

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

IN THE MATTER OF PROVIDING
COUNSEL FOR PERSONS
POTENTIALLY ELIGIBLE FOR
RELIEF UNDER AMENDMENT 821
TO THE UNITED STATES
SENTENCING GUIDELINES

STANDING ORDER
23-04

Pursuant to the Criminal Justice Act, 18 U.S.C. §§ 3006(a)(1) and (c), and finding that persons presently serving prison terms are financially eligible for appointed counsel under the provision of the Act, the Office of the Federal Public Defender for the Districts of South Dakota and North Dakota (FPD) is hereby appointed to represent all defendants in criminal cases in this district who may be eligible to seek a reduced or modified sentence based on Amendment 821 to the United States Sentencing Guidelines.

1. The purposes of this appointed representation are as follows:
 - a. To identify all persons with a potential claim for relief under Amendment 821, which was made retroactive on August 24, 2023, including persons who may have filed a pro se motion for relief.
 - b. To seek any available sentencing relief for such persons through appropriate means, including motions under 18 U.S.C. § 3582(c)(2).
 - c. To prioritize those persons with a claim for relief that must be acted upon immediately.
 - d. To maintain communications with all such persons to learn their wishes and to advise them.

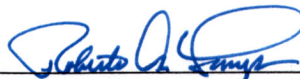
- e. To identify any conflict of interest which would require the withdrawal of the FPD and the appointment of new counsel.
2. The Clerk of Court shall screen all inmate filings to determine if the inmate is seeking relief under Amendment 821 to the United States Sentencing Guidelines. When the Clerk of Court identifies such a request, it shall file the request as a Motion to Reduce Sentence (Part A & B Criminal History Amendment), and shall notify the FPD, U.S. Attorney, and the United States Probation Office for the District of South Dakota (USPO). The FPD, U.S. Attorney and USPO shall designate persons within their respective offices to receive notification.
3. The FPD will have 7 days from the receipt of the notification to notify the Court as to whether it will appear on behalf of the movant. The FPD will notify the Court by filing either a "Notice of Intent to Supplement" or a "Notice of Intent to Not Supplement." The FPD shall supplement in all cases where the movant has colorable and non-frivolous grounds for relief under Amendment 821.
4. Once the FPD files supplemental briefing on behalf of the movant, the U.S. Attorney's Office will have 21 days to file its response, unless the presiding judge sets a different deadline. The FPD may file a reply brief within 14 days.
5. If the FPD does not represent a pro se movant, the deadline for the government's response is 21 days from the filing of the FPD's "Notice of Intent Not to Supplement," unless the presiding judge orders a different deadline.
6. If the FPD (or other counsel) files the initial Motion to Reduce Sentence (Part A & B Criminal History Amendment) on behalf of the defendant, the U.S. Attorney's Office will have 21 days to file its response, unless the presiding judge orders a

different deadline. The FPD may file a reply brief within 14 days.

7. The presiding judge may enter an order to enlarge or contract the time frames set forth in this Standing Order.
8. To give effect to the purposes of this order, the USPO is authorized and directed to cooperate with the FPD in identifying the persons who meet the criteria of inclusion set forth above and in providing the FPD with relevant information about the affected persons, including the Court's Statement of Reasons, Presentence Investigation Reports, and any defense or prosecution objections thereto. Moreover, where the U.S. Attorney's Office opposes relief, it shall provide the FPD with any information it relies upon and any other relevant information from the Bureau of Prisons (BOP) such as education data, disciplinary data, or work history. The inmate shall not receive a copy of the Presentence Investigation Report or other sensitive material.

Dated this 3rd day of November 2023.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE