

IN THE UNITED STATES DISTRICT AND BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In Re: APRIL 27, 2023, UNITED  
STATES SENTENCING COMMISSION  
GUIDELINE AMENDMENTS

**GENERAL ORDER NO. 435**

On November 29, 2023, the Court adopted a Procedural Order proposed by United State's Attorney's Office for the District of Idaho and the Federal Defender's Services of Idaho. This Procedural Order addresses cases affected by the retroactive application of the United States Sentencing Commission's amendment of the base offense level for drug trafficking offenses. The Court finds that this Procedural Order shall incorporated by this General Order.

IT IS HEREBY ORDERED that the November 29, 2023, Procedural Order is adopted by the District of Idaho and that the Clerk of the court may make ministerial changes to the attached Procedural Order without revisions to this General Order.



DATED: December 6, 2023

  
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David C. Nye  
Chief U.S. District Court Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

IN RE:

APRIL 27, 2023 UNITED STATES

SENTENCING COMMISSION

GUIDELINE AMENDMENTS

**PROCEDURAL ORDER**

Based upon the stipulation for a procedural order, filed on November 8, 2023, and signed by the United States Attorney’s Office for the District of Idaho and the Federal Defender Services of Idaho, the Court hereby enters the following order adopting the procedure proposed by the parties to address cases affected by the retroactive application of the United States Sentencing Commission's amendment of the base offense level for drug trafficking offenses.

**BACKGROUND**

On April 27, 2023, the United States Sentencing Commission (“the Commission”) issued Amendment 821 to the United States Sentencing Guidelines (“USSG”), which takes effect on November 1, 2023. In Parts A and B of the amendment, the Commission amended two guideline sections related to a defendant’s criminal history calculation. Part A amended USSG § 4A1.1 to limit the overall criminal history impact of “status points” (*i.e.* the additional criminal history points given to defendants for the fact of having committed the instant offense while under a criminal justice sentence, including probation,

parole, supervised release, imprisonment, work release, or escape status). Part B, Subpart 1 created a new Chapter Four guideline, § 4C1.1 (Adjustment for Certain Zero-Point Offenders) to provide a decrease of two levels from the offense level determined under Chapters Two and Three for defendants who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors.

The Commission has authority to apply Amendment 821, Parts A and B, Subpart 1 retroactively under 18 U.S.C. § 3582(c)(2). This code section also provides that a court may reduce a defendant's term of imprisonment upon motion of the defendant, the Bureau of Prisons, or the court's own motion, after considering the factors set forth in 18 U.S.C. § 3553(a), and if the reduction is consistent with applicable policy statements from the Sentencing Commission. In August of 2023, the Commission amended the policy statement in USSG § 1B1.10 to provide that application of Amendment 821, Parts A and B, Subpart 1, is available for retroactive application, but not earlier than February 1, 2024.

The extent of a sentence reduction under § 1B1.10(b) is limited to the low end of the new applicable guideline, with one exception (where the defendant received a below-guideline sentence based on substantial assistance). *See* U.S.S.G. § 1B1.10(b). In *Dillon v. United States*, 560 U.S. 817 (2010), the Supreme Court addressed the process for application of a retroactive guideline amendment, emphasizing that Section 1B1.10 is binding. The Court required district courts to engage in the following two step process:

1. First, the court must determine the defendant's eligibility and the extent of the reduction authorized by determining the amended guideline range that would

have been applicable to the defendant had the amended range been in effect at the time of sentencing. The court shall substitute only the amendment to the base offense level, and shall leave all other guideline application decisions unaffected.

2. Second, the court shall then consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized is warranted in whole or in part under the particular circumstances of the case.

*Dillon*, 560 U.S. at 827.

On November 1, 2023, this Court entered General Order 431, which appointed the Federal Defender Services of Idaho to represent any defendant potentially eligible for a reduction of sentence because of Amendment 821. General Order 431 also authorized the United States Probation Office and the Office of the Clerk of the Court for the District of Idaho to disclose case-related documents to the Federal Defender Services of Idaho and the United States Attorney's Office for the purpose of determining a defendant's eligibility.

To permit consistent and efficient review of the potential cases affected by the retroactive application of Amendment 821, to ensure that eligible defendants obtain the relief to which they are entitled, and to avoid unnecessary litigation, the parties hereby stipulate to the following procedural order creating a committee to review the potential cases. The proposed procedure is consistent with this Court's General Order 285 (December 10, 2014) creating a review committee for cases affected by the retroactive application of Amendment 782, which provided for a reduction in the base offense levels in § 2D1.1 (Offenses Involving Drugs).

## **PROCEDURE FOR REVIEW OF CASES FOR ELIGIBILITY**

1. Personnel from The United States Attorney's Office (USAO), Federal Defender Services of Idaho (FDSI), and the United States Probation Office (USPO) shall meet periodically to review a set number of cases to determine each defendants' eligibility for a reduction in sentence because of the retroactive application of Amendment 821, Parts A and B, Subpart 1. This "review committee" will attempt to reach an agreement on each defendant's eligibility for a reduction, and the extent of a reduction, if applicable. The review committee will consist of the following individuals:
  - a. Justin D. Whatcott, First Assistant United States Attorney;
  - b. Mark J. Ackley, First Assistant Federal Defender, and;
  - c. Tonya McDonald, United States Probation Officer.
2. Cases reviewed by the review committee will consist of the following:
  - a. Defendants identified as potentially eligible for a sentence reduction by the United States Sentencing Commission;
  - b. Defendants identified as potentially eligible by the FDSI, Criminal Justice Act Panel Attorneys, prior retained counsel, the USPO, or the USAO; and
  - c. Defendants who file a *pro se* motion for a reduction or contact the Court requesting a reduction.
3. The review committee shall prioritize the cases according to the anticipated release date, with defendants eligible for release on February 1, 2024 receiving first priority of review.

4. The Court will refer all *pro se* motions for a reduction, letters written to the court inquiring about a reduction, and any other motions or communications from a defendant or his appointed counsel which reference the reduction, to the FDSI for submission to the review committee. Motions filed under 28 U.S.C. § 2255 which contain only a request for a reduction in sentence because of the guideline amendment will be referred to the review committee. However, motions filed under 28 U.S.C. § 2255 which contain claims in addition to a reduction under 18 U.S.C. § 3582 will not be referred to the review committee.
5. After reviewing each case, the review committee shall determine which of the following is appropriate:
  - a. Stipulation for a reduction: Upon agreement between the USAO and the FDSI that a defendant is eligible for a reduction, and a specific reduction is appropriate, the parties shall enter a stipulation to be filed with the court, along with a proposed order, providing for a specific reduction in sentence.
  - b. Stipulation on eligibility only: In cases in which the parties agree that the defendant is eligible for a reduction, but the USAO objects to a reduction in full or in part, a stipulation on eligibility shall be entered and filed with the Court, the USAO shall file its objection to a reduction, and the FDSI may respond.
  - c. Motion for Reduction & Government Objection: In cases in which no agreement is reached on eligibility, the FDSI shall file a motion for a

reduction, and the USAO shall respond in writing. If a defendant filed a *pro se* motion for relief, the USAO will respond in writing.

6. Prior to each review committee meeting, the USPO shall provide to the USAO and the FDSI the following documents for each case to be reviewed:
  - a. The presentence investigation reports, including the initial and final presentence investigation reports, and the addendum;
  - b. The Judgment of Conviction;
  - c. The Statement of Reasons.
7. If requested by the USAO, the FDSI, or the Court, the USPO shall assist in obtaining information from the Bureau of Prisons regarding a defendant's post-sentencing conduct while incarcerated.
8. If requested by the Court, the review committee shall prepare a report detailing its progress in reviewing and addressing cases potentially eligible for a reduction and shall specifically provide the progress reached on the cases identified by the United States Sentencing Commission.



DATED: November 29, 2023

  
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David C. Nye  
Chief U.S. District Court Judge