ATTORNEY NAME AND BAR #

ADDRESS

EMAIL

Telephone:

Facsimile:

Attorneys for Defendant

INSERT NAME OF CLIENT

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**WESTERN DIVISION**

|  |  |  |
| --- | --- | --- |
| UNITED STATES OF AMERICA,  Plaintiff,  v.  INSERT NAME OF DEFENDANT(S),  Defendant. |  | Case No. [USDC CASE #]  **NOTICE OF MOTION AND MOTION TO REDUCE SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(2); MEMORANDUM OF POINTS AND AUTHORITIES**  **Hearing Date:**  **Hearing Time:** |

PLEASE TAKE NOTICE THAT Defendant [NAME], by and through his attorney of record, Deputy Federal Public Defender [ATTORNEY], hereby moves for an Order granting a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). This motion is based on the attached memorandum of points and authorities[, attached exhibits,] and all the records in this case.

Respectfully submitted,

ATTORNEY NAME

DATED: [DATE] By */s/*

ATTORNEY NAME

Attorney for [CLIENT NAME]

**MEMORANDUM OF POINTS AND AUTHORITIES**

# Introduction

[CLIENT/CASE BACKGROUND]

On April 27, 2023, the Sentencing Commission (the “Commission”) promulgated Amendment 821 (“Amendment 821” or the “Amendment”) to the United States Sentencing Guidelines (“U.S.S.G.”.) The Amendment alters the application of the Guidelines with respect to certain offenders who (a) earned criminal history “status points” based on the commission of the instant offense while serving a criminal justice sentence, or (b) presented zero criminal history points at the time of sentencing. U.S.S.G. Parts A and B, Subpart 1, Amend. 821. Amendment 821 became effective November 1, 2023.

Regarding status points, Amendment 821 amends U.S.S.G. § 4A1.1 by (1) eliminating the two status points previously assigned to individuals who “committed the instant offense while under any criminal justice sentence” if they have 6 or fewer criminal history points, and (2) for such individuals who have 7 or more criminal history points, decreasing the prior two-point status point enhancement to one point. U.S.S.G. Part A, Amend. 821.

Regarding “zero-point offenders,” Amendment 821 adds a new section, U.S.S.G. § 4C1.1, which reduces the offense level by two levels for persons with zero criminal history points. This two-level reduction is contingent upon the zero-point offender meeting the criteria outlined in U.S.S.G. § 4C1.1(a)(2)-(10).

On August 24, 2023, the Commission provided for the delayed retroactive application of Amendment 821 related to criminal history. This allows eligible currently-incarcerated individuals to request reductions in their sentences pursuant to the Amendment. On August 31, 2023, the Commission amended U.S.S.G. § 1B1.10 to reflect the retroactive application of Amendment 821 as related to criminal history. The Commission also stated that, while inmates may file motions beginning on November 1, 2023, under 18 U.S.C. § 3582(c)(2), the court “shall not order a reduced term of imprisonment [pursuant to the status-point or zero-point offender provisions] unless the effective date of the court’s order is February 1, 2024, or later.” U.S.S.G. § 1B1.10(e)(2).

# ARGUment

18 U.S.C. § 3582(c)(2) permits a court to reduce an individual’s term of imprisonment if that term of imprisonment was “based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013). In considering a motion under § 3582(c)(2), the court must follow a two-step inquiry. *United States v. Dillon*, 560 U.S. 817, 826 (2010). First, the court must determine whether and to what extent the Sentencing Commission's policy statements in U.S.S.G. § 1B1.10 authorize a reduction. Here, it is undisputed that U.S.S.G. § 1B1.10 authorizes reductions based on Amendment 821, which applies retroactively. Second, if a reduction is authorized, the court must consider “whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a).” *Id.*

## [Client Name] is Eligible for a Sentence Reduction Pursuant to Amendment [[ 821’s Status Point Modification] or [821 as a Zero Point Offender]] And Their Sentence Should Be Reduced to [NEW SENTENCE].

[[FOR STATUS POINT INDIVIDUALS] The Sentencing Commission’s policy statement lists Amendment 821, parts A and B, subpart 1, as a covered amendment. *See* U.S.S.G §1B1.10(d). Part A of Amendment 821, in part, sought to reform the applicable “status points” applied to individual offenders under U.S.S.G. § 4A1.1(d). The Amendment limits the overall criminal history impact of “status points” in two ways. “First, as revised, the ‘status points’ provision under redesignated subsection (e) applies only to offenders with more serious criminal histories under the guidelines by requiring that an offender have seven or more criminal history points under subsections (a) through (d) in addition to having been under a criminal justice sentence at the time of the instant offense.” U.S.S.G. Parts A, Amend. 821. Offenders with six or fewer criminal history points receive no “status points.” “Second, the amendment [] reduces from two points to one point the ‘status points’ assessed for offenders to whom the revised provision applies.” *Id.*

Amendment 821, thus, struck what was previously U.S.S.G. § 4A1.1(d), adding the new amended language to § 4A1.1(e). U.S.S.G. 4A1.1(e) as amended states:

Add 1 point if the defendant (1) receives 7 or more points under subsections (a) through (d), and (2) committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

[INSERT ANALYSIS]]

OR

[[FOR ZERO POINT INDIVIDUALS] The Sentencing Commission’s policy statement lists Amendment 821, parts A and B, subpart 1, as a covered amendment. *See* U.S.S.G §1B1.10(d). Subpart 1 of Part B of the Amendment creates a new Chapter Four guideline—§ 4C1.1—entitled “Adjustment for Certain Zero-Point Offenders.” *See* U.S.S.G. § 4C1.1. This new guideline provides for a two-level decrease in an individual’s offense level if they did not receive any criminal history points under Chapter Four, Part A and if their instant offense did not involve specified aggravating factors. *Id.* “The amendment applies to offenders with no criminal history points, including (1) offenders with no prior convictions; (2) offenders who have prior convictions that are not counted because those convictions were not within the time limits set forth in subsection (d) and (e) of §4A1.2; and (3) offenders who have prior convictions that are not used in computing the criminal history category for reasons other than their ‘staleness’ (e.g., sentences resulting from foreign or tribal court convictions, minor misdemeanor convictions, or infractions).” *See* U.S.S.G. Parts B subpart 1, Amend. 821. In promulgating § 4C1.1, the Commission also identified circumstances in which zero-point offenders are appropriately excluded from eligibility due to the type of instant offense or other aggravating factors in the instant offense. *Id.*, *se also* U.S.S.G. § 4C1.1(a)(2)-(10). An individual must meet all requirements in § 4C1.1(a) to qualify for a sentence reduction.

[INSERT ANALYSIS]]

## A Sentence Reduction is Warranted According to the Applicable Factors of 18 U.S.C. § 3553(a)(1).

A sentence reduction must be consistent with the factors outlined in 18 U.S.C. § 3553(a). The sentencing factors include: “(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; ... [and] (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]” 18 U.S.C. § 3553(a).

[INSERT ANALYSIS]

# Conclusion

Respectfully submitted,

ATTORNEY NAME

DATED: [DATE] By */s/ ATTORNEY NAME*

[ATTORNEY NAME]

Attorney for [INSERT DEFENDANT’S NAME]