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DISTRICT COURT OF GUAM

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JEANNE G. QUINATA
CLERK OF COURT

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THE DISTRICT COURT OF GUAM

IN RE

GENERAL ORDER 23-0024

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

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 instant offense did not involve specific aggravating factors. These amendments become retroactive effective February 1, 2024 ("Effective Date").

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, pursuant to 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 Guam ("FPD") is hereby presumptively appointed to represent any defendant

1 previously determined to have been entitled to appointment of counsel, or who is now entitled to
2 appointment of counsel, to determine whether that defendant may qualify for retroactive relief
3 under Amendment 821, and to present any requests relating thereto to the court for adjudication
4 that the FPD deems appropriate under Amendment 821. This Order does not confer additional
5 rights.

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

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

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

20 **Joint Stipulation:** If the parties reach an agreement concerning a discretionary sentence
21 reduction, a Joint Stipulation regarding the proposed amended sentence will be filed. The Joint
22 Stipulation will contain a statement by defense counsel that he/she has communicated with the
23 defendant and that the defendant consents to the proposed resolution. The Joint Stipulation must
24 set forth the defendant's sentencing range under the amended Guidelines as calculated by the

1 parties and the proposed sentence. No hearing will be required in cases where the parties file a
2 Joint Stipulation and the court adopts the jointly proposed sentence. If the court disagrees with the
3 proposed sentence in the parties' Joint Stipulation, the court will permit the defendant to participate
4 telephonically at a hearing scheduled by the court to address the appropriate sentence.

5 **Contested Motions:** In contested cases, defense counsel must file a Section 3582(c)(2)
6 motion. Within fourteen calendar days of the filing of the Section 3582(c)(2) motion by defense
7 counsel, the Government must file a response. The defense may file a reply within seven calendar
8 days of the Government's response. In cases where the parties do not reach agreement, unless
9 waived by the defendant, the defendant must appear telephonically in any hearing that addresses
10 the merits of the Section 3582(c)(2) motion.

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


17 **Amended Judgment:** If the court grants the Joint Stipulation or otherwise amends a
18 defendant's sentence, the court will issue an amended judgment.

19 **Authorized Disclosures:** The United States Probation Office and the District Court Clerk's
20 Office are authorized to disclose to the FPD, successor counsel, and the United States Attorney's
21 Office, upon request, documents from the defendants' case files not otherwise available through
22 the judiciary's Public Access to the Court Electronic Records ("PACER") service to determine
23 defendants' eligibility for relief, to evaluate conflicts, and to file and litigate any petitions, motions,
24 or applications under Amendment 821. The Probation Office and the Clerk's Office may disclose

1 any such documents, including plea agreements, Presentence Investigation Reports, judgments,
2 statement of reasons, Sentry reports, and any sealed documents pertinent to Amendment 821 and
3 sentencing. No counsel may further distribute such documents unless so ordered by the court.

4 **Joint Stipulations and Contested Motions Deadline:** The FPD shall, after 90 days of this
5 Order, file any appropriate motion or stipulation pursuant to this Order.

6 **SO ORDERED this 1st day of November, 2023.**

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FRANCES M. TYDINGCO-GATEWOOD
11 Chief Judge