

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**GERARDO GAXIOLA, JR.,**

**Defendant.**

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**Case No. 06-40057-JAR**

**MEMORANDUM AND ORDER**

This matter is before the court on defendant Gerardo Gaxiola, Jr.'s pro se motion for reduction of sentence (Doc. 125) pursuant to 18 U.S.C. § 3582(c)(2) in which Mr. Gaxiola asks the court to reduce his sentence based on Amendment 782 to the United States Sentencing Guidelines which took effect on November 1, 2014 and lowers the base offense levels in the Drug Quantity Table. On July 18, 2014, the United States Sentencing Commission voted to apply the amendment retroactively to those offenders currently in prison, but with a requirement that the reduced sentences cannot take effect until November 1, 2015.

The Honorable J. Thomas Marten of the District of Kansas recently appointed the Office of the Federal Public Defender to represent any defendant previously determined to have been entitled to appointment of counsel, or who is now indigent, to determine whether that defendant may qualify for relief under Amendment 782. The record reflects that Mr. Gaxiola may be entitled to have the Federal Public Defender represent him to determine in the first instance whether Mr. Gaxiola qualifies for relief under the amendment. In light of these circumstances, the court believes that the most efficient way to resolve the issue raised by Mr. Gaxiola is to forward his motion (along with a copy of this order) to the Office of the Federal Public Defender for an initial determination of whether Mr. Gaxiola

qualifies for representation and is entitled to a reduction in his sentence in light of the amendment. In the meantime, the court will deny Mr. Gaxiola's motion without prejudice to refiling the motion on or after February 2, 2015 if the Office of the Public Defender declines to seek relief for Mr. Gaxiola under Amendment 782.

**IT IS THEREFORE ORDERED** that Mr. Gaxiola's motion for reduction of sentence (Doc. 125) pursuant to 18 U.S.C. § 3582(c)(2) is denied without prejudice to refiling on or after February 2, 2015.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall forward to the Office of the Federal Public Defender a copy of this order along with a copy of Mr. Gaxiola's pro se motion for reduction of sentence.

**IT IS SO ORDERED.**

Dated: December 3, 2014

S/ Julie A. Robinson  
JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE