853HB6	01680093		U.S.	Unpingco, John S.	Agana	08/08/2019	12/18/2015
Glmy, Rexielito J	0100061	12/12/2001	708683KB6	02179093		U.S.	Unpingco, John S.	Unknown	06/28/2020	09/19/2016
Paulino, Christopher Pablo	1000062	01/30/2012	219841AB6	03043093	2201	U.S.	Tydingco-Gatewood, Frances	Agana	06/06/2017	04/08/2016
Lujan, James Robert	0500076	09/17/2006	596413XA9	02570093	1586	U.S.	England, Morrison C	Agana	02/22/2020	05/15/2017
Baker, Karl Kaai	1100058	04/08/2013	633646MD9	03251093	2278	U.S.	Tydingco-Gatewood, Frances	Agana	01/16/2019	10/17/2017
Sheny, Arthur	0900014	02/18/2010	870972FB9	02932093	2048	U.S.	Tydingco-Gatewood, Frances	Agana	12/03/2019	12/20/2017
Scharff, Marvin G.	9400059	05/17/2012	238700FA1	00990093	2247	U.S.	Tydingco-Gatewood, Frances	Agana	05/16/2018	12/15/2016

\*Release date based on the new estimated sentence calculated after application of Amendment 782.  
Release date provided by Bureau of Prisons based on current sentence.

**ESTIMATED RETROACTIVE ELIGIBLE DRUG TRAFFICKING OFFENDERS FOUND WITHIN USSC DATAFILES  
DISTRICT OF GUAM**

Defendant's Name	Docket Number	Date Sentenced	FBI Number	Marshal Number	PACTS Number	Citizen Status	Judge's Name	Probation Office	Current Projected Release Date <sup>1</sup>	ted Release <sup>2</sup>
Acfalle, Daniel Jamesm.	1100008	06/20/2012	285279PA7	03168093	2226	U.S.	Tydingco-Gatewood, Frances	Agana	05/28/2017	12/28/2016
Cruz, Vince Luishocog	0400053	05/04/2010	809248CB6	36810177	1862	U.S.	Tydingco-Gatewood, Frances	Agana	02/07/2017	11/01/2015
Mclain, Kenneth Leroy	1100058	04/08/2013	725572NC5	03252093	2277	U.S.	Tydingco-Gatewood, Frances	Agana	03/09/2021	07/23/2019
Cruz, Kevin Michael	1200066	07/30/2013	54984NB7	03600093	2422	U.S.	Tydingco-Gatewood, Frances	Agana	11/12/2020	02/21/2020
Sotelo, Andres Jasmin	1000024	10/06/2011	852926NCO	03014093	2161	Non-U.S.	Tydingco-Gatewood, Frances	Agana	06/07/2023	10/19/2020
Nauta, Roland Anthony	1100008	06/07/2012	478230CBO	03169093	2228	U.S.	Tydingco-Gatewood, Frances	Agana	07/17/2022	03/13/2021
Villa, Rodean	1000028	10/10/2012	487363VA1	02997093	2136	Non-U.S.	Tydingco-Gatewood, Frances	Agana	03/25/2027	10/27/2023
Medina, Gina Fresnoza	1000028	10/29/2012	818569HD2	03015093	2160	U.S.	Tydingco-Gatewood, Frances	Agana	11/18/2033	06/04/2027
Chargualaf, Honofre James	9500054	05/10/1996	421175RA5	01107093		U.S.	Unpingco, John S.	Agana	02/27/2034	05/02/2029
Lee, Warren Antonio	9500114	05/24/1996		01160093		U.S.	Unpingco, John S.	Agana	09/20/2030	09/11/2029
Ichihara, Richard John	0800020	05/26/2009	589189FB2	02820093	1909	U.S.	Tydingco-Gatewood, Frances	Agana	05/07/2034	05/07/2034

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<sup>1</sup>Release date based on the new estimated sentence calculated after application of Amendment 782.

<sup>2</sup>Release date provided by Bureau of Prisons based on current sentence.

**EXH. 2 PROPOSED ORDER ON MOTION (FPD)**

The Defendant, by and through the Federal Public Defender, has filed a Motion requesting appointment of counsel and suggesting to the Court that he may be eligible for discretionary relief pursuant to 18 U.S.C. §3582(c)(2). Accordingly, IT IS HEREBY ORDERED that the Federal Public Defender is appointed as counsel to represent the Defendant nunc pro tunc to the date of the filing of the Motion.

IT IS FURTHER ORDERED that the Probation Office shall provide the Federal Public Defender and the government with the Defendant's Presentence Report; shall generate the Defendant's current Inmate Profile (also known as a "Sentry Report"); and shall prepare a 2014 Drug Retroactive Sentencing Worksheet addressing whether, in the Probation Office's assessment, the Defendant is statutorily eligible for a sentence reduction pursuant to Guidelines Amendment 782, and further advising the Court of the applicable and recommended guideline range. The Probation Office will serve the Presentence Report and 2014 Drug Retroactive Sentencing Worksheet on the Federal Public Defender, the United States Attorney, and the Court, and shall be prepared to meet and confer with the Federal Public Defender and the United States Attorney to discuss the Sentry Report, within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that the United States Attorney or the Federal Public Defender may, within 30 days after receiving those Reports from the Probation Office, request that the Probation Office provide the Defendant's Progress Report and Disciplinary Records from the Bureau of Prisons. If the United States Attorney or the Federal Public Defender makes such a request, the Progress Report and Disciplinary Records shall be made accessible to the Federal Public Defender, the United States Attorney, and the Court as soon as possible.

IT IS FURTHER ORDERED that the Federal Public Defender shall, within 120 days of this Order, file any appropriate motion or stipulation. If the Federal Public Defender files a motion for a sentence reduction pursuant to Guidelines Amendment 782, the United States Attorney shall serve any response to such motion within thirty (30) days of the filing of that motion unless for good cause the time is extended.

Dated:

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UNITED STATES DISTRICT JUDGE

**EXH. 3 PROPOSED ORDER (CJA)**

The Court has been advised that Defendant may be eligible for discretionary relief pursuant to 18 U.S.C. § 3582(c)(2), and concludes that the appointment of counsel is appropriate. Accordingly, IT IS HEREBY ORDERED that [NAME OF COUNSEL] is appointed as counsel to represent the Defendant.

IT IS FURTHER ORDERED that the Probation Office shall provide counsel for the Defendant and the government with the Defendant's Presentence Report; shall generate the Defendant's current Inmate Profile (also known as a "Sentry Report"); and shall prepare a 2014 Drug Retroactive Sentencing Worksheet addressing whether, in the Probation Office's assessment, the Defendant is statutorily eligible for a sentence reduction pursuant to Guidelines Amendment 782, and further advising the Court of the applicable and recommended guideline range. The Probation Office will serve the Presentence Report and 2014 Drug Retroactive Sentencing Worksheet on Defendant's counsel, the United States Attorney, and the Court, and shall be prepared to meet and confer with Defendant's counsel and the United States Attorney to discuss the Sentry Report, within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that the United States Attorney or Defendant's counsel may, within 30 days after receiving those Reports from the Probation Office, request that the Probation Office provide the Defendant's Progress Report and Disciplinary Records from the Bureau of Prisons. If the United States Attorney or Defendant's counsel makes such a request, the Progress Report and Disciplinary Records shall be made accessible to the Defendant's counsel, the United States Attorney, and the Court as soon as possible.

IT IS FURTHER ORDERED that Defendant's counsel shall, within 120 days of this Order, file any appropriate motion or stipulation. If Defendant's counsel files a motion for a sentence reduction pursuant to Guidelines Amendment 782, the United States Attorney shall serve any response to such motion within thirty (30) days of the filing of that motion unless for good cause the time is extended.

Dated:

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UNITED STATES DISTRICT JUDGE

**EXH. 4 - PROPOSED ORDER (PRO SE REQUEST)**

The Defendant has filed a [motion] [letter, which the Court will consider as a motion,](#) seeking Discretionary Relief pursuant to 18 U.S.C. § 3582(c)(2). Accordingly,

IT IS HEREBY ORDERED that the Federal Public Defender is appointed as counsel to represent the Defendant unless the Federal Public Defender declines the appointment, on the basis of a conflict, no later than fourteen (14) days from the date of this Order.

IT IS FURTHER ORDERED that the Clerk of Court shall distribute a copy of the document filed by the Defendant to the Federal Public Defender, the United States Attorney, and the U.S. Probation Office forthwith.

IT IS FURTHER ORDERED that the Probation Office shall provide counsel for the Defendant and the government with the Defendant's Presentence Report; shall generate the Defendant's current Inmate Profile (also known as a "Sentry Report"); and shall prepare a 2014 Drug Retroactive Sentencing Worksheet addressing whether, in the Probation Office's assessment, the Defendant is statutorily eligible for a sentence reduction pursuant to Guidelines Amendment 782, and further advising the Court of the applicable and recommended guideline range. The Probation Office will serve the Presentence Report and 2014 Drug Retroactive Sentencing Worksheet on the Federal Public Defender, the United States Attorney, and the Court, and shall be prepared to meet and confer with the Federal Public Defender and the United States Attorney to discuss the Sentry Report, within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that the United States Attorney or the Federal Public Defender may, within 30 days after receiving those Reports from the Probation Office, request that the Probation Office provide the Defendant's Progress Report and Disciplinary Records from the

Bureau of Prisons. If the United States Attorney or the Federal Public Defender makes such a request, the Progress Report and Disciplinary Records shall be made accessible to the Federal Public Defender, the United States Attorney, and the Court as soon as possible.

IT IS FURTHER ORDERED that the Federal Public Defender shall, within 120 days of this Order, file any appropriate motion or stipulation. If the Federal Public Defender files a motion for a sentence reduction pursuant to Guidelines Amendment 782, the United States Attorney shall serve any response to such motion within thirty (30) days of the filing of that motion unless for good cause the time is extended.

Dated:

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UNITED STATES DISTRICT JUDGE



The United States of America, by Assistant United States Attorney XXX, and Defendant XXX, by Assistant Federal Public Defender XXX, hereby submit the following Joint Stipulation for Discretionary Relief pursuant to 18 U.S.C. § 3582(c)(2).

The parties agree and stipulate to the following:

**A. Material Facts in Support of Joint Stipulation**

1. Defendant was previously convicted and sentenced for offenses involving controlled substances.

2. On \_\_\_\_\_, \_\_\_\_, this Court sentenced Defendant to \_\_\_\_ months imprisonment for [offense], in violation of 21 U.S.C. [Section], as set forth in count \_\_\_\_ of the indictment. This Court previously found: (a) that Defendant's total offense level was \_\_; (2) that Defendant's criminal history category was \_\_; and that the advisory guidelines sentencing range was \_\_\_\_ - \_\_\_\_.

3. Following imposition of this sentence, the U.S. Sentencing Commission promulgated Amendment 782, which took effect on November 1, 2014. Amendment 782: (a) reduces the guidelines offense levels across all drug types; and (b) with certain limitations, applies retroactively to defendants sentenced prior to November 1, 2014.

4. Defendant seeks a discretionary reduction in sentence pursuant to Amendment 782, and in accordance with 18 U.S.C. § 3582(c)(2) which (among other things) provides that, in certain circumstances, a sentencing court "may reduce the term of imprisonment."

**B. Terms of Sentence Reduction Under 18 U.S.C. §3582(c)(2)**

Defendant is eligible for a discretionary reduction to the guideline imprisonment

range. Pursuant to 18 U.S.C. § 3582(c)(2) and Guidelines Amendment 782: (a) Defendant's revised total offense level is \_\_\_\_\_; (b) Defendant's criminal history category remains \_\_\_\_; and (c) the revised advisory guidelines sentencing range is \_\_\_\_-\_\_\_\_ months imprisonment. Based on the foregoing, the parties jointly recommend that Defendant be sentenced to a revised term of \_\_\_\_\_ months imprisonment.

**C. Waivers; Review and Consent of Defendant**

1. Defendant knowingly and voluntarily waives any right to appeal any aspect of the revised sentence, provided that, if the revised sentence exceeds the recommended term of \_\_\_\_ months, Defendant may appeal that aspect of the revised sentence. *See* Declaration, attached as Exhibit I.

2. Defendant (a) waives any right he may have to a hearing on his motion under 18 U.S.C. § 3582(c)(2); (b) waives any right he may have to attend such a hearing; (c) Defendant has reviewed this stipulation with defense counsel; and (d) agrees with and consents to this stipulation. *See* Declaration, attached as Exhibit I.

**D. 2014 Drug Retroactive Sentencing Worksheet**

The parties jointly request, for purposes of this Court's adjudication of Defendant's pending motion under 18 U.S.C. § 3582(c)(2), that this Court direct the United States Probation Office to submit a 2014 Drug Retroactive Sentencing Worksheet, confirming Defendant's revised guidelines imprisonment range and describing any public safety factors (including Defendant's institutional history) relevant to this Joint Stipulation and discretionary relief under 18 U.S.C. § 3582(c)(2).

**E. Acknowledgment of Reserved Rights**

Notwithstanding this Joint Stipulation, the United States expressly preserves and

does not waive its contentions that a defendant seeking relief under 18 U.S.C. § 3582(c)(2) has no constitutional or statutory right to counsel, to a hearing on the motion, or to be present at any hearing on the motion.

Respectfully submitted,

ALICIA A. LIMITIACO  
United States Attorney

DATED

\_\_\_\_\_  
Assistant United States Attorney

DATED

\_\_\_\_\_  
JOHN T. GORMAN  
Counsel for the Defendant

**EXH. 6 SAMPLE DECLARATION**

IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA, ) CR  
 )  
 Plaintiff, ) DECLARATION IN SUPPORT OF JOINT  
 ) STIPULATION UNDER  
 vs. ) 18 U.S.C. § 3582(c)(2)  
 )  
 xxxxx, )  
 Defendant. )  
 \_\_\_\_\_ )

1. I, [Defendant], am the Defendant in the above-captioned case and the movant seeking relief in a pending motion under 18 U.S.C. § 3582(c)(2).

2. I have read and discussed with my attorney, [attorney's name], the "Joint Stipulation Under 18 U.S.C. § 3582(c)(2)," dated [date] (the "Joint Stipulation") to be filed in this case.

3. I agree with and consent to the Joint Stipulation.

4. My attorney has explained my appellate rights to me. I hereby knowingly and voluntarily waive the right to appeal any aspect of the revised sentence imposed by the Court under the terms of the Joint Stipulation, provided that, if the revised sentence exceeds the recommended term of \_\_\_\_\_ months imprisonment, I may appeal that aspect of the revised sentence.

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5. I hereby waive any right I may have to a hearing on my pending motion for discretionary relief under 18 U.S.C. § 3582(c)(2), or to attend such a hearing.

DATED this \_\_\_\_ day of \_\_\_\_, 201\_.

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[Defendant]