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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 IN THE MATTER OF

GENERAL ORDER NO. 23-17

11 }
12 } APPOINTMENT OF COUNSEL AND
13 } ACCESS TO SEALED DOCUMENTS
14 } IN CRIMINAL CASES POTENTIALLY
15 } AFFECTED BY AMENDMENT 821 OF
16 } THE UNITED STATES SENTENCING
17 } GUIDELINES

18 On August 24, 2023, the United States Sentencing Commission voted to give
19 retroactive effect to Parts A and B of Subpart 1 to Amendment 821 to the United States
20 Sentencing Guidelines. Those provisions: (1) provide a 2-level offense level decrease
21 for certain criminal defendants with zero criminal history points; and (2) modify the
22 former two-point criminal history point enhancement under guideline 4A1.1(d) to
23 either eliminate it entirely (for defendants who otherwise have six or fewer criminal
24 history points) or reduce it from two points to one point (for defendants who otherwise
25 have seven or more criminal history points). These amendments may provide certain
26 defendants previously sentenced in this Court with grounds to seek post-conviction
27 relief. While the effective date of Amendment 821 is November 1, 2023, the
28 amendment specifically provides that any order granting sentence reductions based on
Part A or Part B of Subpart 1 of Amendment 821 shall not take effect until February 1,
2024, or later.

1 Pursuant to 18 U.S.C. § 3006A(a)(1) and (c), and because of the need to
2 efficiently process petitions for relief under Amendment 821, IT IS HEREBY
3 ORDERED that the Federal Public Defender for the Central District of California is
4 appointed to represent any defendant who was previously determined to have been
5 entitled to appointment of counsel, or who is now entitled to the appointment of
6 counsel, to determine whether that defendant may qualify for post-conviction relief
7 under Amendment 821 and United States Sentencing Guideline 1B1.10, and to present
8 any petitions, motions, or applications relating thereto to the Court for disposition.

9 If the Federal Public Defender's Office (FPDO) or previously appointed counsel
10 believes there is a conflict that would prevent the FPDO from assuming appointment
11 for an individual defendant, counsel shall bring such conflict to the attention of the
12 Court for adjudication of the issue. If the FPDO has a conflict and is, therefore, unable
13 to represent an individual defendant, the Court may re-appoint prior CJA counsel
14 assuming prior CJA counsel is an active member of the CJA Trial Attorney Panel in
15 good standing, or new CJA counsel if prior CJA counsel is not available.

16 To evaluate a defendant's eligibility, counsel may need access to sealed case
17 records, which requires a written order of the Court. *See* L.R. 79-7.1. Rather than
18 entertain applications for such orders in each individual case, *see* L.R. 79-7.2, the
19 Court has determined that it would be more efficient to address the disclosure of all
20 such records through this General Order.

21 Accordingly, IT IS HEREBY ORDERED that the Clerk is authorized to provide
22 the United States Attorney's Office (USAO) with copies of sealed case records when:

- 23 (1) the USAO submits a written request for copies of sealed records,
24 identifying the case number(s) and defendant(s) to which the request
25 relates; and
- 26 (2) the request is made expressly pursuant to this General Order, with a
27 certification that it is being made for purposes of contemplated litigation
28 regarding a defendant's eligibility for post-conviction relief pursuant to

1 Amendment 821 and United States Sentencing Guideline 1B1.10.

2 To the extent possible, the request should be limited to documents that are
3 relevant to determining whether a defendant may qualify for post-conviction relief, and
4 should identify those documents by their docket numbers or by a date range within
5 which all sealed filings are requested. Because it may not always be possible to
6 identify the relevant sealed documents from the docket, however, the USAO may
7 request all sealed documents filed in such a case. Notwithstanding the foregoing, the
8 Clerk is not authorized to provide to the USAO copies of any documents filed “in
9 camera” by a defendant, or of any transcripts or minutes of proceedings held outside
10 the presence of counsel for the government.

11 Requests submitted pursuant to this General Order may be submitted UNDER
12 SEAL and may seek records from multiple cases in one request. Requests should be
13 submitted electronically by emailing Records_CACD@cacd.uscourts.gov. The subject
14 line of the email requesting documents should read: “UNDER SEAL REQUEST RE
15 RETROACTIVE APPLICATION OF AMENDMENT 821 OF THE USSG.” The
16 Clerk’s Office shall not file or docket a request in any case, but shall maintain all such
17 requests UNDER SEAL. The USAO need only provide one copy of a request to the
18 Clerk’s Office, regardless of the number of cases addressed in the request. It is not
19 necessary to electronically file a Notice of Manual Filing for any such request.

20 The United States Probation and Pretrial Services Office for the Central District
21 of California is authorized to disclose Presentence Investigation Reports, Statement of
22 Reasons, and Judgments to the USAO and FPDO for the purpose of determining
23 eligibility for post-conviction relief under Amendment 821 and United States
24 Sentencing Guideline 1B1.10. The USAO and FPDO are each authorized to provide
25 copies of any records obtained pursuant to this General Order to the other for purposes
26 of evaluating and litigating any defendant’s eligibility for post-conviction relief under
27 Amendment 821 and United States Sentencing Guideline 1B1.10. The USAO and
28 FPDO are also authorized to provide copies of records relating to a specific defendant

1 obtained pursuant to this General Order to that defendant's counsel of record; defense
2 counsel, in turn, is authorized to provide those records to the defendant and to any
3 successor counsel. Counsel shall not otherwise disseminate any such sealed records.
4 If the records are to be re-presented to this Court, the Ninth Circuit, or the Supreme
5 Court, they must be presented under seal.

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7 IT IS SO ORDERED.



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9 CHIEF UNITED STATES DISTRICT JUDGE

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11 *Date of Approval by the Court:* December 7, 2023

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13 *Date of Filing by the Clerk:* December 7, 2023