




# One of these Things is Not Like the Others: Challenging Drug Predicates

November 6, 2020  
DSO Training Division Webinar


Davina T. Chen, Sentencing Resource Counsel



**ACCA, 18 U.S.C. 924(e)(2)(A).  
10 yr max → 15 yr min**

(A) the term **“serious drug offense”** means–

- (i) an offense under [federal drug laws] . . . for which a maximum term of imprisonment of ten years or more is prescribed by law; or
- (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law . . .




**21 USC § 841(a)(1)(A),(B), 802(57)  
double the man min, or more!**

The term “**serious drug felony**” means an offense described in section 924(e)(2) of Title 18, for which—

**(A)** the offender served a term of imprisonment of more than 12 months; and

**(B)** the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense.



**21 USC § 841(b)(1)(C), 802(44)**  
**increases max; mandatory life for SBI**


The term “**felony drug offense**” means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.



## USSG § 4B1.2(b)

### career offender: triples GL range


The term “**controlled substance offense**” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.



**§1101(a)(43)(B):  
Aggravated Felony for § 1326(d) motions**

(43) The term “aggravated felony” means—

... **(B) illicit trafficking in a controlled substance** (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18)



## 8 USC §1227(a)(2)(B)(ii): Deportable Offense, for § 1326(d)

has been convicted of a violation of (or a conspiracy to attempt to violate) any law or regulation of a State, the United States, or a foreign country **relating to a controlled substance** (as defined in section 802 of title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana