No.

In The
Supreme Court of the United States

CORVAIN T. COOPER,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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February 18, 2015

QUESTIONS PRESENTED

1. Whether a mandatory life sentence without the possibility of parole for non-violent marijuana trafficking under Federal law violates the Eighth Amendment's prohibition of cruel and unusual punishment?

2. Whether 21 USC § 851, as applied, is an unconstitutional violation of the separation of powers enumerated in Articles I, II, and III of the United States Constitution?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fourth Circuit. Rule 14.1(b) of the Supreme Court Rules.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Corvain Cooper, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth entered in the above-entitled case on October 2, 2015.

DECISIONS BELOW

The October 2, 2015 opinion of the United States Court of Appeals for the Fourth Circuit, whose judgment is herein sought to be reviewed, is not reported, and is reprinted in the separate Appendix to this Petition, page App. 15.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit to be reviewed was entered October 2, 2015. The mandate issued November 18, 2015. The instant Petition is filed within 90 days of the date of decision and one 10-day extension granted by this Court on February 8, 2016. Sup. Ct. R. 13.1. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

The Eighth Amendment of the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

21 U.S.C §851 states as follows:

> (a) Information filed by United States Attorney
> (1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in

the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) Affirmation or denial of previous conviction

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing

(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a

hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1) of this section. The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be

waived unless good cause be shown for failure to make a timely challenge.

(d) Imposition of sentence

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) Statute of limitations

No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

U.S. CONST. art. I (App. 38)

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U.S. CONST. art. III (App. 57)

STATEMENT OF THE CASE

Corvain Cooper was charged in the United States District Court for the Western District of North Carolina with conspiracy to distribute and possession with intent to distribute 1000 kilograms or more of marijuana (21 U.S.C. § 841(b)(1)(A)), conspiracy to commit money laundering (18 U.S.C. § 1956(h)), and structuring transactions (31 U.S.C. § 5313(a)). (App. 60-102). A special information pursuant to 21 U.S.C. § 851 was also filed against Cooper, alleging two prior felony convictions for possession of marijuana in the California state courts. He and two co-defendants were tried before the District Court and a jury from October 15, 2013 – October 18, 2013 and each were found guilty of all counts.

Prior to trial, Cooper moved to sever his case from the co-defendants, arguing that he lacked any connection to the Western District of North Carolina, that his co-defendants' testimony would have a "spill-over" effect against him, and that by blaming Cooper for their involvement in the conspiracy, both co-defendants would have mutually antagonistic defenses.

On September 16, 2013, the District Court entered an order denying the motion on grounds that

Cooper "failed to meet the burden of showing that a miscarriage of justice would result from a joint trial." (App. 27). The District Court further found that any prejudice resulting from joinder would be mitigated by a curative instruction. (App. 27).

Cooper filed a pre-trial motion in limine to exclude evidence of his alleged prior possession of a firearm, arguing that since he was not charged with possession of a firearm in furtherance of a drug conspiracy (while one of the co-defendants was so charged), admission of this evidence would be highly prejudicial and not probative. The Government filed a Rule 404(b) notice of its intent to introduce evidence of a prior arrest of the Cooper in California that led to the recovery of approximately one pound of marijuana and what was alleged to be a drug ledger. The Government sought to introduce evidence of Cooper's two prior felonies in California for possession of marijuana and argued that the evidence proffered in its 404(b) notice was "inextricably intertwined" with the conduct concerning the charged crimes. In a supplemental filing, the Government also announced its intent to introduce evidence through a cooperating witness that Cooper had possessed a black revolver in the center console of his vehicle on one prior occasion, and that he told the cooperator that the revolver was to protect himself from future robberies. The defense objected and argued that no gun had ever been recovered, and that since Cooper was not charged with unlawful firearms possession, it was not probative. Nevertheless, the District Court deemed the evidence admissible, ruling it was "linked in time, place and pattern of conduct." (App. 174).

The evidence presented at trial established that on January 9, 2009, a cargo crate containing approximately 338 pounds of marijuana was intercepted by joint State and Federal task force agents in Charlotte, North Carolina. The Government linked this shipment to Cooper through investigation of co-conspirators telephone records, records of past shipments that had not been intercepted, and through several cooperating witnesses. Those cooperating witnesses generally testified that Cooper was involved in the acquisition and distribution of marijuana from California to North Carolina through the use of third-party cargo carriers. The sale proceeds were deposited into several bank accounts, some of which were opened under the two co-defendants' names, who worked as bank tellers, and were withdrawn from by Cooper and others.

At trial, there were no recorded conversations intercepted pursuant to a wiretap warrant. Other than the relatively small amount of marijuana and a cell phone recovered pursuant to his prior arrest in California, Cooper was not found in possession of any marijuana, packaging material, other drug paraphernalia, or weapons.

Both co-defendants testified at trial, one of whom alleged that Cooper was the blameworthy party, and that she was an unknowing and unwilling participant.

On October 18, 2013, the jury returned guilty verdicts against all three defendants on all substantive counts.

Represented now by undersigned counsel, prior to sentencing Cooper filed objections to the Pre-Sentence Report and a sentencing memorandum with the District Court. In those documents, Cooper presented extensive mitigation evidence, objected to an enhancement for firearms possession, drug amount, and leadership role, and objected to a mandatory life sentence without parole on Eighth Amendment grounds, pointing out the disparity in sentences meted out to the co-defendants and others similarly-situated.

On June 18, 2014, Cooper appeared for sentencing. The District Court recognized the severity of the mandatory life sentence, noting that it "would want to have discretion before imposing a life sentence. The absence of discretion is a troubling thing for the Court." (App. 160). Later, the District Court stated that

> [T]he Court is not comfortable with imposing a mandatory life sentence on a 34 year old individual without some discretion to consider the 3553(a) factors that a court normally is entitled to consider…The Court has no discretion. I'm not sure what I would do if I had discretion, but the absence of discretion is a difficult thing for the Court.

(App. 169).

Nevertheless, the District Court overruled the Eighth Amendment objection, and his other objections with the exception of one. As a consequence, Cooper was sentenced to life imprisonment without the possibility of parole.

Cooper prosecuted a direct appeal to the Fourth Circuit, arguing that (1) the Eighth Amendment prohibits the cruel and unusual punishment of mandatory life imprisonment without parole for a 34-year old man with two prior convictions for possession of possession of a controlled substance (marijuana and codeine) and no history of violence; (2) the District Court's admission of other-crimes evidence under Rule 404(b) deprived Cooper of his right to a fair trial; (3) the District Court's denial of severance deprived Cooper of a fair trial where he and his testifying co-defendants had mutually exclusive and antagonistic defenses; (4) the evidence was legally insufficient to sustain a conviction for conspiracy to possess with intent to distribute 1000 kilograms or more of marijuana where there was no reliable evidence of the weight of the marijuana actually trafficked; and (5) Cooper received ineffective assistance of counsel where his attorney failed to object to foundationless expert testimony based on hearsay, opinion testimony based upon hearsay, and calculations of drug amounts based on speculation. However, the Fourth Circuit affirmed his convictions without oral argument in an unpublished per curium opinion on October 2, 2015. (App. 1-14).

Cooper filed a petition for rehearing en banc on October 15, 2015, pursuant to FED. R. APP. P. 35, which was denied on November 10, 2015. (App. 31-32).

This timely Petition follows.

REASONS FOR GRANTING THE WRIT

REVIEW IS NECESSARY FOR THIS COURT TO DETERMINE WHETHER DEPRIVING OUR JUDICIARY OF ITS DISCRETION BY ENFORCING THE IMPOSITION OF A MANDATORY LIFE SENTENCE WITHOUT PAROLE FOR A NON-VIOLENT, BENIGN DRUG CRIME BASED SOLELY UPON TWO PRIOR FELONY CONVICTIONS FOR MARIJUANA POSSESSION VIOLATES THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION'S PROHIBITION OF CRUEL AND UNUSUAL PUNISHMENT

In Solem v. Helm, 463 U.S. 277, 284, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983), the United States Supreme Court held:

> The Eighth Amendment declares: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The

> final clause prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed. The principle that a punishment should be proportionate to the crime is deeply rooted and frequently repeated in common-law jurisprudence.

In Solem v. Helm, this Court analyzed an Eighth Amendment challenge to a habitual felony offender statute and the imposition of a life sentence for the crime of passing a bad $100 check. There, this Court held that several factors must be weighed in determining whether a sentence violates the Eighth Amendment: (1) the gravity of the offense and harshness of the penalty; (2) sentences imposed on other criminals in the jurisdiction; and (3) sentences imposed for the same crime in other jurisdictions. Id. at 290–91. An application of the Solem factors to the case at bar results in the inescapable conclusion that a mandatory sentence of life imprisonment without parole violates the Eighth Amendment.

A. The Gravity of the Offense

While the offense herein, conspiracy to distribute marijuana, is a serious offense, this is not a crime of violence, nor a crime of deception, nor a crime perpetrated against an individual resulting in direct serious economic, physical, or emotional injury. It is submitted that marijuana is the most benign of all of the controlled substances, so much so that the District of Columbia, the States of Colorado, Oregon, Washington, and Alaska have legalized its possession

and use, and the Federal Government's enforcement of Federal drug laws as to marijuana distribution has relaxed. This reflects a change in policy towards marijuana, recognizing that it poses the least danger to the public compared to other drugs.

The other offenses charged with the drug conspiracy count (money laundering and structuring financial transactions) are certainly not crimes of violence. Nor was there any violence attributed to Petitioner, or any threats of violence, in this case.

B. Sentences Imposed Upon Others Similarly Situated in the Federal System

The sentences imposed upon the co-defendants and co-conspirators were laid out in Petitioner's sentencing memorandum. Those sentences are to be compared to the mandatory sentence of life imprisonment that was imposed upon the Petitioner. For commission of the same offenses, one individual received a sentence of 24 months' imprisonment. The leader of this conspiracy received a sentence of 235 months.

In contrast, Petitioner received a sentence of life without the possibility of parole–an anticipated sentence of approximately 50 years, given his age and life expectancy. This is a huge disparity that the Eighth Amendment prohibits.[1]

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[1] The leader of the conspiracy, D.C., who testified against Petitioner at trial, likely received a reduction of sentence as a result of his cooperation pursuant to a Rule 35 motion.

C. Sentences Imposed Upon Others Similarly Situated in Other Jurisdictions

In the State of North Carolina, the penalties for distribution of marijuana are set forth in North Carolina General Statutes § 90-95(h). (App. 125-38). Under the North Carolina sentencing scheme, the worst possible sentence Petitioner could have received would have been a minimum term of 175 months and a maximum term of 222 months in the State's prison and a fine of $200,000.00 or more. N.C. GEN. STAT. § 90-95(h) (2014). (App. 125-38).

If the case were prosecuted in the New Jersey state courts, Petitioner would have faced a minimum sentence of 10 years' imprisonment, and a maximum of 20 years' imprisonment for a First Degree Crime, and would have been eligible for parole after approximately 2 years. N.J. STAT. ANN. § 2C:35-5 (2014). (App. 139-45).

If the case were prosecuted in the New York state courts, Petitioner would have received a minimum of 2 years' imprisonment, and a maximum of 8 years' imprisonment, with 1 ½ - 3 years of supervised release. N.Y. PENAL LAW §§ 70.06, 221.30, 221.55 (2015). (App. 146-55).

Counsel is unaware of any state that authorizes a life sentence for possession and sale of marijuana, even those prosecuted under "three strikes" laws.

D. Sentencing Petitioner to Life in Prison Without Parole is Grossly Disproportionate to Any Alleged Justification

Sentencing Petitioner to life in prison without the possibility of parole is disproportionate to any alleged justification and subsequently violates the Eighth Amendment. "The principle of proportionality is deeply rooted in common-law jurisprudence … When the Framers of the Eighth Amendment adopted this language, they adopted the principle of proportionality that was implicit in it." Solem, 463 U.S. 277, 284–86, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983). Unless a sentence serves a penological justification—it is disproportionate on its face. Graham v. Florida, 560 U.S. 48, 71, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).

The only goals of penal sanctions that have been recognized as legitimate justifications are: retribution, deterrence, incapacitation, and rehabilitation. Id. The Court in Graham held that "[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." Id. Here, Petitioner's mandatory sentence relied solely on his two prior offenses, and not the facts at trial. A goal of retribution cannot be satisfied by past offenses, only by directly relating the sentence to the case at bar. Therefore, the goal of retribution could not be met.

Deterrence here does not suffice to justify the sentence either. Although a sentence of life without parole will certainly deter Petitioner from any future

ill-considered actions, it must be shown that the punishment is not "grossly disproportionate in light of the justification offered." Id. at 72. Here, any limited deterrent effect provided by life without parole is not enough to justify the sentence as it is grossly disproportionate for a non-violent benign drug offense.

Recidivism is a serious risk to public safety, and so incapacitation is an important goal. Id. However, a life without parole sentence improperly denies Petitioner the chance to demonstrate growth and maturity. The Court in Graham held that even a finding of an escalating pattern of criminal conduct does not necessarily mean that the offender would be a risk to society for the rest of his life. Id at 73. Here, Petitioner's sentence was for a non-violent benign drug offense, only escalated by his prior offenses for marijuana. There is nothing that showed "irreparable corruption" or an inability to ever grow and mature.

Lastly, there is the goal of rehabilitation. This penological goal forms the basis of parole systems. Id. at 74. A sentence of life imprisonment without parole can never satisfy the goal of rehabilitation, since it does away with the notion of rehabilitation altogether. Here, there is no opportunity for rehabilitation afforded to Petitioner since the possibility of parole, or eventual release is removed by the mandatory sentence.

However, even if a punishment has some connection to a valid penological goal, a punishment violates the Eighth Amendment if it is grossly disproportionate to its alleged justification. Id. at 130.

Over the past 13 years, the United States Supreme Court has repeatedly taken up the issue of sentencing, finding that sentencing schemes that result in harsh sentences violate various Constitutional provisions, including the Eighth Amendment. The recent trend started with Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) in which the Court held that a state sentencing scheme which increased a defendant's sentence for facts not proven to a jury beyond a reasonable doubt, or conceded by the defendant, violated the Sixth Amendment. This ruling was re-affirmed four years later in Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), where the Court struck down a similar state sentencing scheme. In between these two decisions, the Court held that the Eighth Amendment prohibits capital punishment for the mentally retarded. Atkins v. Virginia, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).

The Court then took up the issue of federal sentencing in the landmark case of United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), holding that the Federal Sentencing Guidelines were advisory, not mandatory, giving District Courts the freedom to impose a reasonable sentence outside of the Guidelines. The year of 2005 also saw the end of capital punishment for crimes committed while under the age of eighteen. In Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), the Court held that the Eighth Amendment prohibited such a penalty.

Two years later, in Kimbrough v. United States, 552 U.S. 85, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007), this Court held that District Courts were free to reject the 100:1 crack-to-cocaine ratio set forth in the Sentencing Guidelines. This effectively paved the way for reduced sentences to be imposed for crack distribution offenses by the Fair Sentencing Act of 2010 which reduced the disparity between the amount of crack cocaine and powder cocaine to a ratio of 18:1 weight ratio and eliminated the five-year mandatory minimum sentence for simple possession of crack cocaine, among other provisions.

This Court revisited the Constitutional prohibition on cruel and unusual punishment in 2010, holding in Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) that imposition of a life sentence without the possibility of parole for a juvenile violates the Eighth Amendment. This trend continued with this Court's holding in Alleyne v. United States, 133 S.Ct. 2151, 186 L.Ed.2d 314, 81 USLW 4444 (2013), where the Court re-affirmed the central holding of Apprendi, ruling that a defendant's minimum sentence cannot be increased unless supported by facts proven beyond a reasonable doubt to a jury.

E. 21 U.S.C. §851, as Applied, is an Unconstitutional Violation of The Separation Of Powers Enumerated in the United States Constitution

It is now common knowledge that just a few months ago Attorney General Eric Holder announced a new policy of the Department of Justice with respect

to Federal drug offenses. According to the Attorney General, the United States Government would no longer be seeking the harsh mandatory minimum sentences for drug offenses in certain cases. Most recently, the Attorney General announced new policy concerning the use of § 851 statements and superseding indictments as tools to coerce Federal defendants into accepting guilty pleas on Federal narcotics prosecutions and the harsh sentences that go along with them. In a speech given at the American Bar Association, Attorney General Holder said:

> Too many Americans go to too many prisons for far too long…widespread incarceration at the federal, state and local levels is both ineffective and unsustainable. It imposes a significant economic burden…and it comes with human and moral costs that are impossible to calculate.

Attorney General Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of Delegates, San Francisco, C.A. (Aug. 12, 2013), http://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-annual-meeting-american-bar-associations

These remarks and his policy changes reflect the trend in the law outlined above, and a general consensus in American jurisprudence that harsh sentences for non-violent drug offenders are cruel, unusual, and counterproductive.

The defense is mindful of current Court of Appeals case law which holds that the statute challenged herein and the resultant mandatory life sentence are constitutional. However, Petitioner firmly believes in good faith that the time has come for this topic to be re-reviewed, and changed to reflect the trend in the law over the past 13 years. For all of these reasons, this Court should find that under the particular facts of this case, a mandatory sentence of life imprisonment is cruel and unusual punishment in violation of the Eighth Amendment.

CONCLUSION

Mandatory life-without-parole sentences for non-violent drug offenses violate the Eighth Amendment because they impose sentences that are grossly disproportionate, foreclose consideration of the unique facts of each case, and do not make any measurable contribution to the goals that punishment of such offenders is intended to achieve. Branding those who commit nonviolent drug offenses as individuals beyond rehabilitation or undeserving of hope merely perpetuates a cycle of criminal activity, prison overcrowding, and injustice.

Furthermore, depriving our judiciary of its discretion by enforcing the imposition of a mandatory life sentence without parole for a non-violent, benign drug crime based solely upon two prior felony convictions for marijuana possession violates the Eight Amendment of the United States Constitution's prohibition of Cruel and Unusual Punishment.

For the reasons set forth herein, Petitioner, Corvain Cooper, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth entered in the above-entitled case on October 2, 2015.

Respectfully submitted on this 18th day of February, 2016.

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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4586

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

CORVAIN T. COOPER, a/k/a CV,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., District Judge. (3:11-cr-00337-RJC-DSC-12)

Submitted: August 31, 2015 Decided: October 2, 2015

Before KING and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Patrick Michael Megaro, Orlando, Florida, for Appellant. Anne M. Tompkins, United States Attorney, Anthony J. Enright, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A jury convicted Corvain Cooper of conspiring to distribute and possess with intent to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (2012); money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), (a)(1)(B)(i), (h) (2012); and structuring, and aiding and abetting in structuring, financial transactions to evade reporting requirements, in violation of 31 U.S.C. § 5324(a)(3), (d)(1), (d)(2) (2012); 31 C.F.R. §§ 103.11, 103.22 (2015); 18 U.S.C. § 2 (2012). The district court sentenced Cooper to a mandatory term of life imprisonment. Cooper argues that (1) evidence of his past conviction for possession of marijuana and of his past possession of a firearm was inadmissible character evidence, (2) his case should have been severed from those of his codefendants, (3) the evidence was insufficient to connect him to 1000 or more kilograms of marijuana, (4) he suffered ineffective assistance of counsel, and (5) his sentence violates the Eighth Amendment. We affirm in part and dismiss in part.

We first review Cooper's challenges to the district court's admission of evidence for abuse of discretion. United States v. Queen, 132 F.3d 991, 995 (4th Cir. 1997). Cooper contends that the district

court's evidentiary rulings contravened both Rule 404(b) and Rule 403 of the Federal Rules of Evidence.

2

Rule 404(b)(1) prohibits introduction of "[e]vidence of a crime, wrong, or other act . . . to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Evidence "concern[ing] acts intrinsic to the alleged crime," however, does not fall within Rule 404(b)'s ambit. United States v. Otuya, 720 F.3d 183, 188 (4th Cir. 2013) (internal quotation marks and brackets omitted). "[E]vidence of other bad acts is intrinsic if, among other things, it involves the same series of transactions as the charged offense, which is to say that both acts are part of a single criminal episode." Id. (internal quotation marks and citation omitted). Moreover, evidence subject to exclusion under Rule 404(b)(1) "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2). Generally, we will not find that a district court abused its discretion in admitting evidence over a Rule 404(b) objection unless that decision was "arbitrary and irrational." United States v. Williams, 740 F.3d 308, 314 (4th Cir. 2014).

We find no abuse of discretion in the district court's decision to admit the testimony of Beverly Hills, California police officer David Rudy that he recovered a brick of marijuana and other evidence of drug distribution from Cooper during a

traffic stop in January 2009. At the conclusion of Officer Rudy's testimony, the court instructed the jury to limit its consideration of that testimony to the issues of intent, motive, plan, preparation, absence of mistake, or lack of accident. Evidence that Cooper was selling marijuana in California at the height of the drug trafficking conspiracy alleged in this case is probative of his intent to participate in that conspiracy, even if his low-level distribution in California was not part of the conspiracy. See United States v. Ghant, 339 F.3d 660, 664 (8th Cir. 2003).*

We also find no abuse of discretion in the district court's admission of evidence that Cooper obtained and possessed a firearm to protect himself. Because firearms are tools of the drug trade, evidence that Cooper possessed a firearm is relevant intrinsic evidence of the ongoing conspiracy. See United States v. Ricks, 882 F.2d 885, 892 (4th Cir. 1984) ("[E]vidence of firearms is relevant in narcotics conspiracy cases.");

see also Ybarra v. Illinois, 444 U.S. 85, 107 (1979) (recognizing that

* The government asks us to find that evidence that Cooper was dealing drugs in California was "inextricably intertwined" with the conspiracy and therefore not subject to the constraints of Rule 404(b). See Otuya, 720 F.3d at 188. Because we conclude that the district court was within its discretion to admit Officer Rudy's testimony only as evidence of intent, motive, preparation, plan, absence of mistake, or lack of accident, we do not address whether the court might have admitted it for more general purposes.

firearms are as much "tools of the trade" in the narcotics business as are other forms of paraphernalia).

We also reject Cooper's argument that the district court should have excluded Officer Rudy's testimony and the evidence of Cooper's firearm possession pursuant to Rule 403. Rule 403 permits a district court to "exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice." Because "balancing . . . the Rule 403 scale . . . is a discretionary task for the district court," we will not overturn a district court's

decision to admit evidence over a Rule 403 objection "'except under the most extraordinary circumstances, where that discretion has plainly been abused,'" and the trial court has acted "'arbitrarily or irrationally.'" United States v. Williams, 445 F.3d 724, 732 (4th Cir. 2006) (quoting United States v. Simpson, 910 F.2d 154, 157 (4th Cir. 1990)). Here, Cooper has simply not shown that the trial court acted arbitrarily or irrationally in concluding that the unfairly prejudicial effect of Officer Rudy's testimony and the evidence of Cooper's firearm possession did not "substantially outweigh" the probative value of that evidence.

We likewise consider the district court's denial of Cooper's motion for severance for abuse of discretion. United States v. Min, 704 F.3d 314, 319 (4th Cir. 2013). A district court has "broad discretion" to deny a motion for severance. To

establish an abuse of that discretion, a defendant must show that he suffered prejudice as a result of the denial. United States v. Lighty, 616 F.3d 321, 348 (4th Cir. 2010).

The Federal Rules of Criminal Procedure permit multiple defendants to be "charged in the same indictment if they are alleged to have 'participated in

the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses.'" Id. (quoting Fed. R. Crim. P. 8(b)). Moreover, "[t]here is a preference in the federal system for joint trials of defendants who are indicted together because such trials promote efficiency and serve the interests of justice by avoiding the scandal and inequality of inconsistent verdicts." United States v. Graham, __ F.3d __, __, Nos. 12-4659, 12-4825, 2015 WL 4637931, at *28 (4th Cir. 2015) (internal quotation marks and brackets omitted).

While Rule 14 permits severance, a district court should not order it unless "there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." Id. The burden rests with the defendant to show "that actual prejudice would result from a joint trial, and not merely that a separate trial would offer a better chance of acquittal." Id. (internal quotation marks and ellipses omitted).

Cooper makes no such showing. Cooper neither identifies a specific right that the joint trial infringed upon nor demonstrates that the joint trial prevented the jury from reliably determining his guilt. While

one of his codefendants pleaded ignorance and sought to shift blame to him, that testimony would have been admissible even if his trial were severed. Cooper thus suffered no prejudice, and consequently, we find no abuse of discretion in the denial of Cooper's motion to sever.

We next review de novo the district court's denial of

Cooper's Rule 29 motion for judgment of acquittal. United States v. Smith, 451 F.3d 209, 216 (4th Cir. 2006). We will affirm if, when the evidence is viewed in the light most favorable to the government, "the conviction is supported by substantial evidence." United States v. Hickman, 626 F.3d 756, 762-63 (4th Cir. 2010) (internal quotation marks omitted). "'Substantial evidence' is 'evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt.'"

United States v. Green, 599 F.3d 360, 367 (4th Cir. 2015) (quoting United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (en banc)). A defendant challenging evidentiary sufficiency "faces a heavy burden." United States v. Foster,

507 F.3d 233, 245 (4th Cir. 2007). Reversal of a conviction on

these grounds is limited to "cases where the prosecution's failure is clear." Id. at 244-45 (internal quotation marks omitted).

To obtain a conviction for a drug conspiracy under 21

U.S.C. § 846, the government must show that a defendant (1) agreed with at least one more person to engage in conduct that violated 21 U.S.C. § 841; (2) had knowledge of the conspiracy; and (3) knowingly and voluntarily participated in the conspiracy. United States v. Howard, 773 F.3d 519, 525 (4th Cir. 2014). Further, "in order for the statutory maximums and mandatory minimums of § 841(b) to apply," the government must demonstrate "that the threshold drug amount was reasonably foreseeable to the individual defendant." United States v. Brooks, 524 F.3d 549, 558 (4th Cir. 2008). In that vein, this Court has cautioned that the trier of fact "may not simply guess at the magnitude or frequency of unknown criminal activity" if "no evidence exists to guide the trier of fact in determining the outer scope of a conspiracy." Hickman, 626 F.3d at 768-69.

Here, the Government presented sufficient evidence specifically showing that Cooper was responsible for more than 1000 kilograms of marijuana. The Government presented testimony from three of Cooper's coconspirators, each of whom claimed to distribute well over 10,000 kilograms of marijuana. While only 153 kilograms of marijuana were seized, the jury is not limited

to considering only that marijuana which is seized. See United States v. Durham, 211 F.3d 437, 444 (7th Cir. 2000) (holding that court may take witnesses' estimates of amount of drugs purchased and multiply that by minimum quantity sold on each occasion), cited in Hickman, 626 F.3d at 769.

Next, while Cooper charges his attorney with ineffective assistance, unless an attorney's ineffectiveness conclusively appears on the face of the record, such claims are not generally addressed on direct appeal. United States v. Benton, 523 F.3d 424, 435 (4th Cir. 2008). Because his attorney's ineffectiveness does not appear on the face of the record, his claims should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012), to permit sufficient development of the record. United States v. Baptiste, 596 F.3d 214, 216 n.1 (4th Cir. 2010). We

thus dismiss his appeal with respect to the ineffective assistance claims.

Finally, we review de novo Cooper's challenge to his sentence on Eighth Amendment grounds. United States v. Dowell, 771 F.3d 162, 167 (4th Cir. 2014). The Eighth Amendment prohibits cruel and unusual punishments, encompassing both barbaric punishments and those that are disproportionate to the crime committed. Graham v. Florida, 560 U.S. 48, 59 (2010). In determining whether a sentence is disproportionate to the offense, and thus cruel and unusual, we consider objective

criteria, including the gravity of the offense and harshness of the penalty, the sentences imposed on other criminals in the same jurisdiction, and the sentences imposed for the same offense in other jurisdictions. Dowell, 771 F.3d at 167. Of the challenges charging that a particular sentence is disproportionate to the crime committed, there are two types: an as-applied challenge that the length of a sentence is disproportionate given the circumstances of the case, and a categorical challenge asserting that the entire class of sentences is disproportionate based on the nature of the offense or the characteristics of the offender. Id.

Where, as here, a party has asserted an as-applied challenge to a particular sentence, we have outlined a specific method of analysis:

> [T]he narrow proportionality principle of the Eighth Amendment does not require strict proportionality between crime and sentence, but forbids only extreme sentences that are grossly disproportionate to the crime. Before an appellate court concludes that a sentence is grossly disproportionate based on an as-applied challenge, the court first must determine that a threshold comparison of the gravity of the offense and the severity of the sentence leads to an inference of gross disproportionality.

United States v. Cobler, 748 F.3d 570, 575 (4th Cir. 2014) (internal quotation marks and citations omitted).

As Cooper acknowledges, we have previously held that a mandatory sentence of life without parole for drug distribution

is not grossly disproportionate. United States v. Kratsas, 45 F.3d 63, 68 (4th Cir. 1995). In Kratsas, we emphasized that the defendant's conduct was "immensely grave," considering that the defendant was "part of a ring of dealers," directly responsible "a

large amount of cocaine, specifically 18 kilograms," and a repeat drug offender. Id. Cooper makes no effort to distinguish Kratsas; rather, he urges us to reconsider Kratsas in light of policy changes concerning marijuana and sentencing since that decision. We cannot overrule a published decision issued by another panel of this Court. McMellon v. United States, 387 F.3d 329, 332 (4th Cir. 2004) (en banc). Therefore, we conclude that Kratsas forecloses Cooper's Eighth Amendment claim.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART AND
DISMISSED IN PART

APPENDIX B

FILED: October 2, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4586
(3:11-cr-00337-RJC-DSC-12)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CORVAIN T. COOPER, a/k/a CV

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part. The appeal is dismissed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: October 2, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4586, US v. Corvain Cooper
3:11-cr-00337-RJC-DSC-12

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. **(www.supremecourt.gov)**

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available from the clerk's office or from the court's web site, **www.ca4.uscourts.gov,** or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition to identify the cases to which the petition applies and to avoid companion cases proceeding to mandate during the pendency of a

petition for rehearing in the lead case. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 15 pages. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will

issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:11-CR-337-RJC-DSC

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	**ORDER**
(12) CORVAIN T. COOPER, a/k/a "CV",	)	
	)	
	)	
Defendant.	)	
	)	

THIS MATTER is before the Court on Defendant's "Motion for Severance of Defendants

(Prejudicial Joinder)," Doc. 317, filed September 10, 2013[1] and "Government's Response in Opposition to Defendant Cooper's Motion to Sever," Doc. 319, filed September 10, 2013. Having fully considered the arguments, the record, and the applicable authority, the Court finds that Defendant's "Motion for Severance of Defendants (Prejudicial Joinder)," should be DENIED, as discussed below.

On August 20, 2013, the Government filed a Third Superseding Bill of Indictment against Defendant, Evelyn Chantell LaChapelle and Natalia Christina Wade. Count One charges all three Defendants with drug conspiracy in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A). Count Two charges all three Defendants with conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). Count Three charges all three Defendants with structuring currency transactions in violation of 31 U.S.C. §§ 5324(a)(3) and 5324(d)(1) and (d)(2); 31 C.F.R. §§ 103.11 and 103.22; and 18 U.S.C. § 2.

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[1] This Motion was originally filed on September 9, 2013 as document 313. On September 11, 2013, the Court allowed document 317 to replace the original Motion.

Defendant Cooper argues that he withdrew from the alleged conspiracy in or about 2006. He also argues that to the extent he was involved in a conspiracy, it had no connection to the Western District of North Carolina. He contends that evidence offered against his Co-Defendants poses a risk of prejudicial "spill-over" for him, and that a joint trial may confuse the jury. Finally, he anticipates that his Co-Defendants may assert defenses that are inconsistent or antagonistic to his defense.

The Government responds that multiple cooperating Defendants will testify that as part of a conspiracy involving Defendant Cooper, they shipped crates and FedEx packages containing marijuana from California to the Charlotte area and elsewhere into 2009 and later. The

Government represents that this testimony will be corroborated by bank records showing that Defendant Cooper and his co-conspirators structured drug proceeds into 2009. One witness is expected to testify that Defendants LaChapelle and Wade handled hundreds of thousands of dollars in drug proceeds for Cooper in 2009 and 2010, as corroborated by bank records. The Government also proffers that Defendant Cooper continued to broker marijuana deals from 2009

to 2012. The Government's evidence will include telephone toll records corroborating the witnesses, as well as connecting Cooper to the seizure of more than 300 pounds of marijuana that shipped from California to Charlotte in 2009. Finally, the Government asserts that Defendant Cooper's phone contains text messages and photographs indicating that he was continuing to traffic in marijuana with fugitive Co-Defendant Clyde "Big C" Wilburn into 2013.

Federal Rule of Criminal Procedure 8(b) provides:

> The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

Fed.R.Crim.P. 8(b). Thus, "[t]he test for joinder under Rule 8(b) is whether the defendants 'are alleged to have participated in the same act or transaction or in the same series of acts or transactions.'" United States v. Santoni, 585 F.2d 667, 673 (4th Cir. 1978) (quoting Fed. R. Crim. P. 8(b)). In those instances "[w]here the

defendants' acts are part of a series of acts or transactions, it is not necessary that each defendant be charged in each count, nor to show that each defendant participated in every act or transaction in the series." Id. In this case, Defendant is charged with participating in a conspiracy. Therefore, the Court finds that joinder is proper.

Federal Rule of Criminal Procedure 14(a) provides:

> If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

Fed.R.Crim.P. 14(a). "In deciding whether to grant a Rule 14 motion, the district court is given broad discretion in weighing the inconvenience and expense to the government and witnesses in conducting separate trials against the prejudice to the defendants caused by a joint trial." United States v. Smith, 44 F.3d 1259, 1266-7 (4th Cir. 1995). "The district court's decision to grant or deny a motion for severance will be overturned only for a clear abuse of discretion. Such

an abuse of discretion will be found only where the trial court's decision to deny a severance deprives the defendants of a fair trial and results in a miscarriage of justice." United States v. Rusher, 966 F.2d 868, 878 (4th Cir. 1992) (quotation omitted). It is the defendant's burden to show "that a joint trial would be so unfairly prejudicial that a miscarriage of justice would result." United States v. Williams, 10 F.3d 1070, 1079-80 (4th Cir. 1993).

The Supreme Court has held that "[t]here is a preference in the federal system for joint trials of defendants who are indicted together." Zafiro v. United States, 506 U.S. 534, 537 (1993). There are several reasons for this preference. Joint trials "serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts." Id. Joint trials also promote "economy and efficiency" and help the Court and litigants "avoid a multiplicity of trials." Id. at 540. The Fourth Circuit recently reiterated, "[w]e adhere to the general principle that when defendants are indicted together, they should be tried together." United States v. Dinkins, 691 F.3d 358, 368 (4th Cir. 2012) (quoting United States v. Singh, 518 F.3d 236, 255 (4th Cir. 2008).

The preference for joint trials is particularly strong in conspiracy cases. "[J]oinder is highly favored in conspiracy cases, over and above the general disposition [supporting] joinder for reasons of efficiency and judicial economy." Id. (quoting United States v. Tedder, 801 F.2d 1437, 1450 (4th Cir. 1986)) (alterations in original). This is because, as the Fourth Circuit explains, "[t]he gravamen of conspiracy is that each conspirator is fully liable for the acts of all co-conspirators in furtherance of the conspiracy." Tedder, 801 F.2d at 1450.

Defendant has failed to meet the burden of showing that a miscarriage of justice would result from a joint trial. The Fourth Circuit has been clear that "[s]peculative allegations as to possible prejudice do not meet the burden of showing an abuse of discretion in denying a motion for severance." United States v. Becker, 585 F.2d 703, 707 (4th Cir. 1978). Any arguable prejudice can be avoided by the Court's instructions to the jury.

For the foregoing reasons, the Court DENIES the "Motion for Severance of Defendants (Prejudicial Joinder),"

The Clerk is directed to send copies of this Order to counsel for the parties; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

APPENDIX D

FILED: October 15, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4586
(3:11-cr-00337-RJC-DSC-12)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CORVAIN T. COOPER, a/k/a CV

Defendant - Appellant

STAY OF MANDATE UNDER

FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

APPENDIX E

FILED: November 10, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4586
(3:11-cr-00337-RJC-DSC-12)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CORVAIN T. COOPER, a/k/a CV

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX F

Amendment VIII of the United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

APPENDIX G

21 U.S.C. §851. Proceedings to establish prior convictions

(a) Information filed by United States Attorney

(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three

years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) Affirmation or denial of previous conviction

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing

(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in

addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1) of this section. The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d) Imposition of sentence

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of

prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) Statute of limitations

No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

APPENDIX H

Article I of the United States Constitution

Section 1.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective

numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3.

The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4.

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5.

Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more

than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the

President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8.

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9.

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the

year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10.

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in

time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

APPENDIX I

Article II of the United States Constitution

Section 1.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit

sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive

within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2.

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public

ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3.

He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4.

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

APPENDIX J

Article III of the United States Constitution

Section 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--

between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3.

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

APPENDIX K

21 U.S.C. §841. Prohibited acts A.

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally-

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving-

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of-

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1- (2-

phenylethyl) -4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not

be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this

subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving-

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of-

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1- (2-phenylethyl) -4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;
such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be

not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence

of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of

twice that authorized in accordance with the provisions of title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that

authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of

imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance

with the provisions of title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as

provided in this subsection and shall be fined any amount not to exceed-

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual; or both.

(6) Any person who violates subsection (a) of this section, or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use-

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Penalties for distribution.-

(A) In general.-Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18 (including rape), against an individual, violates subsection (a) of this section by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18.

(B) Definition.-For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally-

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed

chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;
shall be fined in accordance with title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, or both.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of

a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements ofsection 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18 or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that-

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser; shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term "date rape drug" means-

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4–butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed bysection 553 of title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner has conducted at least 1 medical

evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other heath 1 professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4–butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

(h) Offenses involving dispensing of controlled substances by means of the Internet

(1) In general

It shall be unlawful for any person to knowingly or intentionally-

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in section 2 of title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

(2) Examples

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally-

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(f) of this title(unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of the title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections 2823(f) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

(3) Inapplicability

(A) This subsection does not apply to-

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to-

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

APPENDIX L

18 U.S.C. §1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity-

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States-

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part-

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent-

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.-

(1) In general.-Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of-

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

(2) Jurisdiction over foreign persons.-For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and-

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.-A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.-

(A) In general.-A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.-A Federal Receiver described in subparagraph (A)-

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out insection 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant-

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section-

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or

negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" includes-

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term "specified unlawful activity" means-

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving-

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978)); 1

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving-

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730–774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section

657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(l) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 2(relating to fraudulent Federal credit institution entries), 1007 2 (relating to Federal Deposit Insurance transactions), 1014 2 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 2 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to

murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating

to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the

Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons) 3

environmental crimes

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing

criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if-

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) Notice of Conviction of Financial Institutions.-If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, orsection 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) Venue.-(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in-

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

APPENDIX M

31 U.S.C. §5313. Reports on domestic coins and currency transactions

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

(b) The Secretary may designate a domestic financial institution as an agent of the United States Government to receive a report under this section. However, the Secretary may designate a domestic financial institution that is not insured, chartered, examined, or registered as a domestic financial

institution only if the institution consents. The Secretary may suspend or revoke a designation for a violation of this subchapter or a regulation under this subchapter (except a violation of section 5315 of this title or a regulation prescribed under section 5315), section 411 1 of the National Housing Act (12 U.S.C. 1730d), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b).

(c)(1) A person (except a domestic financial institution designated under subsection (b) of this section) required to file a report under this section shall file the report-

(A) with the institution involved in the transaction if the institution was designated;

(B) in the way the Secretary prescribes when the institution was not designated; or

(C) with the Secretary.

(2) The Secretary shall prescribe-

(A) the filing procedure for a domestic financial institution designated under subsection (b) of this section; and

(B) the way the institution shall submit reports filed with it.

(d) Mandatory Exemptions From Reporting Requirements.-

(1) In general.-The Secretary of the Treasury shall exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and the following categories of entities:

(A) Another depository institution.

(B) A department or agency of the United States, any State, or any political subdivision of any State.

(C) Any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between 2 or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision.

(D) Any business or category of business the reports on which have little or no value for law enforcement purposes.

(2) Notice of exemption.-The Secretary of the Treasury shall publish in the Federal Register at such times as the Secretary determines to be appropriate (but not

less frequently than once each year) a list of all the entities whose transactions with a depository institution are exempt under this subsection from the reporting requirements of subsection (a).

(e) Discretionary Exemptions From Reporting Requirements.-

(1) In general.-The Secretary of the Treasury may exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

(2) Qualified business customer defined.-For purposes of this subsection, the term "qualified business customer" means a business which-

(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

(3) Criteria for exemption.-The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

(4) Guidelines.-

(A) In general.-The Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection.

(B) Contents.-The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

(5) Annual review.-The Secretary of the Treasury shall prescribe regulations requiring each depository institution to-

(A) review, at least once each year, the qualified business customers of such institution with respect to

whom an exemption has been granted under this subsection; and

(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

(6) 2-year phase-in provision.-During the 2-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, this subsection shall be applied by the Secretary on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.

(f) Provisions Applicable to Mandatory and Discretionary Exemptions.-

(1) Limitation on liability of depository institutions.-No depository institution shall be subject to any penalty which may be imposed under this subchapter for the failure of the institution to file a report with respect to a transaction with a customer for whom an exemption has been granted under subsection (d) or (e) unless the institution-

(A) knowingly files false or incomplete information to the Secretary with respect to the transaction or the customer engaging in the transaction; or

(B) has reason to believe at the time the exemption is granted or the transaction is entered into that the customer or the transaction does not meet the criteria established for granting such exemption.

(2) Coordination with other provisions.-Any exemption granted by the Secretary of the Treasury under section 5318(a) in accordance with this section, and any transaction which is subject to such exemption, shall be subject to any other provision of law applicable to such exemption, including-

(A) the authority of the Secretary, under section 5318(a)(6), to revoke such exemption at any time; and

(B) any requirement to report, or any authority to require a report on, any possible violation of any law or regulation or any suspected criminal activity.

(g) Depository Institution Defined.-For purposes of this section, the term "depository institution"-

(1) has the meaning given to such term in section 19(b)(1)(A) of the Federal Reserve Act; and

(2) includes-

(A) any branch, agency, or commercial lending company (as such terms are defined in section 1(b) of the International Banking Act of 1978);

(B) any corporation chartered under section 25A of the Federal Reserve Act; and

(C) any corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

APPENDIX N

N.C. GEN. STAT. § 90-95. Violations; penalties.

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon, except as follows: (i) the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felony, and (ii) the manufacture of methamphetamine shall be punished as provided by subdivision (1a) of this subsection.

(1a) The manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana or less than 2.5 grams of a synthetic cannabinoid or any mixture containing such substance for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon. However, if the

controlled substance is MDPV and the quantity of the MDPV is 1 gram or less, the violation shall be punishable as a Class 1 misdemeanor.

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana, 7 grams of a synthetic cannabinoid or any mixture containing such substance, or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana, 21 grams of a synthetic cannabinoid or any mixture containing such substance, or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) (1) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance; or

c. Possess a pseudoephedrine product if the person has a prior conviction for the possession or manufacture of methamphetamine.

Except where the conduct is covered under subdivision (2) of this subsection, any person who violates this subdivision shall be punished as a Class H felon.

(2) Except as authorized by this Article, it is unlawful for any person to:

a. Possess an immediate precursor chemical with intent to manufacture methamphetamine; or

b. Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture methamphetamine.

Any person who violates this subdivision shall be punished as a Class F felon.

(d2) The immediate precursor chemicals to which subsection (d1) and (d1a) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Acetic anhydride.

(2) Acetone.

(3) Anhydrous ammonia.

(4) Anthranilic acid.

(5) Benzyl chloride.

(6) Benzyl cyanide.

(7) 2-Butanone (Methyl Ethyl Ketone).

(8) Chloroephedrine.

(9) Chloropseudoephedrine.

(10) D-lysergic acid.

(11) Ephedrine.

(12) Ergonovine maleate.

(13) Ergotamine tartrate.

(14) Ethyl ether.

(15) Ethyl Malonate.

(16) Ethylamine.

(17) Gamma-butyrolactone.

(18) Hydrochloric Acid.

(19) Iodine.

(20) Isosafrole.

(21) Lithium.

(22) Malonic acid.

(23) Methylamine.

(24) Methyl Isobutyl Ketone.

(25) N-acetylanthranilic acid.

(26) N-ethylephedrine.

(27) N-ethylepseudoephedrine.

(28) N-methylephedrine.

(29) N-methylpseudoephedrine.

(30) Norpseudoephedrine.

(31) Phenyl-2-propane.

(32) Phenylacetic acid.

(33) Phenylpropanolamine.

(34) Piperidine.

(35) Piperonal.

(36) Propionic anhydride.

(37) Pseudoephedrine.

(38) Pyrrolidine.

(39) Red phosphorous.

(40) Safrole.

(41) Sodium.

(42) Sulfuric Acid.

(43) Tetrachloroethylene.

(44) Thionylchloride.

(45) Toluene.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an

offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more

than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial.

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary

school or within 1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). For purposes of this subdivision, a child care center is as defined in G.S. 110-86(3)a., and that is licensed by the Secretary of the Department of Health and Human Services.

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(10) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property that is a public park or within 1,000 feet of the boundary of real property that is a public park shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition,

be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without

further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

(1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. -

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 39 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70

months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(1a) For the purpose of this subsection, a "dosage unit" shall consist of 3 grams of synthetic cannabinoid or any mixture containing such substance. Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 dosage units of a synthetic cannabinoid or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in synthetic cannabinoids," and if the quantity of such substance involved:

a. Is in excess of 50 dosage units, but less than 250 dosage units, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 39 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 250 dosage units or more, but less than 1250 dosage units, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 1250 dosage units or more, but less than 3750 dosage units, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 3750 dosage units or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound,

derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term

of 222 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Repealed by Session Laws 1999-370, s. 1, effective December 1, 1999.

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or any mixture containing such substance shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to

a minimum term of 225 months and a maximum term of 282 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3c) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of amphetamine or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in amphetamine", and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 39 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 400 grams or more, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term

of 120 months in the State's prison and shall be fined at least one hundred thousand dollars ($100,000).

(3d) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of MDPV or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in MDPV," and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term

of 282 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3e) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of mephedrone or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in mephedrone," and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term

of 282 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 282 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum

term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in MDA/MDMA." If the quantity of the substance or mixture involved:

a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35

months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred fifty thousand dollars ($250,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation

when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section.

APPENDIX O

N.J. STAT. § 2C:35-5. Manufacturing, distributing or dispensing

2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

(1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or

(2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

b. Any person who violates subsection a. with respect to:

(1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves,

and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecogine, or 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxyamphetamine, in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. The defendant shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $500,000.00 may be imposed;

(2) A substance referred to in paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants is guilty of a crime of the second degree;

(3) A substance referred to in paragraph (1) of this subsection in a quantity less than one-half ounce

including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000.00 may be imposed;

(4) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of one ounce or more including any adulterants or dilutants is guilty of a crime of the second degree;

(5) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000.00 may be imposed;

(6) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine, or its analog, in a quantity of 10 grams or more including any adulterants or dilutants, is guilty of a crime of the

first degree. Except as provided in N.J.S.2C:35-12, the court shall impose a term of imprisonment which shall include the imposition of a minimum term, fixed at, or between, one-third and one-half of the sentence imposed by the court, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $500,000.00 may be imposed;

(7) Lysergic acid diethylamide, or its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where the amount is undetermined, or phencyclidine, or its analog, in a quantity of less than 10 grams including any adulterants or dilutants, or where the amount is undetermined, is guilty of a crime of the second degree;

(8) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000.00 may be imposed;

(9) (a) Methamphetamine, or its analog, or phenyl-

2-propanone (P2P), in a quantity of one-half ounce or more but less than five ounces including any adulterants or dilutants is guilty of a crime of the second degree;

(b) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000.00 may be imposed;

(10) (a) Marijuana in a quantity of 25 pounds or more including any adulterants or dilutants, or 50 or more marijuana plants, regardless of weight, or hashish in a quantity of five pounds or more including any adulterants or dilutants, is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000.00 may be imposed;

(b) Marijuana in a quantity of five pounds or more but less than 25 pounds including any adulterants or dilutants, or 10 or more but fewer than 50 marijuana plants, regardless of weight, or hashish in a quantity

of one pound or more but less than five pounds, including any adulterants and dilutants, is guilty of a crime of the second degree;

(11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants or dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000.00 may be imposed;

(12) Marijuana in a quantity of less than one ounce including any adulterants or dilutants, or hashish in a quantity of less than five grams including any adulterants or dilutants, is guilty of a crime of the fourth degree;

(13) Any other controlled dangerous substance classified in Schedule I, II, III or IV, or its analog, is guilty of a crime of the third degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000.00 may be imposed; or

(14) Any Schedule V substance, or its analog, is guilty of a crime of the fourth degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000.00 may be imposed.

c. Where the degree of the offense for violation of this section depends on the quantity of the substance, the quantity involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the quantity involved in individual acts of manufacturing, distribution, dispensing or possessing with intent to distribute may be aggregated in determining the grade of the offense, whether distribution or dispensing is to the same person or several persons, provided that each individual act of manufacturing, distribution, dispensing or possession with intent to distribute was committed within the applicable statute of limitations.

APPENDIX P

NY Penal L § 70.06 (2014)

70.06 Sentence of imprisonment for second felony offender.

1. Definition of second felony offender.

(a) A second felony offender is a person, other than a second violent felony offender as defined in section 70.04, who stands convicted of a felony defined in this chapter, other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions as defined in paragraph (b) of this subdivision.

(b) For the purpose of determining whether a prior conviction is a predicate felony conviction the following criteria shall apply:

(i) The conviction must have been in this state of a felony, or in any other jurisdiction of an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed;

(ii) Sentence upon such prior conviction must have been imposed before commission of the present felony;

(iii) Suspended sentence, suspended execution of sentence, a sentence of probation, a sentence of conditional discharge or of unconditional discharge, and a sentence of certification to the care and custody of the division of substance abuse services, shall be deemed to be a sentence;

(iv) Except as provided in subparagraph (v) of this paragraph, sentence must have been imposed not more than ten years before commission of the felony of which the defendant presently stands convicted;

(v) In calculating the ten year period under subparagraph (iv), any period of time during which the person was incarcerated for any reason between the time of commission of the previous felony and the time of commission of the present felony shall be excluded and such ten year period shall be extended by a period or periods equal to the time served under such incarceration;

(vi) An offense for which the defendant has been pardoned on the ground of innocence shall not be deemed a predicate felony conviction.

* 2. Authorized sentence. Except as provided in subdivision five or six of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

* NB Effective until September 1, 2015

* 2. Authorized sentence. Except as provided in subdivision five of this section, or as provided in subdivision five of section 70.80 of this article, when the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender the court must impose an indeterminate sentence of imprisonment. The maximum term of such sentence must be in accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

* NB Effective September 1, 2015

* 3. Maximum term of sentence. Except as provided in subdivision five or six of this section, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

(b) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

(c) For a class C felony, the term must be at least six years and must not exceed fifteen years;

(d) For a class D felony, the term must be at least four years and must not exceed seven years; and

(e) For a class E felony, the term must be at least three years and must not exceed four years; provided, however, that where the sentence is for the class E felony offense specified in section 240.32 of this chapter, the maximum term must be at least three years and must not exceed five years.

* NB Effective until September 1, 2015

* 3. Maximum term of sentence. Except as provided in subdivision five of this section, or as provided in subdivision five of section 70.80 of this article, the maximum term of an indeterminate sentence for a second felony offender must be fixed by the court as follows:

(a) For a class A-II felony, the term must be life imprisonment;

(b) For a class B felony, the term must be at least nine years and must not exceed twenty-five years;

(c) For a class C felony, the term must be at least six years and must not exceed fifteen years;

(d) For a class D felony, the term must be at least four years and must not exceed seven years; and

(e) For a class E felony, the term must be at least three years and must not exceed four years.

* NB Effective September 1, 2015

4. Minimum period of imprisonment.

(a) The minimum period of imprisonment for a second felony offender convicted of a class A-II felony must be fixed by the court at no less than six years and not to exceed twelve and one-half years and must be

specified in the sentence, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter, such minimum period shall be not less than ten years nor more than twenty-five years.

(b) Except as provided in paragraph (a), the minimum period of imprisonment under an indeterminate sentence for a second felony offender must be fixed by the court at one-half of the maximum term imposed and must be specified in the sentence.

* 6. Determinate sentence. When the court has found, pursuant to the provisions of the criminal procedure law, that a person is a second felony offender and the sentence to be imposed on such person is for a violent felony offense, as defined in subdivision one of section 70.02, the court must impose a determinate sentence of imprisonment the term of which must be fixed by the court as follows:

(a) For a class B violent felony offense, the term must be at least eight years and must not exceed twenty-five years;

(b) For a class C violent felony offense, the term must be at least five years and must not exceed fifteen years;

(c) For a class D violent felony offense, the term must be at least three years and must not exceed seven years; and

(d) For a class E violent felony offense, the term must be at least two years and must not exceed four years.

* NB Repealed September 1, 2015

* 7. Notwithstanding any other provision of law, in the case of a person sentenced for a specified offense or offenses as defined in subdivision five of section 410.91 of the criminal procedure law, who stands convicted of no other felony offense, who has not previously been convicted of either a violent felony offense as defined in section 70.02 of this article, a class A felony offense or a class B felony offense, and is not under the jurisdiction of or awaiting delivery to the department of corrections and community supervision, the court may direct that such sentence be executed as a parole supervision sentence as defined in and pursuant to the procedures prescribed in section 410.91 of the criminal procedure law.

* NB Repealed September 1, 2015

APPENDIX Q

New York Penal Law § 221.30 Criminal possession of marihuana in the first degree

A person is guilty of criminal possession of marihuana in the first degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than ten pounds.

Criminal possession of marihuana in the first degree is a class C felony.

APPENDIX R

New York Penal Law § 221.55 Criminal sale of marihuana in the first degree

A person is guilty of criminal sale of marihuana in the first degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than sixteen ounces.

Criminal sale of marihuana in the first degree is a class C felony.

APPENDIX S

MR. KAUFMAN: Good afternoon, Your Honor.

MR. MEGARO: Good afternoon, Your Honor.

THE COURT: We're here in the matter of United States V Corvain Cooper for sentencing. Are the parties ready to proceed?

MR. KAUFMAN: Yes, Your Honor.

MR. MEGARO: Yes, Your Honor.

THE COURT: Mr. Cooper was found guilty by a jury on October 21st, and after that his case was referred to the Federal Probation Department for the purpose of preparing a presentence report. Mr. Cooper, I have a few questions to ask you about that presentence report, if you would please stand. Have you had a chance to read the presentence report?

DEFENDANT COOPER: Yes, sir.

THE COURT: Do you believe you understand it?

DEFENDANT COOPER: Yes, sir.

THE COURT: Have you had enough time to go over the presentence report with your attorney?

DEFENDANT COOPER: Yes, sir.

THE COURT: All right. You may sit down. Is it Mr. Megaro, is that the correct pronunciation?

MR. MEGARO: Yes, Your Honor. Thank you.

THE COURT: Were there any objections to the presentence report?

MR. MEGARO: Yes, Your Honor. I had filed an objection letter on January 23rd, 2014, as well as an update on May 20th, 2014, and the Defendant's Sentencing Memorandum, which I believe was electronically filed on June 12th, which incorporates by reference and expands on some of those objections.

THE COURT: I've received all of those. It appears to me that there are two things going on here. One is the statutory mandatory minimum issue, and the other is a series of guideline objections. I guess, taking them in order. With respect to the 851, does the defendant deny the validity of any of the predicate convictions that were noticed by the Government in their 851?

MR. MEGARO: No, Your Honor. We don't -- we don't object to the validity of the underlying convictions. It's more or less an Eighth Amendment argument with respect to the cruel and unusual punishment with respect to the mandatory minimum.

THE COURT: So we've got that going on. And if the Eighth Amendment doesn't bar the imposition of the mandatory life sentence, the Court has no discretion under the statute.

MR. MEGARO: I would agree with that statement. If the Court does not find that this violates the Eighth Amendment of the United States Constitution, the statute would strip the Court of any discretion.

THE COURT: And what is the argument that there is an Eighth Amendment issue here?

MR. MEGARO: I have laid it out in my sentencing memorandum at -- I think it was point, Your Honor, which begins on page -- I'm sorry -- page of my memorandum. And without rehashing everything that I've written, I know the Court has read it. The main thrust of the argument is that the punishment does not fit the crime for the factors that were laid out in the Supreme Court case. And I would point out that if Mr. Cooper was prosecuted by the State of

North Carolina rather than the United States government, he would be facing a sentence which would be in line with the highest sentence that a co-defendant or co-conspirator received in this case, and what I believe would be -- if the mandatory minimum did not apply, and the Court were to credit all of my objections -- would be a level, a criminal history category VI, which is 210 to 262 months. Which is roughly the same maximum sentence that the State of North Carolina would impose. He would not be able to receive a life sentence. I'm unaware of any state in the United States that would impose a life sentence for trafficking marijuana without any other aggravating factor that would include violence.

THE COURT: Very well. What says the Government with respect to the Eighth Amendment claim?

MR. KAUFMAN: Your Honor, the convictions are valid. In terms of the Eighth Amendment, Mr. Cooper is an adult male of the age of majority. There's not an issue as to his age. I don't believe there's any issue as to his competence or I.Q. So I don't believe that there's a constitutional challenge. In terms of the 851 notice that we filed, we did so knowing that Mr. Cooper had several factors that weighed in favor of us filing it, to include his very extensive criminal history. He's a VI, based on actual convictions not on status as a career

offender. He had a leadership role. He had firearms in the course of the conspiracy. There was obstructive conduct. I mean, there are numerous factors that our office internally would consider, and he hits many of those pistons not just one of them, in terms of using the 851 enhancement.

THE COURT: Mr. Megaro, I'm sympathic to your argument. I would want to have discretion before imposing a life sentence. The absence of discretion is a troubling thing for the Court. But it appears to the Court that from a statutory standpoint, the i's have been dotted, the t's have been crossed. The imposition of a mandatory life sentence is what Congress has provided for someone who has been found guilty of this offense with the priors that Mr. Cooper has. From a constitutional sense, it does appear to me that the Fourth Circuit has spoken in this area and has upheld the constitutionality of a mandatory life sentence for a crime such as this in the *Kratsas* case, and in the unpublished *Sylvester* case cited by the Government. I'm going to overrule the Eighth Amendment challenge in light of that case law. Having done that, you having preserved your constitutional challenge, do you still wish to be heard on the guideline issues?

MR. MEGARO: Your Honor, I know that it would seem almost academic in light of the mandatory nature of the sentence, but I don't want to -- I'm ever conscious of possibly waiving any appellate rights.

THE COURT: Right. Well, why don't we do this: I have reviewed the objections with respect to the two level 19 increase for a weapon; the drug amount, the -- seems like the leadership enhancement and the double counting. I've reviewed your objections, as well as the government's response, and as to each I think the government has the better argument for the reasons specified, either in the probation office response to your objection or the government's response and supplemental response. And so for the record, you have made each of those objections and I have overruled them.

MR. MEGARO: Thank you, Your Honor.

THE COURT: All right.

MR. KAUFMAN: And Your Honor, I apologize. I believe there was also an enhancement for the obstruction based upon the letter to Mr. Moseley.

THE COURT: There was. Do you have Government's Exhibit 45 with you?

MR. KAUFMAN: I should, Your Honor.

MR. MEGARO: I have -- Your Honor, I have seen Government's Exhibit 45.

THE COURT: All right. Let me hear the argument of the Government as to why this exhibit justified a two level obstruction enhancement.

MR. KAUFMAN: Your Honor, the context of his letter was after co-defendant Leamon Keishan Moseley, who was one of the testifying witnesses against Mr. Cooper eventually, but it was right after he had been arrested. In actuality, Your Honor had released him on bond. But it was not a fact yet known to Mr. Cooper. He sent this letter to Mr. Cooper's mother with whom -- I'm sorry -- to Mr. Moseley's mother. Mr. Cooper and Mr. Moseley were very close friends. I believe that Mr. Moseley even talked about it almost like a brothership. And that he was very close to Mr. Moseley's mother. So he addressed it to Mr. Moseley's mother, who is Ms. Scott. And in the letter he is giving an update to Mr. Moseley about the status of the case to include who's saying what. He even at the very back attaches a list of – the actual indictment and has handwritten who's cooperating, who's on the run, adding defendants who weren't even shown on this superseding indictment as to who is cooperating, good their friend Mr. Alegrete, Mr. Johnson, who Your Honor heard from during testimony. So he's clearly trying to keep Mr. Moseley abreast of what's going on during it. There were a couple of specific comments. For example, just below the signature block is one of the key comments. "Call my mom or Susan." Susan is

Mr. Cooper's girlfriend. "And any questions or concerning Keishan should be cool." Now, again, he's talking about Keishan in third party person because he thinks this is going to Keishan Moseley's mother. And then very importantly, "If he did" -- "If he did the takes on the bank accounts, he can say that money came from anywhere." This is a very important statement there, Your Honor. Because Mr. Cooper was aware that he was charged with money laundering. There were money laundering charges. And obviously one of the key things in a money laundering case like this is, what is the source of the funds. The deposit slip doesn't say "drug proceeds" on it. And so Mr. Cooper is trying to influence what Mr. Moseley will tell law enforcement, if and when he eventually is asked about these bank accounts. Which, very importantly, Mr. Moseley testified he opened on behalf of Mr. Cooper. So he was receiving funds for Mr. Cooper. And so to say that the money came from anywhere, he's basically saying, it didn't come from me. The money in your account did not come from me. He's trying to influence the testimony of Mr. Moseley.

THE COURT: All right. I'm going to -- I'm going to

grant the objection to the obstruction enhancement. I do believe that there's -- it's a very close call. The letter does not have overt threats. It comes very close

to crossing the line. The government says it does cross the line with respect to either unlawfully influencing a witness or suborning perjury. I'm going to find that it comes just short 19 of the line and overrule the objection. Having done that, it appears that -- or not overruling the objection -- granting the objection to the obstruction enhancement. Which I think would make the -- based upon the other rulings of the Court would make the offense level a 44, and still reduced to 43 because that's as high as the guidelines go. Are there any other objections?

MR. MEGARO: Other than what I've laid out in the letters, Your Honor, I believe the other big one would probably be -- or the other two big ones would be the firearm.

THE COURT: And the drug amounts?

MR. MEGARO: And not only the drug -- well, that would be –

THE COURT: -- and leadership.

MR. MEGARO: The drug amounts and the leadership 11 role, which I believe has been carefully laid out and briefed by both parties.

THE COURT: It has, and I've read both sides, and I recall the testimony at trial, and I find as to each that the objection should be denied.

MR. MEGARO: Thank you.

THE COURT: Those are the findings of the Court. I think based upon those findings, the statute requires a mandatory life sentence. The guidelines -- advisory guideline range is life. And having made those findings I'll be glad to hear from you Mr. Megaro on behalf of Mr. Cooper at this time.

MR. MEGARO: Certainly, Your Honor. Again, I've laid out a lot of the factual reasons for a possible departure or mitigating factors for this Court to take into consideration. I did submit a number of letters of recommendation from friends and family, and it's clear to me that Mr. Cooper does have a very loving and caring family. They've been in touch with me throughout my representation on the case. Because of the distance -- they all reside in California where Mr. Cooper is a resident of -- they were unable to make the trip out across the country. But they -- they have shown their support, and I think it speaks volumes that despite the amount of trouble that Mr. Cooper is in, that these people have stood by him, continued to support him, financially and emotionally. I have laid out a number of mitigating factors for the Court to

consider and I cannot stress enough that this is a case that did not involve any violence on Mr. Cooper's part. There was no acts of robbery or any physical violence. I understand there's an enhancement for a weapon, but there was no use of that weapon or threatened use of that 18 weapon, which to me is one of the most important factors. It's how a person comports themselves. If they're in the drug business strictly for business purposes, that's one thing. But if they employ violence as a means themselves or directly or indirectly, or commit any violent acts, I think that places them in a whole different category. And certainly I don't think there's any indicia that Mr. Cooper used any violence or threatened any violence. Other than that, I will rely upon my written submission and leave it to the Court's discretion. I have spoken to my client about speaking today. He understands there will be an appeal. I have gone over every document that I filed on his behalf with respect to the sentencing, as well as the government's responses to my objections. And Mr. Cooper agrees with me that anything that he could have said, I've laid out in my sentencing memorandum. So based upon that he will not address the Court.

THE COURT: How old is Mr. Cooper?

DEFENDANT COOPER: I'm 34 years old.

THE COURT: All right. Thank you. Mr. Cooper, I understand that you believe that Mr. Megaro has laid out the case for you in terms of mitigation, in terms of anything that can be said on your behalf, but I want to make sure that that's your -- if you wish to say anything, you're entitled to do that, and you have that opportunity. And if you don't wish to say anything, I have read everything that Mr. Megaro has filed on your behalf. And so do you understand that you have a right to say anything you wish to say to me at this time?

DEFENDANT COOPER: Yes, sir.

THE COURT: And do you care to say anything further?

DEFENDANT COOPER: I just want to see my family again.

THE COURT: Thank you. Mr. Kaufman.

MR. KAUFMAN: Your Honor, there's, I guess, not much to say. There's a statutorily required sentence here. I want to say that it's unfortunate that we're here in the circumstance. Although Mr. Cooper was a major marijuana trafficker, the firearms enhancement -- actually, interestingly, while the act of violence that we know of involving Mr. Cooper involved him initially

as the victim of a drug related robbery, and that's why he then armed himself. But the danger inherent in arming himself, even to protect himself from other drug dealers is serious and has to be deterred. His leadership role, the magnitude of the overall investigation -- very importantly I have to say that we have, throughout the process pretrial, sought his cooperation against others, and quite honestly, Your Honor, even post-trial. He did not testify, and we felt that we could still have him as a credible witness if he was so inclined. He declined to be a cooperator, even with our offer post-sentencing -- I'm sorry, post-trial. So we've done what we could. We're continuing the investigation. Fortunately we've recently had some breakthroughs going up the chain, even from Mr. Cooper. And Your Honor will probably become aware of those pretty soon.

THE COURT: Thank you.

MR. KAUFMAN: Thank you, Your Honor.

THE COURT: Mr. Cooper, if you would please stand. I've considered the information in the presentence report, the arguments of the attorneys, the pleadings filed by both sides, I also remember this trial quite well, presided over it, heard the testimony of the witnesses, and will take that into account in terms of announcing a sentence. I do echo what I said earlier,

and that is, the Court is not comfortable with imposing a mandatory life sentence on a 34 year old individual without some discretion to consider the 3553(a) factors that a court normally is entitled to consider. Congress has essentially made the sufficient but not greater than necessary sentence in this case through that mandatory minimum sentence. The Court has no discretion. I'm not sure what I would do if I had discretion, but the absence 18 of discretion is a difficult thing for the Court. Nonetheless, the Court recalls the testimony, believes that Mr. Cooper was involved in a very serious way in a multi-million dollar drug trafficking organization, and that he has a lengthy criminal history. That I believe his total number of criminal history points were, even though several of the convictions didn't register any points. A criminal history category of at such a young

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APPENDIX T

ALL COUNSEL: Good morning, Your Honor.

THE COURT: We're here in the matter of United States v Evelyn Chantell LaChapelle, Natalia Wade and Corvain Cooper, to select a jury and try this matter. I would ask the attorneys at the outset if you would just introduce yourself to me for the record and tell me who you represent. Mr. Lee, would you start.

MR. LEE: Good morning, Your Honor. Randolph Lee. I represent Ms. LaChapelle, Defendant No. 7, I think it is. And she's here in court, Your Honor.

THE COURT: Thank you.

MR. LEE: Yes, sir.

MR. GSELL: Good morning, Your Honor. Scott Gsell, I represent Natalia Wade and she is seated to my right.

MS. McVAY: Good morning, Your Honor. I am Dianne Jones McVay and this is Mr. Corvain Cooper.

THE COURT: Thank you. And you're Mr. Kaufman and you represent the Government.

MR. KAUFMAN: As usual, Your Honor. Thank you.

THE COURT: Well, I was hoping to go through some of the issues, that seem to me outstanding at this time. But I do want to bring the jury in at 9:30. I don't want them downstairs cooling their heels when we have time to bring them up and select a jury. So if we don't get through all the pretrial motions, we will revisit that after the jury selection process. It seems to me that the first thing I should entertain is the Government's 404(b) notice. And as I understand the notice, the Government would seek to elicit evidence of a car stop that occurred in California in which a quantity of marijuana was seized, along with some other documents. And the Government believes that:

1. The evidence is inextricably intertwined with the charged offense; and
2: To the extent it's not direct evidence, ought to 16 be admitted under 404(b). And the defendant Mr. Cooper contests that admission based upon Rule 404(b) and Rule 403.

Do I understand the issue properly described before me?

MR. KAUFMAN: Yes, Your Honor.

MS. McVAY: Yes, Your Honor.

THE COURT: Does either side wish to be heard further?

MR. KAUFMAN: Your Honor, I believe that our notice handled it, I think Your Honor's summarized it well. In terms -- I don't have the motion right in front of me, but I can say that the Officer David Rudy from Beverly Hills is en route today. He will actually be testifying from his own personal observations. And again, substantial amount of the evidence that was seized then, and specifically the phone that Mr. Cooper had, was directly connected to the large crate seizure, over 330 pounds, that we'll be presenting. So it is directly connected to the conspiracy in that regard. Mr. Cooper identified himself as Keishan Moseley who will be testifying. He will be one of our first few witnesses from the cooperating defendants will be testifying. And I also note that he had marijuana that is consistent with this conspiracy as well. So there are numerous facts that are important that are connected to that stop, and therefore connected to this conspiracy as well. Even if it were 404(b), Your Honor, I think that the recent case law, this is spot on, this is exactly the type of scenario that the Fourth Circuit would approve of being admitted.

THE COURT: And while I'm examining this alleged other act testified, the Government would also tell me about the firearm evidence that it has indicated it intends to pursue.

MR. KAUFMAN: Yes, Your Honor. As Your Honor knows, firearms are the tool of drug trafficking trade, and these firearms are not --

THE COURT: They certainly can be.

MR. KAUFMAN: Yes, Your Honor. And in this case that's exactly what they are. One of the witnesses will be testifying that he had spoken with Mr. Cooper, and during a drug transaction Mr. Cooper had been robbed. And it was in -- and that was part of this conspiracy. And that subsequent to that robbery, in order to protect himself, he then purchased a firearm. In addition to that, another one of our testifying witnesses will state that he was with Mr. Cooper and

Mr. Cooper's vehicle. Mr. Cooper had pulled out a large amount of U.S. currency from the center console. And in the center console he saw a firearm in there as well. So those two are both during and in the course of the conspiracy, and in furtherance of the conspiracy. We have not charged him with 924(c), but we submit that this is relevant evidence for the trial.

THE COURT: Ms. McVay, do you wish to be heard any further?

MS. McVAY: Yes, Your Honor. With regard to the 2009 stop in California. First of all, Mr. Cooper pled guilty to possession of the drugs and was incarcerated and served time on that case. With regard to the phone that was in the car that they're saying is relevant to this case, there were three other people in the vehicle including another male figure, a person. They do not have any information that ties the phone directly to Mr. Cooper. I mean -- and it is our position that the probative value outweighs the prejudice value associated with the case that it should be excluded. That there's no way to conclude that the phone was found in the center console of the vehicle, and is not directly tied to Mr. Cooper. Additionally, with regard to the firearm testimony, it is not charged in the indictment. Mr. Darrick Johnson is allegedly making the statements saying that the gun had to do with the robbery. There's no evidence that Mr. Cooper was ever robbed or purchased a weapon, other than the statements of the co-defendant. There's no proof of a gun, no gun was recovered. Therefore we're asking that that be excluded as well.

THE COURT: Thank you. I'm going to permit the Government to put on evidence of the car stop. I think it's linked in time, place, and pattern of conduct. It

appears to me from the proffer that the defendant used an alias, which was the name of a co-conspirator, and that the phone recovered from the vehicle provides further link, as well as if the Government is successful in establishing that the ledger sheets were drug records. I think all of that and the weight of the marijuana and the type of the drug found in the car stop consistent with the drug charged in the indictment and the time period certainly is consistent with that charged in the indictment. I think all of those factors establish a time and/or place and pattern of conduct consistent with recent Fourth Circuit case law. And that the probative value substantially outweighs any notions of prejudice. I'm going to admit the evidence of the car stop. There does appear to me to be an attempt to 12 introduce photographs that were obtained during that car stop, and I really didn't see any link or relevance to that. Be glad to hear from you on that, Mr. Kaufman.

MR. KAUFMAN: Thank you, Your Honor. With regard to the photographs, these are photographs that Officer Rudy will testify were the marijuana samples that he obtained during that traffic stop.

THE COURT: There were photographs of, like, family members and gang members that were listed in the 404(b).

MR. KAUFMAN: No, Your Honor. We're not planning on 22 going down that road. The photographs are two sheets of photographs that were taken of the drugs seized themselves. We're not going elsewhere, Your Honor.