

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

IN RE: REQUESTS FOR RETROACTIVE
APPLICATION OF U.S.S.G.
AMENDMENT 821 TO REDUCE
CRIMINAL HISTORY POINTS.

MISCELLANEOUS
GENERAL ORDER 24-02

On August 24, 2023, the United States Sentencing Commission authorized retroactive application of United States Sentencing Guideline Amendment 821 relating to criminal history. Part A of Amendment 821 limits the overall criminal history impact of "Status Points" under § 4A 1.1. Specifically, Part A eliminated the application of 2 criminal history points for defendants who committed the instant offense while under a criminal justice sentence, and now only allows for 1 criminal history point if the defendant receives 7 or more criminal history points and was under a criminal justice sentence. This amendment became retroactive effective February 1, 2024 ("Effective Date").

Application of this amendment lowers the criminal history points for defendants who may or may not separately qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2). Because criminal history points may have administrative consequences for convicted defendants in Bureau of Prisons ("BOP") custody, this Court will entertain requests for retroactive reduction of criminal history points for eligible defendants pursuant to Amendment 821 regardless of whether a reduction in criminal history points would change the defendant's sentencing guidelines range or reduce the defendant's sentence.

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, under 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 Alaska ("FPD") is hereby presumptively appointed to represent any defendant previously determined to have been entitled to appointment of counsel, or who is now entitled to appointment of counsel, to determine whether that defendant may qualify for a reduction of criminal history points under Amendment 821, and to present any requests relating thereto to the Court for adjudication that the FPD deems appropriate under Amendment 821. This order does not confer additional rights.

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

Qualified Defendants: The FPD, in consultation with the United States Probation Office ("USPO"), shall identify those defendants whose criminal history points will be reduced by 1 or 2 points.

Criminal History Recalculation Report: For all the defendants identified as qualified for a reduction, the USPO must prepare a Criminal History Recalculation Report. That report must be filed with the Court via CM/ECF in the defendant's case in accordance with the process for filing Presentence Reports. See Local Criminal Rule 32.1.2.

Pro Se Filings: In any case in which a defendant has filed either a letter or motion for a criminal history point reduction under Amendment 821, the FPD will be notified of that filing by the Clerk of Court. The FPD will conduct an initial screening for eligibility

and consult with the USPO. After reviewing the pro se motion and any applicable documents, the FPD must file an amended motion and proposed order to reduce criminal history or a notice that no amended motion will be filed, within 30 days of notification.

Recalculation Pending Revocation and Other Relief: If a defendant is facing revocation and received status points at sentencing, USPO shall include the amended guideline calculation as if Amendment 821 had been applied, under the U.S. Probation Officer Recommendation section of any applicable Petition for Warrant for Person Under Supervised Release, Superseding Petition for Warrant for Person Under Supervised Release, Violation Disposition Report, and any Superseding Violation Disposition Report thereafter.

Defense counsel shall request recalculation of criminal history points for defendants pending revocation that are impacted by Amendment 821.

Authorized Disclosures: The USPO is authorized to disclose to the FPD, successor counsel, and the United States Attorney's Office, upon request, documents from the defendant's case files not otherwise available through the judiciary's Public Access to the Court Electronic Records ("PACER") service necessary to determine a defendant's eligibility for relief, to evaluate conflicts, and to file and litigate any petitions, motions, or applications under Amendment 821, to include Presentence Investigation Reports, Judgments of Conviction, and Statements of Reasons. No counsel shall further distribute such documents unless so ordered by the Court; defense counsel may discuss the documents with their client but shall not provide a copy of the documents to the clients unless otherwise ordered.

Transmission to Bureau of Prisons: USPO shall transmit the amended criminal history report to BOP.

DATED this 9th day of September 2024.

/s/ SHARON L. GLEASON

Hon. Sharon L. Gleason

UNITED STATES CHIEF DISTRICT JUDGE

Distribution:

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