

Appendix A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 30 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PEDRO HERNANDEZ, AKA Flaca Flaca,
AKA Flaco,

Defendant-Appellant.

No. 19-50013

D.C. No. 8:13-cr-00108-AG-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Submitted July 6, 2020**
Pasadena, California

Before: PAEZ and BADE, Circuit Judges, and MELGREN,*** District Judge.

Pedro Hernandez was convicted in the Central District of California of multiple drug and gun offenses and sentenced to seventy months of imprisonment.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Eric F. Melgren, United States District Judge for the District of Kansas, sitting by designation.

Prior to his trial, the district court denied Hernandez’s motion to dismiss the Government’s indictment on Sixth Amendment speedy trial grounds and under Federal Rule of Criminal Procedure 48(b). We review the district court’s legal analysis on a Sixth Amendment claim de novo and its factual findings for clear error. *United States v. Gregory*, 322 F.3d 1157, 1160 (9th Cir. 2003). We review a denial of a Rule 48(b) motion for abuse of discretion. *United States v. Sears, Roebuck & Co.*, 877 F.2d 734, 737 (9th Cir. 1989). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court’s ruling.

1. To determine if a Sixth Amendment speedy trial violation occurred, we apply the four-factor test articulated in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Those factors are: (1) length of delay, (2) reason for the delay, (3) the defendant’s assertion of his speedy trial rights, and (4) prejudice to the defendant. *Id.* “A court balances all four of these factors in a practical, case-by-case analysis under *Barker*.” *United States v. Myers*, 930 F.3d 1113, 1120 (9th Cir. 2019) (citation omitted). No single factor is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.” *Barker*, 407 U.S. at 533. “Rather, they are related factors and must be considered together with such other circumstances as may be relevant.”¹ *Id.*

¹ The first *Barker* factor is not disputed. The Government concedes that the delay exceeds the one-year delay generally considered presumptively prejudicial. *See United States v. Myers*, 930 F.3d 1113, 1119 (9th Cir. 2019). Although

Hernandez was indicted on federal charges in July 2013, but the FBI's attempts to locate and arrest Hernandez proved unsuccessful. Approximately eighteen months after he was indicted by the federal government, Hernandez was arrested on unrelated state charges in Yuma County, Colorado. A federal detainer was issued against Hernandez, but the FBI (by its own admission) had negligently lifted the detainer prior to his release from state custody in June 2015. The FBI did not apprehend Hernandez until February 2017, when he was arrested pursuant to a renewed detainer and transferred to California to face federal charges. Therefore, the FBI's negligence caused Hernandez's federal trial to be delayed an additional twenty months.

Finding that Hernandez avoided apprehension by living under an alias in a remote part of Colorado, the district court attributed the twenty-three months preceding his release from state custody to Hernandez's conduct. Hernandez contends that the district court's findings were not supported by any evidence. Regardless of whether Hernandez took steps to avoid apprehension, the second factor favors dismissal only if the Government failed to pursue Hernandez with "reasonable diligence." *United States v. Mendoza*, 530 F.3d 758, 763 (9th Cir. 2008). We hold that the Government satisfied this obligation when it attempted to

Hernandez's "prompt assertion of [his] speedy trial rights weighs, at least slightly, in [his] favor," *Barker*'s third factor does not tip the balance here. *See Gregory*, 322 F.3d at 1162 n.4. Accordingly, we discuss only the second and fourth factor.

arrest Hernandez at his last-known address, circulated Hernandez's photograph at nearby businesses, and monitored a federal law enforcement database. Our holding renders it unnecessary to resolve Hernandez's challenge to the district court's factual findings.

Barker's fourth factor requires that we consider how the delay prejudiced Hernandez. Because only twenty months of the delay in this case is attributable to the Government's negligence, Hernandez has the burden to demonstrate actual prejudice. *See Gregory*, 322 F.3d at 1162–63; *United States v. Beamon*, 992 F.2d 1009, 1013–14 (9th Cir. 1993).

We affirm the district court's ruling that Hernandez suffered no actual prejudice. The Supreme Court recognizes that an unreasonable delay can prejudice a defendant in three ways: (1) "oppressive pretrial incarceration," (2) "anxiety and concern of the accused," and (3) "the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. Hernandez claims to have suffered all three types of prejudice, but his assertions are not persuasive.

Hernandez argues that he suffered oppressive pretrial incarceration because the Government negligently released a federal detainer on him while he was held by Colorado authorities, and this act of negligence caused him to lose custody credits that would have reduced the time spent serving his federal sentence. Assuming loss of pretrial custody credits would have caused him actual prejudice,

Hernandez fails to explain how he would have been entitled to them had the federal detainer not been lifted.

Hernandez contends that he suffered excessive anxiety when he was arrested on federal charges twenty months after he had been released from Colorado custody. There is little in the record to support Hernandez's claims of anxiety.

Lastly, Hernandez argues the long delay impaired his ability to prepare an adequate defense. He asserts that "the passage of time . . . unquestionably affected the memory of [Hernandez] and the [law enforcement] agents" without any specific examples or proof that Hernandez's defense was impaired by dimmed memories. This assertion is speculative, and the district court correctly concluded that Hernandez failed to meet his burden to prove actual prejudice. *United States v. Corona-Verbera*, 509 F.3d 1105, 1112–13 (9th Cir. 2007). Therefore, we affirm the district court's holding that Hernandez's Sixth Amendment rights were not infringed upon.

2. The district court did not abuse its discretion in denying Hernandez's Rule 48(b) motion. A Rule 48(b) dismissal is a severe remedy that "should be imposed only in extreme circumstances." *Sears*, 877 F.2d at 737. Hernandez makes no showing that the district court abused its discretion in denying dismissal under Rule 48(b). Moreover, Hernandez has not cited any case where this Court deemed a denial of a Rule 48(b) motion to be an abuse of discretion.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

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Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
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- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

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Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

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- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

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 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
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Appendix B

21 U.S. Code § 846. Attempt and conspiracy

U.S. Code	Notes
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Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91-513, title II, § 406, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 100-690, title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

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18 U.S.C. § 922 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 922. Unlawful acts

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(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of [section 1715 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=148304790eb9b11e5a9eaeadf290\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=148304790eb9b11e5a9eaeadf290) of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person

Appendix D

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21 U.S.C. § 841 - U.S. Code - Unannotated Title 21. Food and Drugs

§ 841. Prohibited acts A

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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 \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22430ea4d11e5aa5a9917922a2)

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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;

Appendix E

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§ 841. Prohibited acts A

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- (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 \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22430ea4d11e5aa5a9917922a2)

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[of this title, any person who violates subsection \(a\) of this section shall be sentenced as follows:](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22433ea4d11e5aa5a9917922a2)

- (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](#)

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, 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](#)

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[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I02185a81ea4d11e5aa5a9917922&](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I02185a81ea4d11e5aa5a9917922&...)

, 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);

Appendix F

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21 U.S.C. § 841 - U.S. Code - Unannotated Title 21. Food and Drugs

§ 841. Prohibited acts A

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SEARCH[« Prev \(https://codes.findlaw.com/us/title-21-food-and-drugs/21-usc-sect-831.html\)](https://codes.findlaw.com/us/title-21-food-and-drugs/21-usc-sect-831.html)[Next » \(https://codes.findlaw.com/us/title-21-food-and-drugs/21-usc-sect-842.html\)](https://codes.findlaw.com/us/title-21-food-and-drugs/21-usc-sect-842.html)**(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 \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22430ea4d11e5aa5a9917922a2)

[, 859 \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22431ea4d11e5aa5a9917922a2)[, 860 \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22431ea4d11e5aa5a9917922a2)[, or 861 \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22432ea4d11e5aa5a9917922a2)[of this title, any person who violates subsection \(a\) of this section shall be sentenced as follows:](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=I01c22433ea4d11e5aa5a9917922a2)

- (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

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, 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

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, 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 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=102682830ea4d11e5aa5a991792>;

, 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 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000546&refType=LQ&originatingDoc=102ae0ad0ea4d11e5aa5a991792>;

, 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 (<https://1.next.westlaw.com/Link/Document/FullText?>

Appendix G

18 U.S. Code § 2. Principals

U.S. Code	Notes
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(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(June 25, 1948, ch. 645, 62 Stat. 684; Oct. 31, 1951, ch. 655, § 17b, 65 Stat. 717.)



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