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## Document (1)

1. [21 CFR 1308.12](#)

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## 21 CFR 1308.12

This document is current through the July 29, 2019 issue of the Federal Register. Title 3 is current through July 12, 2019.

**Code of Federal Regulations > TITLE 21 -- FOOD AND DRUGS > CHAPTER II -- DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE > PART 1308 -- SCHEDULES OF CONTROLLED SUBSTANCES > SCHEDULES**

### **§ 1308.12 Schedule II.**

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**(a)** Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

**(b)** Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

**(1)** Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone, and naltrexone, and their respective salts, but including the following:

(i) Codeine	9050
(ii) Dihydroetorphine	9334
(iii) Ethylmorphine	9190
(iv) Etorphine hydrochloride	9059
(v) Granulated opium	9640
(vi) Hydrocodone	9193
(vii) Hydromorphone	9150
(viii) Metopon	9260
(ix) Morphine	9300
(x) Opium extracts	9610
(xi) Opium fluid	9620
(xii) Oripavine	9330
(xiii) Oxycodone	9143
(xiv) Oxymorphone	9652
(xv) Powdered opium	9639
(xvi) Raw opium	9600
(xvii) Thebaine	9333
(xviii) Tincture of opium	9630

**(2)** Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

**(3)** Opium poppy and poppy straw.

**(4)** Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include:

## 21 CFR 1308.12

(i) Decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; or

(ii) [~~123~~]ioflupane.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy), 9670.

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

(1) Alfentanil	9737
(2) Alphaprodine	9010
(3) Anileridine	9020
(4) Bezitramide	9800
(5) Bulk dextropropoxyphene (non-dosage forms)	9273
(6) Carfentanil	9743
(7) Dihydrocodeine	9120
(8) Diphenoxylate	9170
(9) Fentanyl	9801
(10) Isomethadone	9226
(11) Levo-alpha-acetylmethadol [Some other names: levo-alpha-acetylmethadol, levomethadly acetate, LAAM]	9648
(12) Levomethorphan	9210
(13) Levorphanol	9220
(14) Metazocine	9240
(15) Methadone	9250
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl, butane	9254
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid	9802
(18) Pethidine (meperidine)	9230
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine	9232
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate	9233

## 21 CFR 1308.12

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid	9234
(22) Phenazocine	9715
(23) Piminodine	9730
(24) Racemethorphan	9732
(25) Racemorphan	9733
(26) Remifentanil	9739
(27) Sufentanil	9740
(28) Tapentadol	9780
(29) Thiafentanil	9729

**(d) Stimulants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers	1100
(2) Methamphetamine, its salts, isomers, and salts of its isomers	1105
(3) Phenmetrazine and its salts	1631
(4) Methylphenidate	1724
(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers	1205

**(e) Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital	2125
(2) Glutethimide	2550
(3) Pentobarbital	2270
(4) Phencyclidine	7471
(5) Secobarbital	2315

**(f) Hallucinogenic substances.**

(1) Nabilone Another name for nabilone: ([+/-]-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo [b,d] pyran-9-one)	7379
(2) Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration	(7365)

## 21 CFR 1308.12

**(g)**Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1)**Immediate precursor to amphetamine and methamphetamine:
- (i) Phenylacetone 8501  
Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;
- (2)**Immediate precursors to phencyclidine (PCP):
- (i) 1-phenylcyclohexylamine 7460
- (ii) 1-piperidinocyclohexanecarbonitrile (PCC) 8603
- (3)**Immediate precursor to fentanyl:
- (i) 4-anilino-N-phenethylpiperidine (ANPP). . . . . 8333
- (ii)[Reserved]

## Statutory Authority

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[21 U.S.C. 811](#), 812, 871(b).

## History

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[[39 FR 22142](#), June 20, 1974; [51 FR 15318, 17478, 1986](#); [52 FR 2517, 11043, 12285, 1987](#); [53 FR 31837, 43685, 1988](#); [57 FR 31126](#), July 14, 1992; [58 FR 43796](#), Aug. 18, 1993; [61 FR 56893, 56894](#), Nov. 5, 1996; [62 FR 13938, 13968](#), March 24, 1997; [64 FR 35928, 35930](#), July 2, 1999; [65 FR 69442, 69443](#), Nov. 17, 2000; [72 FR 24532, 24533](#), May 3, 2007; [72 FR 54208, 54209](#), Sept. 24, 2007; [72 FR 69618](#), Dec. 10, 2007; [74 FR 23790, 23793](#), May 21, 2009; [75 FR 37295, 37299](#), June 29, 2010; [77 FR 4228, 4235](#), Jan. 27, 2012; [80 FR 3468, 3470](#), Jan. 23, 2015; [80 FR 54715, 54718](#), Sept. 11, 2015; [81 FR 58834, 58839](#), Aug. 26, 2016, as confirmed at [84 FR 28212, 28214](#), June 18, 2019; [82 FR 14815, 14820](#), Mar. 23, 2017, as confirmed at [82 FR 55504, 55506](#), Nov. 22, 2017; [82 FR 45436, 45438](#), Sept. 29, 2017; [84 FR 2448, 2449](#), Feb. 7, 2019]

Annotations

## Notes

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### [EFFECTIVE DATE NOTE:

[80 FR 3468, 3470](#), Jan. 23, 2015, revised the introductory text of paragraph (b)(1), effective Jan. 23, 2015; [80 FR 54715, 54718](#), Sept. 11, 2015, revised this section, effective Sept. 11, 2015; [81 FR 58834, 58839](#), Aug. 26, 2016, added paragraph (c)(29), effective Aug. 26, 2016; [82 FR 14815, 14820](#), Mar. 23, 2017, added paragraph (f)(2), effective Mar. 23, 2017; [82 FR 45436, 45438](#), Sept. 29, 2017, revised the introductory text of paragraph (b)(1), effective Oct. 1, 2017; [84 FR 2448, 2449](#), Feb. 7, 2019, revised paragraph (g)(3), effective Feb. 7, 2019.]

## Case Notes

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**Case Notes Applicable to Entire Part**

Administrative Law : Agency Rulemaking : Informal Rulemaking

Administrative Law : Judicial Review : Administrative Record : General Overview

Administrative Law : Separation of Powers : Legislative Controls : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Analogues : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Definitions

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Delivery, Distribution & Sale :

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Delivery, Distribution & Sale : Penalties

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Manufacture : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Manufacture : Elements

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : Intent to Distribute :

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : Simple Possession : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : Simple Possession : Elements

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : General Overview

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Changes & Exceptions

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Cocaine

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Hashish & Marijuana

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules :

Methamphetamines

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Miscellaneous

Drugs

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Opiates

Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Phencyclidine

Criminal Law & Procedure : Accusatory Instruments : Indictments : General Overview

Criminal Law & Procedure : Guilty Pleas : General Overview

Criminal Law & Procedure : Sentencing : Guidelines : General Overview

Criminal Law & Procedure : Sentencing : Guidelines : Adjustments & Enhancements : Criminal History :

Criminal Law & Procedure : Sentencing : Imposition : Factors

Criminal Law & Procedure : Sentencing : Ranges

Criminal Law & Procedure : Appeals : Standards of Review : Harmless & Invited Errors : Guilty Pleas

Governments : Agriculture & Food : Federal Food, Drug & Cosmetic Act

Immigration Law : Deportation & Removal : Grounds : Criminal Activity : Controlled Substance Offenses

Immigration Law : Inadmissibility : Grounds : Criminal Activity

**Case Notes Applicable to Entire Part**[Part Note](#)**Administrative Law : Agency Rulemaking : Informal Rulemaking**

[United States v. Gori, 324 F.3d 234, 2003 U.S. App. LEXIS 6701](#) (3rd Cir Apr. 8, 2003).

**Overview:** *District court had not clearly erred in finding that drugs defendant sold, which were on average 2.7 percent pure, contained detectable amount of methamphetamine and appellate court declined to read "purity" requirement into definition of "mixture."*

- [21 U.S.C.S. § 812](#)'s classification of methamphetamine supersedes the subsequent regulation. [21 U.S.C.S. § 811](#) (a)(1) expressly authorizes the Attorney General to "transfer between such schedules any drug or other substance" upon making findings and in accordance with typical notice and comment rulemaking procedures. [21 C.F.R. § 1308.12\(d\)](#) was properly promulgated. [Go To Headnote](#)

#### **Administrative Law : Judicial Review : Administrative Record : General Overview**

[Romeo v. INS, 1997 U.S. App. LEXIS 19167](#) (6th Cir July 21, 1997) (Unpublished).

**Overview:** *Immigration and Naturalization Service's motion to dismiss alien's petition to review deportation order based on controlled substance convictions was proper because Immigration Reform and Immigrant Responsibility Act barred appeal of waiver denial.*

- Hydromorphone is a drug within the definition of [21 U.S.C.S. § 802\(6\)](#). [21 U.S.C.S. § 812](#) and [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

#### **Administrative Law : Separation of Powers : Legislative Controls : General Overview**

[United States v. Schrock, 855 F.2d 327, 1988 U.S. App. LEXIS 11486](#) (6th Cir Aug. 24, 1988).

**Overview:** *Defendant was properly charged with conspiracy to distribute a Schedule II controlled substance; failure to identify the transacted substance by scientific evidence did not cause relevant testimony to become unfairly prejudicial.*

- Pursuant to the authority granted by congress in [21 U.S.C.S. § 811](#), and in conformity with the procedural requirements, the attorney general in 1974 redesignated noninjectable methamphetamine as a Schedule II controlled substance under [21 C.F.R. § 1308.12\(d\)\(2\) \(1987\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : General Overview**

[United States v. Selvan-Cupil, 2015 U.S. App. LEXIS 3233](#) (5th Cir Mar. 2, 2015).

**Overview:** *Judgment was affirmed in this case where defendant challenged an enhancement under U.S. Sentencing Guidelines Manual § 2L1.2(b)(1)(B). The district court properly relied on the judgment and indictment under the modified categorical approach to determine that he pleaded guilty to selling cocaine. Furthermore, his 2004 conviction was a felony.*

- The 2003 version of the Controlled Substances Act's schedule II lists both Levo-alphaacetylmethadol and Remifentanil in its section on "opiates." [21 C.F.R. § 1308.12\(c\)](#). Levo-alphaacetylmethadol is also listed in the Uniform Controlled Substances Act. Uniform Controlled Substances Act § 206(2)(xi) (1994). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Analogues : General Overview**

[United States v. Skelton, 901 F.2d 1204, 1990 U.S. App. LEXIS 6224](#) (4th Cir Apr. 20, 1990).

**Overview:** *After being convicted of drug charges relating to PCPy, defendants' base offense level was properly determined because PCPy was treated as the equal to PCP or heroin for purposes of determining the base offense level under the sentencing guidelines.*

## 21 CFR 1308.12

- Phencyclidine, PCP, is listed as a Schedule II depressant, [21 C.F.R. § 1308.12\(e\)\(3\)](#), whereas PCPy is listed as a Schedule I hallucinogenic substance, [21 C.F.R. § 1308.11\(d\)\(24\)](#). [Go To Headnote](#)

**Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Definitions**

[Vazquez v. Sessions, 881 F.3d 396, 2018 U.S. App. LEXIS 2543](#) (5th Cir Feb. 1, 2018).

**Overview:** *Lawful permanent resident waived his only viable argument for avoiding removal under [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#) based on an Oklahoma controlled substance conviction, as he failed to address whether there was a realistic probability that the State would apply its statute to conduct falling outside the generic definition of controlled substance.*

- An alien who, after admission to the United States, is convicted of violating any state, federal, or foreign law relating to a controlled substance (as defined in [21 U.S.C.S. § 802](#)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable. [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#). To trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the alien's conviction to a drug defined in [21 U.S.C.S. § 802](#). Section 802 defines "controlled substance" as a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of the subchapter. [21 U.S.C.S. § 802\(6\)](#). Cocaine is classified as a Schedule II controlled substance under both Oklahoma and federal law. [21 C.F.R. § 1308.12\(b\)\(4\) \(2013\)](#); Okla. Stat. Ann. tit. 63, § 2-206(A)(4) (2013). [Go To Headnote](#)

[United States v. Adade, 2013 U.S. App. LEXIS 23257](#) (3rd Cir Nov. 19, 2013).

**Overview:** *Sufficient evidence supported defendant's convictions for conspiracy to distribute oxycodone under [21 U.S.C.S. § 846](#) and acquiring or obtaining possession of oxycodone by fraudulent means under [21 U.S.C.S. § 843](#) because, inter alia, rational trier of fact could conclude that he was aware that oxycodone was secured for distribution.*

- Oxycodone is a Schedule II controlled substance. [21 U.S.C.S. § 812](#); [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

**Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Delivery, Distribution & Sale :**

[Messina v. Ag United States, 2015 U.S. App. LEXIS 17903](#) (3rd Cir Oct. 15, 2015).

**Overview:** *The denial of a lawful permanent resident's application for cancellation of removal was affirmed as since his felony drug conviction under 35 Pa. Stat. Ann. § 780-113(a)(30) was an aggravated felony drug trafficking crime under [8 U.S.C.S. § 1101\(a\)\(43\)\(B\)](#), making him ineligible for cancellation of removal.*

- The United States Court of Appeals for the Third Circuit has ruled that there is a federal drug statute that is analogous to 35 Pa. Stat. Ann. § 780-113(a)(30)--[21 U.S.C.S. § 841\(a\)](#)--which prohibits the knowing or intentional manufacture, delivery, or possession with intent to deliver a controlled substance. Methamphetamine is also defined as a controlled substance under the federal schedule system. [21 C.F.R. § 1308.12\(d\)\(2\)](#) lists methamphetamine, its salts, isomers, and salts of its isomers as a Schedule II controlled substance. [Go To Headnote](#)

[United States v. Gori, 324 F.3d 234, 2003 U.S. App. LEXIS 6701](#) (3rd Cir Apr. 8, 2003).

**Overview:** *District court had not clearly erred in finding that drugs defendant sold, which were on average 2.7 percent pure, contained detectable amount of methamphetamine and appellate court declined to read "purity" requirement into definition of "mixture."*



- [21 C.F.R. § 1308.12\(d\)](#) reclassifies methamphetamine as a Schedule II drug. [Go To Headnote](#)

[United States v. Buckland, 259 F.3d 1157, 2001 U.S. App. LEXIS 17867](#) (9th Cir Aug. 9, 2001).

**Overview:** *Determinate-sentencing scheme of statute prohibiting the distribution and possession of drugs was unconstitutional under the Apprendi rule as it permitted the judge to find the quantity of drugs under the preponderance of the evidence standard.*

- [21 U.S.C.S. § 841\(b\)\(1\)\(D\)](#) deals with small quantities of marijuana or hashish, and with controlled substances in schedules III, IV, and V. Methamphetamine is a Schedule II substance. [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

[United States v. Nelson, 872 F.2d 1030, 1989 U.S. App. LEXIS 5408](#) (6th Cir Apr. 21, 1989) (Unpublished).

**Overview:** *The district court did not abuse its discretion in denying defendant's motion, which he made on the last day of trial, for a continuance of his trial for the unlawful distribution of a controlled substance where a handwriting expert was "extremely balky" and defendant had not submitted original documents for analysis.*

- Although hydromorphone is not listed in [21 U.S.C.S. § 812](#), [21 U.S.C.S. § 811](#) authorizes the Attorney General to add other drugs or substances to the schedules. [21 U.S.C.S. § 811](#). Under the Controlled Substance Act, the Attorney General has delegated his authority in this regard to the DEA. Hydromorphone was added to Schedule II by [21 C.F.R. § 1308.12\(b\)\(1\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Delivery, Distribution & Sale : Penalties**

[United States v. Daniels, 1992 U.S. App. LEXIS 2439](#) (4th Cir Feb. 24, 1992).

**Overview:** *Notice was required only where defendant's statutory penalty under Part D of the Controlled Substances Act was sought to be enhanced, not where defendant's criminal history was used to increase his sentence under the guidelines as a career offender.*

- The statutory penalty for distribution of crack cocaine, without enhancement for prior convictions, is a maximum of 20 years in prison. [21 U.S.C.S. § 841\(b\)\(1\)\(C\)](#); [21 C.F.R. § 1308.12\(b\)\(4\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Manufacture : General Overview**

[Messina v. Ag United States, 2015 U.S. App. LEXIS 17903](#) (3rd Cir Oct. 15, 2015).

**Overview:** *The denial of a lawful permanent resident's application for cancellation of removal was affirmed as since his felony drug conviction under 35 Pa. Stat. Ann. § 780-113(a)(30) was an aggravated felony drug trafficking crime under [8 U.S.C.S. § 1101\(a\)\(43\)\(B\)](#), making him ineligible for cancellation of removal.*

- The United States Court of Appeals for the Third Circuit has ruled that there is a federal drug statute that is analogous to 35 Pa. Stat. Ann. § 780-113(a)(30)--[21 U.S.C.S. § 841\(a\)](#)--which prohibits the knowing or intentional manufacture, delivery, or possession with intent to deliver a controlled substance. Methamphetamine is also defined as a controlled substance under the federal schedule system. [21 C.F.R. § 1308.12\(d\)\(2\)](#) lists methamphetamine, its salts, isomers, and salts of its isomers as a Schedule II controlled substance. [Go To Headnote](#)

[United States v. Wilhoit, 920 F.2d 9, 1990 U.S. App. LEXIS 20286](#) (9th Cir Nov. 21, 1990).

## 21 CFR 1308.12

**Overview:** Defendant's motion to modify his sentence was denied, because the reclassification of methamphetamine as a Schedule II controlled substance was expressly authorized by the Attorney General and there was adequate notice of the reclassification.

- Methamphetamine, by virtue of [21 C.F.R. § 1308.12\(d\)](#), has been reclassified as a schedule II controlled substance. The reclassification was done pursuant to [21 U.S.C.S. § 811](#), which expressly authorizes the Attorney General to make such reclassifications. [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Manufacture : Elements**

[United States v. Young, 862 F.2d 815, 1988 U.S. App. LEXIS 16619](#) (10th Cir Dec. 9, 1988).

**Overview:** Conviction for possession with intent to manufacture drugs was proper when evidence was sufficient to support conviction, there was no fatal variance in indictment, and defendant did not show prejudice for ineffective assistance of counsel claim.

- [21 U.S.C.S. § 841\(a\)\(1\)](#) makes it a crime to possess with intent to manufacture a controlled substance. Methamphetamine in liquid form is a Schedule II controlled substance. [21 U.S.C.S. § 812\(a\)](#), [21 C.F.R. § 1308.12\(d\)\(2\)](#). Methamphetamine in powder form is a Schedule II controlled substance. As an immediate precursor of methamphetamine, P2P is a Schedule II controlled substance. [21 U.S.C.S. § 811\(e\)](#), [21 C.F.R. § 1308.12\(g\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : General Overview**

[United States v. Irwin, 439 F. Supp. 2d 954, 2006 U.S. Dist. LEXIS 50796](#) (D ND July 25, 2006).

**Overview:** [28 U.S.C.S. § 2255](#) motion was denied as, inter alia, powder methamphetamine was a Schedule II controlled substance. Also, defendant's residence was within 1,000 feet of a school and methamphetamine was found in and around his property and residence. Government did not have to prove he actually intended to distribute it within the same parameters.

- Methamphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)

[Romeo v. INS, 1997 U.S. App. LEXIS 19167](#) (6th Cir July 21, 1997) (Unpublished).

**Overview:** Immigration and Naturalization Service's motion to dismiss alien's petition to review deportation order based on controlled substance convictions was proper because Immigration Reform and Immigrant Responsibility Act barred appeal of waiver denial.

- Hydromorphone is a drug within the definition of [21 U.S.C.S. § 802\(6\)](#), [21 U.S.C.S. § 812](#) and [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

[United States v. Sullivan, 967 F.2d 370, 1992 U.S. App. LEXIS 13315](#) (10th Cir June 12, 1992).

**Overview:** Appellate review was limited to correcting plain errors that affected substantial rights and threatened a miscarriage of justice and defendants' sentences would not have been put aside unless factual determinations were clearly erroneous.

- Amphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. 1308.12\(d\)](#). [Go To Headnote](#)

[United States v. Youngblood, 949 F.2d 1065, 1991 U.S. App. LEXIS 27691](#) (10th Cir Nov. 25, 1991).

**Overview:** *The fact that the Food and Drug Administration had approved certain over-the-counter nasal spray, which contained methamphetamine isomers, did not exempt methamphetamine from being a controlled substance.*

- Methamphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. 1308.12\(d\)](#). [Go To Headnote](#)
- Under [21 C.F.R. 1308.12\(d\)](#), methamphetamine or its isomers is a Schedule II controlled substance unless specially excepted. The FDA has granted a specific exception for the ingredients contained in the Rynal and Vicks inhalers. However, other uses or combinations of methamphetamines or its isomers remain controlled substances under Schedule II until the FDA approves and authorizes a specific exception. [Go To Headnote](#)

[United States v. Berkery, 919 F.2d 817, 1990 U.S. App. LEXIS 20524](#) (2d Cir Nov. 20, 1990).

**Overview:** *A single instance of possession of phenyl-2-propanone (P2P) was insufficient to sustain a conviction for conspiracy to manufacture methamphetamine, even though P2P was a necessary ingredient and served no other purpose than its manufacture.*

- Phenyl-2-propanone (P2P) and methamphetamine are controlled substances in the United States. [21 U.S.C.S. § 802\(6\)](#), [21 C.F.R. § 1308.12\(d\)\(2\)](#), (g)(1). [Go To Headnote](#)

[United States v. Young, 862 F.2d 815, 1988 U.S. App. LEXIS 16619](#) (10th Cir Dec. 9, 1988).

**Overview:** *Conviction for possession with intent to manufacture drugs was proper when evidence was sufficient to support conviction, there was no fatal variance in indictment, and defendant did not show prejudice for ineffective assistance of counsel claim.*

- [21 U.S.C.S. § 841\(a\)\(1\)](#) makes it a crime to possess with intent to manufacture a controlled substance. Methamphetamine in liquid form is a Schedule II controlled substance. [21 U.S.C.S. § 812\(a\)](#), [21 C.F.R. § 1308.12\(d\)\(2\)](#). Methamphetamine in powder form is a Schedule II controlled substance. As an immediate precursor of methamphetamine, P2P is a Schedule II controlled substance. [21 U.S.C.S. § 811\(e\)](#), [21 C.F.R. § 1308.12\(g\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : Intent to Distribute :**

[Messina v. Aq United States, 2015 U.S. App. LEXIS 17903](#) (3rd Cir Oct. 15, 2015).

**Overview:** *The denial of a lawful permanent resident's application for cancellation of removal was affirmed as since his felony drug conviction under 35 Pa. Stat. Ann. § 780-113(a)(30) was an aggravated felony drug trafficking crime under [8 U.S.C.S. § 1101\(a\)\(43\)\(B\)](#), making him ineligible for cancellation of removal.*

- The United States Court of Appeals for the Third Circuit has ruled that there is a federal drug statute that is analogous to 35 Pa. Stat. Ann. § 780-113(a)(30)--[21 U.S.C.S. § 841\(a\)](#)--which prohibits the knowing or intentional manufacture, delivery, or possession with intent to deliver a controlled substance. Methamphetamine is also defined as a controlled substance under the federal schedule system. [21 C.F.R. § 1308.12\(d\)\(2\)](#) lists methamphetamine, its salts, isomers, and salts of its isomers as a Schedule II controlled substance. [Go To Headnote](#)

[United States v. One 1976 Lincoln Continental Mark Iv, 578 F. Supp. 402, 1984 U.S. Dist. LEXIS 19680](#) (SD W Va Feb. 8, 1984).

**Overview:** *A father's automobile, which was used by his son, was subject to forfeiture to the United States under the narcotic and revenue laws because the father gave his son unrestricted access to the automobile.*

- Cocaine is a Schedule II, [21 U.S.C.S. § 812\(b\)\(2\)](#), narcotic controlled substance as designated by the attorney general in [21 C.F.R. § 1308.12\(b\)\(4\)](#), pursuant to [21 U.S.C.S. § 811](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : Simple Possession : General Overview**

[United States v. Lopez-Marques, 2005 U.S. App. LEXIS 10330](#) (10th Cir June 3, 2005).

**Overview:** *Where the procedure that reclassified amphetamine and methamphetamine was adequate and that amphetamine was properly classified as a Schedule II controlled substance, and where methamphetamine was clearly classified as a controlled substance, the court dismissed defendant's appeal as frivolous and granted counsel's motion to withdraw.*

- Methamphetamine is clearly classified as a controlled substance. [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)
- The distinction between methamphetamine isomers is irrelevant because [21 C.F.R. § 1308.12\(d\)](#) not only lists methamphetamine as a controlled substance but also its salts, isomers, and salts of its isomers. Courts in a variety of contexts have routinely rejected the necessity of proving particular isomer form. [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Possession : Simple Possession : Elements**

[Jimenez-Vielma v. Whitaker, 2018 U.S. App. LEXIS 33436](#) (8th Cir Nov. 29, 2018).

**Overview:** *Because petitioner was convicted of possessing cocaine base, which was criminalized under both Missouri and federal law, he was removable under [8 U.S.C.S. § 1182\(a\)\(2\)\(A\)\(i\)](#). His petition for review was denied, as he did not show that his right to procedural due process was violated or that BIA applied the wrong legal standard to his claim.*

- Because an alien was convicted of possessing cocaine base, which is criminalized under both Mo. Rev. Stat. § 195.202 and federal law, he is removable under [8 U.S.C.S. § 1182\(a\)\(2\)\(A\)\(i\)](#). [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : General Overview**

[Romeo v. INS, 1997 U.S. App. LEXIS 19167](#) (6th Cir July 21, 1997) (Unpublished).

**Overview:** *Immigration and Naturalization Service's motion to dismiss alien's petition to review deportation order based on controlled substance convictions was proper because Immigration Reform and Immigrant Responsibility Act barred appeal of waiver denial.*

- Hydromorphone is a drug within the definition of [21 U.S.C.S. § 802\(6\)](#). [21 U.S.C.S. § 812](#) and [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Changes & Exceptions**

[United States v. Shurtz, 510 F.3d 1242, 2007 U.S. App. LEXIS 29390](#) (10th Cir Dec. 19, 2007), writ of certiorari denied by [553 U.S. 1013](#), [128 S. Ct. 2071](#), [170 L. Ed. 2d 808](#), [2008 U.S. LEXIS 3566](#), [76 U.S.L.W. 3568 \(2008\)](#).

**Overview:** Based on language of [21 C.F.R. § 1308.12\(d\)](#) and long-standing precedent, substances enumerated under § 1308.12(d) were prohibited without regard to quantity or concentration, so government did not need to prove at trial that quantity of methamphetamine possessed or distributed by defendant would have stimulant effect on central nervous system.

- The Controlled Substances Act, [21 U.S.C.S. § 812](#), divides controlled substances into five schedules based on factors such as the degree of abuse potential, the existence of accepted medical uses, and the likelihood that abuse may lead to dependence. Congress created the initial schedules and authorized the Attorney General to update them by adding or removing substances from the lists and by moving substances from one schedule to another. [21 U.S.C.S. § 811](#). Schedule II, as adjusted by the Attorney General, appears in [21 C.F.R. § 1308.12](#). It includes methamphetamine. [Go To Headnote](#)

[United States v. Duran, 2007 U.S. App. LEXIS 5469](#) (10th Cir Mar. 6, 2007).

**Overview:** Application for a COA pursuant to [28 U.S.C.S. § 2253](#) was denied because powder methamphetamine was not a Schedule III drug, which would have placed inmate in a lesser sentencing range, rather than a Schedule II drug. Methamphetamine in all forms had been reclassified as a Schedule II drug pursuant to [21 C.F.R. § 1308.12\(d\)](#) and [21 U.S.C.S. § 811](#).

- [21 U.S.C.S. § 811](#) provides that the Attorney General may by rule add to a schedule established by [21 U.S.C.S. § 812](#) or transfer between such schedules any drug or other substance if he complies with certain requirements. [21 U.S.C.S. § 811\(a\)\(1\)](#). Methamphetamine, in all forms, powder or otherwise, has been reclassified by the Attorney General as a Schedule II drug pursuant to [21 C.F.R. § 1308.12\(d\)](#) and [21 U.S.C.S. § 811](#). [Go To Headnote](#)

[United States v. Turner, 2006 U.S. App. LEXIS 16124](#) (9th Cir June 26, 2006).

**Overview:** Evidence was sufficient to sustain a jury's finding that defendant possessed more than 500 grams of methamphetamine. The drug quantity finding did not affect defendant's sentence because his mandatory statutory minimum under [21 U.S.C.S. § 841\(b\)\(1\)\(A\)](#) was higher than the U.S. Sentencing Guidelines range due to his prior felony drug conviction.

- Methamphetamine is a Schedule II substance. [21 C.F.R. § 1308.12](#). The United States Court of Appeals for the Ninth Circuit has held that the United States Attorney General properly rescheduled all forms of methamphetamine to Schedule II, despite language in [21 U.S.C.S. § 812\(c\)](#) that includes some forms of methamphetamine in Schedule III. [Go To Headnote](#)

[United States v. Castro, 2004 U.S. Dist. LEXIS 15095](#) (ND Iowa Aug. 4, 2004).

**Overview:** Counsel was not ineffective for, inter alia, failing to move for severance as there was no evidence blame-shifting defense was irreconcilable with others defenses, failing to file motion to dismiss, or failing to request minor role adjustment.

- [21 U.S.C.S. § 812\(c\)](#) which lists the drug classification schedule, classifies methamphetamine as a schedule II drug when it is contained in "any injectable liquid," but classifies methamphetamine as a schedule III drug when it is in any other form. Federal courts of appeals have uniformly held that the reclassification of methamphetamine as a schedule II substance applies to all forms of methamphetamine in accordance with [21 C.F.R. § 1308.12\(d\)](#) despite the statute's distinction. [Go To Headnote](#)

[United States v. Macedo, 371 F.3d 957, 2004 U.S. App. LEXIS 11687](#) (7th Cir June 15, 2004).

**Overview:** An incorrect designation of the drug schedule in the indictment did not mean there was an Apprendi violation when the indictment also listed the specific drug as well as the quantity.

## 21 CFR 1308.12

- [21 U.S.C.S. § 811](#)(a) grants the Attorney General the power to reclassify controlled substances. [21 U.S.C.S. § 812](#)(c), which lists the drug classification schedule, classifies methamphetamine as a schedule II drug when it is contained in "any injectable liquid," but classifies methamphetamine as a schedule III drug when it is in any other form. Though previously unaddressed by the Seventh Circuit Court of Appeals directly, it now finds that the reclassification of methamphetamine as a schedule II substance applies to all forms of methamphetamine in accordance with [21 C.F.R. § 1308.12\(d\)](#) despite the statute's distinction. [Go To Headnote](#)

[United States v. Gori, 324 F.3d 234, 2003 U.S. App. LEXIS 6701](#) (3rd Cir Apr. 8, 2003).

**Overview:** District court had not clearly erred in finding that drugs defendant sold, which were on average 2.7 percent pure, contained detectable amount of methamphetamine and appellate court declined to read "purity" requirement into definition of "mixture."

- [21 C.F.R. § 1308.12\(d\)](#)reclassifies methamphetamine as a Schedule II drug. [Go To Headnote](#)
- [21 U.S.C.S. § 812](#)'s classification of methamphetamine supersedes the subsequent regulation. [21 U.S.C.S. § 811](#) (a)(1) expressly authorizes the Attorney General to "transfer between such schedules any drug or other substance" upon making findings and in accordance with typical notice and comment rulemaking procedures. [21 C.F.R. § 1308.12\(d\)](#) was properly promulgated. [Go To Headnote](#)

[United States v. Pena, 2002 U.S. App. LEXIS 4667](#) (9th Cir Mar. 19, 2002).

**Overview:** Because defendant's sentence was constitutional, the waiver of appeal in his plea agreement was enforceable. Accordingly, the appellate court lacked jurisdiction to review his claims on appeal.

- [21 U.S.C.S. § 811](#)authorizes the Attorney General of the United States to transfer drugs between schedules. [21 C.F.R. § 1308.12](#) transfers amphetamine from Schedule III to Schedule II. [Go To Headnote](#)

[United States v. Wilhoit, 920 F.2d 9, 1990 U.S. App. LEXIS 20286](#) (9th Cir Nov. 21, 1990).

**Overview:** Defendant's motion to modify his sentence was denied, because the reclassification of methamphetamine as a Schedule II controlled substance was expressly authorized by the Attorney General and there was adequate notice of the reclassification.

- Methamphetamine, by virtue of [21 C.F.R. § 1308.12\(d\)](#), has been reclassified as a schedule II controlled substance. The reclassification was done pursuant to [21 U.S.C.S. § 811](#), which expressly authorizes the Attorney General to make such reclassifications. [Go To Headnote](#)

[United States v. Nelson, 872 F.2d 1030, 1989 U.S. App. LEXIS 5408](#) (6th Cir Apr. 21, 1989) (Unpublished).

**Overview:** The district court did not abuse its discretion in denying defendant's motion, which he made on the last day of trial, for a continuance of his trial for the unlawful distribution of a controlled substance where a handwriting expert was "extremely balky" and defendant had not submitted original documents for analysis.

- Although hydromorphone is not listed in [21 U.S.C.S. § 812](#), [21 U.S.C.S. § 811](#) authorizes the Attorney General to add other drugs or substances to the schedules. [21 U.S.C.S. § 811](#). Under the Controlled Substance Act, the Attorney General has delegated his authority in this regard to the DEA. Hydromorphone was added to Schedule II by [21 C.F.R. § 1308.12\(b\)\(1\)](#). [Go To Headnote](#)

[United States v. Schrock, 855 F.2d 327, 1988 U.S. App. LEXIS 11486](#) (6th Cir Aug. 24, 1988).

**Overview:** Defendant was properly charged with conspiracy to distribute a Schedule II controlled substance; failure to identify the transacted substance by scientific evidence did not cause relevant testimony to become unfairly prejudicial.

- Pursuant to the authority granted by congress in [21 U.S.C.S. § 811](#), and in conformity with the procedural requirements, the attorney general in 1974 redesignated noninjectable methamphetamine as a Schedule II controlled substance under [21 C.F.R. § 1308.12\(d\)\(2\) \(1987\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Cocaine**

[Vazquez v. Sessions, 881 F.3d 396, 2018 U.S. App. LEXIS 2543](#) (5th Cir Feb. 1, 2018).

**Overview:** *Lawful permanent resident waived his only viable argument for avoiding removal under [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#) based on an Oklahoma controlled substance conviction, as he failed to address whether there was a realistic probability that the State would apply its statute to conduct falling outside the generic definition of controlled substance.*

- An alien who, after admission to the United States, is convicted of violating any state, federal, or foreign law relating to a controlled substance (as defined in [21 U.S.C.S. § 802](#)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable. [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#). To trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the alien's conviction to a drug defined in [21 U.S.C.S. § 802](#). Section 802 defines "controlled substance" as a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of the subchapter. [21 U.S.C.S. § 802\(6\)](#). Cocaine is classified as a Schedule II controlled substance under both Oklahoma and federal law. [21 C.F.R. § 1308.12\(b\)\(4\) \(2013\)](#); Okla. Stat. Ann. tit. 63, § 2-206(A)(4) (2013). [Go To Headnote](#)

[United States v. Jernigan, 2004 U.S. App. LEXIS 5975](#) (6th Cir Mar. 22, 2004) (Unpublished).

**Overview:** *District court had jurisdiction to sentence defendant for distribution of crack cocaine where crack cocaine was encompassed by Schedule II of the Controlled Substances Act because it was a mixture containing cocaine and was derived from coca leaves.*

- [21 C.F.R. § 1308.12\(b\)\(4\)](#) lists in Schedule II coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and its salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances. [Go To Headnote](#)

[United States v. Tinoco, 304 F.3d 1088, 2002 U.S. App. LEXIS 18479](#) (11th Cir Sept. 4, 2002).

**Overview:** *The jurisdictional requirement was not an essential ingredient or an essential element of the Maritime Drug Law Enforcement Act substantive offense, and, as a result, it did not have to be submitted to the jury for proof beyond a reasonable doubt.*

- [21 U.S.C.S. § 960\(b\)\(3\)](#) is a catchall provision that provides for a term of imprisonment without reference to drug type or quantity. Section 960(b)(3) states that in cases that involve a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years. [21 U.S.C.S. § 960\(b\)\(3\)](#). Cocaine is a schedule II controlled substance. [21 U.S.C.S. § 812\(a\)\(4\)](#); [21 C.F.R. § 1308.12\(b\)\(4\)](#). Thus, § 960(b)(3) provides a penalty for violations involving cocaine without regard to the drug quantity involved. [Go To Headnote](#)

[Brown v. United States, 1998 U.S. Dist. LEXIS 717](#) (SD NY Jan. 28, 1998).

**Overview:** *Defendants' failure to raise the issue of the insufficiency of the evidence upon which their convictions were based on direct appeal constituted procedural default. They were not entitled to vacate their sentences.*

## 21 CFR 1308.12

- Schedule II lists coca leaves and any salt, compound, derivative or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances. [21 C.F.R. § 1308.12\(b\)\(4\) \(1997\)](#). Crack and cocaine base derive from coca leaves. [Go To Headnote](#)

[United States v. One 1976 Lincoln Continental Mark Iv, 578 F. Supp. 402, 1984 U.S. Dist. LEXIS 19680](#) (SD W Va Feb. 8, 1984).

**Overview:** *A father's automobile, which was used by his son, was subject to forfeiture to the United States under the narcotic and revenue laws because the father gave his son unrestricted access to the automobile.*

- Cocaine is a Schedule II, [21 U.S.C.S. § 812\(b\)\(2\)](#), narcotic controlled substance as designated by the attorney general in [21 C.F.R. § 1308.12\(b\)\(4\)](#), pursuant to [21 U.S.C.S. § 811](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Hashish & Marijuana**

[United States v. Buckland, 259 F.3d 1157, 2001 U.S. App. LEXIS 17867](#) (9th Cir Aug. 9, 2001).

**Overview:** *Determinate-sentencing scheme of statute prohibiting the distribution and possession of drugs was unconstitutional under the Apprendi rule as it permitted the judge to find the quantity of drugs under the preponderance of the evidence standard.*

- [21 U.S.C.S. § 841\(b\)\(1\)\(D\)](#) deals with small quantities of marijuana or hashish, and with controlled substances in schedules III, IV, and V. Methamphetamine is a Schedule II substance. [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

[United States v. Butch, 256 F.3d 171, 2001 U.S. App. LEXIS 14598](#) (3rd Cir June 29, 2001).

**Overview:** *Defendant's drug conviction was affirmed, since evidence of prior thefts of oxycodone was properly admitted, and his sentence was affirmed, since the district court did not err in determining of the quantity of oxycodone attributable to him.*

- Oxycodone is not a Schedule II Depressant. It is a Schedule II Opiate, a classification distinguishable from Schedule II Depressants. [21 U.S.C.S. § 812](#); [21 C.F.R. § 1308.12\(b\)\(1\)](#); U.S. Sentencing Guidelines Manual § 2D1.1(c). Consequently, Amendment 517 does not operate to require that oxycodone be converted into a drug equivalency based on the number of pills as opposed to its weight. [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Methamphetamines**

[Messina v. Ag United States, 2015 U.S. App. LEXIS 17903](#) (3rd Cir Oct. 15, 2015).

**Overview:** *The denial of a lawful permanent resident's application for cancellation of removal was affirmed as since his felony drug conviction under 35 Pa. Stat. Ann. § 780-113(a)(30) was an aggravated felony drug trafficking crime under [8 U.S.C.S. § 1101\(a\)\(43\)\(B\)](#), making him ineligible for cancellation of removal.*

- The United States Court of Appeals for the Third Circuit has ruled that there is a federal drug statute that is analogous to 35 Pa. Stat. Ann. § 780-113(a)(30)--[21 U.S.C.S. § 841\(a\)](#)--which prohibits the knowing or intentional manufacture, delivery, or possession with intent to deliver a controlled substance. Methamphetamine is also defined as a controlled substance under the federal schedule system. [21 C.F.R.](#)



[§ 1308.12\(d\)\(2\)](#) lists methamphetamine, its salts, isomers, and salts of its isomers as a Schedule II controlled substance. [Go To Headnote](#)

[United States v. Garcia, 2011 U.S. App. LEXIS 2985](#) (10th Cir Feb. 15, 2011).

**Overview:** In a [28 U.S.C.S. § 2255](#) case, the inmate's request for a COA was denied, and the matter was dismissed because he failed to show deficient performance and/or prejudice in regards to his five claims of ineffective assistance of counsel.

- The Attorney General properly re-classified methamphetamine as a Schedule II controlled substance pursuant to [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)

[United States v. Shurtz, 510 F.3d 1242, 2007 U.S. App. LEXIS 29390](#) (10th Cir Dec. 19, 2007), writ of certiorari denied by 553 U.S. 1013, 128 S. Ct. 2071, 170 L. Ed. 2d 808, 2008 U.S. LEXIS 3566, 76 U.S.L.W. 3568 (2008).

**Overview:** Based on language of [21 C.F.R. § 1308.12\(d\)](#) and long-standing precedent, substances enumerated under § 1308.12(d) were prohibited without regard to quantity or concentration, so government did not need to prove at trial that quantity of methamphetamine possessed or distributed by defendant would have stimulant effect on central nervous system.

- The Controlled Substances Act, [21 U.S.C.S. § 812](#), divides controlled substances into five schedules based on factors such as the degree of abuse potential, the existence of accepted medical uses, and the likelihood that abuse may lead to dependence. Congress created the initial schedules and authorized the Attorney General to update them by adding or removing substances from the lists and by moving substances from one schedule to another. [21 U.S.C.S. § 811](#). Schedule II, as adjusted by the Attorney General, appears in [21 C.F.R. § 1308.12](#). It includes methamphetamine. [Go To Headnote](#)
- [21 C.F.R. § 1308.12\(d\)](#) lists methamphetamine as follows: Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: Methamphetamine, its salts, isomers, and salts of its isomers. [Go To Headnote](#)
- The list of controlled substances in [21 C.F.R. § 1308.12\(d\)](#) comprises, in addition to methamphetamine: amphetamine, phenmetrazine, methylphenidate, and lisdexamfetamine, together with their salts, isomers, and salts of their isomers. [Go To Headnote](#)
- [21 C.F.R. § 1308.12](#) is a list of those drugs that Congress and the Attorney General have determined to be controlled substances and where Congress intended the quantity of a substance to be dispositive, it indicated so unequivocally. It would violate both congressional intent and long-standing practice for us to infer quantity limitations where no such limitations are affirmatively stated. [Go To Headnote](#)
- [21 C.F.R. § 1308.12\(d\)](#) is a list of drugs that congress has determined to have a stimulant effect on the central nervous system. [Go To Headnote](#)
- The substances enumerated under [21 C.F.R. § 1308.12\(d\)](#) are prohibited without regard to their quantity or concentration. [Go To Headnote](#)

[United States v. Duran, 2007 U.S. App. LEXIS 5469](#) (10th Cir Mar. 6, 2007).

**Overview:** Application for a COA pursuant to [28 U.S.C.S. § 2253](#) was denied because powder methamphetamine was not a Schedule III drug, which would have placed inmate in a lesser sentencing range, rather than a Schedule II drug. Methamphetamine in all forms had been reclassified as a Schedule II drug pursuant to [21 C.F.R. § 1308.12\(d\)](#) and [21 U.S.C.S. § 811](#).

- [21 U.S.C.S. § 811](#) provides that the Attorney General may by rule add to a schedule established by [21 U.S.C.S. § 812](#) or transfer between such schedules any drug or other substance if he complies with certain requirements. [21 U.S.C.S. § 811\(a\)\(1\)](#). Methamphetamine, in all forms, powder or otherwise, has been

## 21 CFR 1308.12

reclassified by the Attorney General as a Schedule II drug pursuant to [21 C.F.R. § 1308.12\(d\)](#) and [21 U.S.C.S. § 811](#). [Go To Headnote](#)

- All forms of methamphetamine have been properly classified as Schedule II drugs, see [21 C.F.R. § 1308.12\(d\)](#); accordingly, whether the type of methamphetamine is powder or liquid is of no moment. [Go To Headnote](#)

[United States v. Turner, 2006 U.S. App. LEXIS 16124](#) (9th Cir June 26, 2006).

**Overview:** Evidence was sufficient to sustain a jury's finding that defendant possessed more than 500 grams of methamphetamine. The drug quantity finding did not affect defendant's sentence because his mandatory statutory minimum under [21 U.S.C.S. § 841\(b\)\(1\)\(A\)](#) was higher than the U.S. Sentencing Guidelines range due to his prior felony drug conviction.

- Methamphetamine is a Schedule II substance. [21 C.F.R. § 1308.12](#). The United States Court of Appeals for the Ninth Circuit has held that the United States Attorney General properly rescheduled all forms of methamphetamine to Schedule II, despite language in [21 U.S.C.S. § 812\(c\)](#) that includes some forms of methamphetamine in Schedule III. [Go To Headnote](#)

[United States v. Walters, 2006 U.S. App. LEXIS 1262](#) (10th Cir Jan. 18, 2006).

**Overview:** Inmate convicted of conspiracy to manufacture and distribute methamphetamine in violation of [21 U.S.C.S. §§ 841](#) and 846 was not entitled to [28 U.S.C.S. § 2255](#) relief, because, *inter alia*, he procedurally defaulted the Apprendi issues, counsel did not render ineffective assistance, and his sentence did not violate the Sixth Amendment under Apprendi.

- Methamphetamine has been reclassified as a Schedule II drug: [21 U.S.C.S. § 811](#) grants broad power to the Attorney General to transfer drugs between schedules if he finds potential for abuse and makes certain other findings. Pursuant to the aforesaid section, the Attorney General has promulgated changes in Schedule II, to include methamphetamine, its salts, isomers, and salts of isomers. [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

[United States v. Lopez-Marques, 2005 U.S. App. LEXIS 10330](#) (10th Cir June 3, 2005).

**Overview:** Where the procedure that reclassified amphetamine and methamphetamine was adequate and that amphetamine was properly classified as a Schedule II controlled substance, and where methamphetamine was clearly classified as a controlled substance, the court dismissed defendant's appeal as frivolous and granted counsel's motion to withdraw.

- Methamphetamine is clearly classified as a controlled substance. [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)
- The distinction between methamphetamine isomers is irrelevant because [21 C.F.R. § 1308.12\(d\)](#) not only lists methamphetamine as a controlled substance but also its salts, isomers, and salts of its isomers. Courts in a variety of contexts have routinely rejected the necessity of proving particular isomer form. [Go To Headnote](#)

[United States v. Boatright, 2005 U.S. Dist. LEXIS 9675](#) (ND Tex May 20, 2005).

**Overview:** Magistrate recommended that an inmate's [28 U.S.C.S. § 2255](#) motion to vacate sentence be set aside; because the inmate's 106-month sentence was below the statutory maximum of 40 years, the Apprendi rule did not apply so as to require that the indictment have stated the exact amount of methamphetamine that the inmate had possessed.

- Methamphetamine is a Schedule II drug and has been a Schedule II drug since 1971. [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)

## 21 CFR 1308.12

- [21 U.S.C.S. § 812\(c\)](#) still classifies methamphetamine under both Schedule II and Schedule III (classified under Schedule II if contained in any "injectable liquid"). However, various federal courts of appeals have held that the reclassification of methamphetamine as a schedule II substance applies to all forms of methamphetamine in accordance with [21 C.F.R. § 1308.12\(d\)](#) despite the statute's distinction. [Go To Headnote](#)

[United States v. Kosek, 2004 U.S. Dist. LEXIS 19534](#) (ND Iowa Sept. 28, 2004).

**Overview:** *A defendant was not entitled to the vacation of his sentence where he failed to show that his counsel was ineffective at sentencing as his methamphetamine conviction was properly classified and he was properly sentenced as a career offender.*

- Federal courts of appeals have uniformly held that the reclassification of methamphetamine as a schedule II substance applies to all forms of methamphetamine in accordance with [21 C.F.R. § 1308.12\(d\)](#) despite the statute's distinction. [21 C.F.R. § 1308.12\(d\)](#) must supercede [21 U.S.C.S. § 812\(c\)](#)'s schedule classification. [Go To Headnote](#)

[United States v. Castro, 2004 U.S. Dist. LEXIS 15095](#) (ND Iowa Aug. 4, 2004).

**Overview:** *Counsel was not ineffective for, inter alia, failing to move for severance as there was no evidence blame-shifting defense was irreconcilable with others defenses, failing to file motion to dismiss, or failing to request minor role adjustment.*

- [21 U.S.C.S. § 812\(c\)](#) which lists the drug classification schedule, classifies methamphetamine as a schedule II drug when it is contained in "any injectable liquid," but classifies methamphetamine as a schedule III drug when it is in any other form. Federal courts of appeals have uniformly held that the reclassification of methamphetamine as a schedule II substance applies to all forms of methamphetamine in accordance with [21 C.F.R. § 1308.12\(d\)](#) despite the statute's distinction. [Go To Headnote](#)

[United States v. Macedo, 371 F.3d 957, 2004 U.S. App. LEXIS 11687](#) (7th Cir June 15, 2004).

**Overview:** *An incorrect designation of the drug schedule in the indictment did not mean there was an Apprendi violation when the indictment also listed the specific drug as well as the quantity.*

- [21 U.S.C.S. § 811\(a\)](#) grants the Attorney General the power to reclassify controlled substances. [21 U.S.C.S. § 812\(c\)](#), which lists the drug classification schedule, classifies methamphetamine as a schedule II drug when it is contained in "any injectable liquid," but classifies methamphetamine as a schedule III drug when it is in any other form. Though previously unaddressed by the Seventh Circuit Court of Appeals directly, it now finds that the reclassification of methamphetamine as a schedule II substance applies to all forms of methamphetamine in accordance with [21 C.F.R. § 1308.12\(d\)](#) despite the statute's distinction. [Go To Headnote](#)

[United States v. Benenhaley, 2004 U.S. App. LEXIS 7966](#) (4th Cir Apr. 22, 2004).

**Overview:** *Although an indictment that charged an unspecified drug quantity violated Apprendi as to sentencing, it was sufficient to support a conviction for distribution of methamphetamine, and the drug's schedule was irrelevant for purposes of sentencing.*

- According to [21 C.F.R. § 1308.12\(d\)\(2\) \(1999\)](#), methamphetamine, its salts, isomers, and salts of its isomers, are Schedule II controlled substances. [Go To Headnote](#)

[United States v. Alcorn, 2004 U.S. App. LEXIS 4666](#) (6th Cir Mar. 9, 2004) (Unpublished).

**Overview:** Defendant's drug-related convictions were affirmed; Congress could delegate power to attorney general to classify drugs, he had made non-injectable methamphetamine Schedule II drug, and prior convictions could be used to enhance defendant's sentence.

- The United States Attorney General has redesignated non-injectable methamphetamine as a Schedule II controlled substance. [21 C.F.R. § 1308.12\(d\)\(2\) \(2003\)](#). [Go To Headnote](#)

[United States v. Gori, 324 F.3d 234, 2003 U.S. App. LEXIS 6701](#) (3rd Cir Apr. 8, 2003).

**Overview:** District court had not clearly erred in finding that drugs defendant sold, which were on average 2.7 percent pure, contained detectable amount of methamphetamine and appellate court declined to read "purity" requirement into definition of "mixture."

- [21 C.F.R. § 1308.12\(d\)](#) reclassifies methamphetamine as a Schedule II drug. [Go To Headnote](#)
- [21 U.S.C.S. § 812](#)'s classification of methamphetamine supersedes the subsequent regulation. [21 U.S.C.S. § 811](#) (a)(1) expressly authorizes the Attorney General to "transfer between such schedules any drug or other substance" upon making findings and in accordance with typical notice and comment rulemaking procedures. [21 C.F.R. § 1308.12\(d\)](#) was properly promulgated. [Go To Headnote](#)

[United States v. Pena, 2002 U.S. App. LEXIS 4667](#) (9th Cir Mar. 19, 2002).

**Overview:** Because defendant's sentence was constitutional, the waiver of appeal in his plea agreement was enforceable. Accordingly, the appellate court lacked jurisdiction to review his claims on appeal.

- [21 U.S.C.S. § 811](#) authorizes the Attorney General of the United States to transfer drugs between schedules. [21 C.F.R. § 1308.12](#) transfers amphetamine from Schedule III to Schedule II. [Go To Headnote](#)

[United States v. Buckland, 259 F.3d 1157, 2001 U.S. App. LEXIS 17867](#) (9th Cir Aug. 9, 2001).

**Overview:** Determinate-sentencing scheme of statute prohibiting the distribution and possession of drugs was unconstitutional under the Apprendi rule as it permitted the judge to find the quantity of drugs under the preponderance of the evidence standard.

- [21 U.S.C.S. § 841\(b\)\(1\)\(D\)](#) deals with small quantities of marijuana or hashish, and with controlled substances in schedules III, IV, and V. Methamphetamine is a Schedule II substance. [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

[United States v. Watkins, 912 F. Supp. 417, 912 F. Supp. 417, 1996 U.S. Dist. LEXIS 4156](#) (ED Ark Jan. 10, 1996).

**Overview:** Petitioner's motion under [28 U.S.C.S. § 2255](#) was denied because he was properly sentenced under U.S.S.G. § 2D1.1 (October, 1987) for violations of [21 U.S.C.S. § 846](#). Petitioner did not show ineffective assistance of counsel under Strickland, as government would have produced evidence regarding drug classification, had counsel raised the issue.

- Although [21 U.S.C.S. § 812](#) still lists any form of methamphetamine other than injectable liquid as a Schedule III controlled substance, [21 U.S.C.S. § 811](#) authorizes the Attorney General, after making certain findings, to transfer substances between schedules. Under the authority of [21 U.S.C.S. § 871\(a\)](#) and [28 U.S.C.S. § 510](#), the Attorney General can delegate this authority to the Director of the Bureau of Narcotics and Dangerous Drugs. By regulation, methamphetamine is a controlled substance under Schedule II unless specially excepted. [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)

[United States v. Waycaster, 1994 U.S. App. LEXIS 24177](#) (4th Cir Sept. 6, 1994).

## 21 CFR 1308.12

**Overview:** Defendant was properly convicted of drug conspiracy and possession charges because defendant's statements corroborated testimony of coconspirators and agents regarding defendant's role. Quantity was irrelevant as to possession charge.

- Phenyl-2-propanone is an immediate precursor to the Schedule II substances amphetamine and methamphetamine. [21 C.F.R. § 1308.12\(g\)\(1\) \(1994\)](#). Under [21 U.S.C.S. § 811\(e\)](#), an "immediate precursor" may be placed in the same schedule as the controlled substance of which it is an immediate precursor. [Go To Headnote](#)

[United States v. Lafoon, 978 F.2d 1183, 1992 U.S. App. LEXIS 28305](#) (10th Cir Nov. 2, 1992).

**Overview:** Reclassification of amphetamine did not void conviction because defendant voluntarily pled guilty to violation involving a Schedule II substance and because the scientific and medical evaluation of amphetamine was adequate for reclassification .

- Amphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. 1308.12\(d\)](#). [Go To Headnote](#)

[United States v. Sullivan, 967 F.2d 370, 1992 U.S. App. LEXIS 13315](#) (10th Cir June 12, 1992).

**Overview:** Appellate review was limited to correcting plain errors that affected substantial rights and threatened a miscarriage of justice and defendants' sentences would not have been put aside unless factual determinations were clearly erroneous.

- Amphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. 1308.12\(d\)](#). [Go To Headnote](#)

[United States v. Youngblood, 949 F.2d 1065, 1991 U.S. App. LEXIS 27691](#) (10th Cir Nov. 25, 1991).

**Overview:** The fact that the Food and Drug Administration had approved certain over-the-counter nasal spray, which contained methamphetamine isomers, did not exempt methamphetamine from being a controlled substance.

- Methamphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. 1308.12\(d\)](#). [Go To Headnote](#)
- Under [21 C.F.R. 1308.12\(d\)](#), methamphetamine or its isomers is a Schedule II controlled substance unless specially excepted. The FDA has granted a specific exception for the ingredients contained in the Rynal and Vicks inhalers. However, other uses or combinations of methamphetamines or its isomers remain controlled substances under Schedule II until the FDA approves and authorizes a specific exception. [Go To Headnote](#)

[United States v. Durham, 941 F.2d 886, 1991 U.S. App. LEXIS 17680](#) (9th Cir Aug. 7, 1991).

**Overview:** Methamphetamine was properly designated as a controlled substance despite its inclusion as an ingredient in a nonprescription drug, but the district court lacked jurisdiction if the U.S. Attorney's office did not properly supervise the prosecutor.

- The current version of the regulations specifically designates methamphetamine as a schedule II controlled substance, consistent with earlier versions going back several years. [21 C.F.R. § 1308.12](#). The regulations also exclude certain substances determined to be non-narcotic, including nasal sprays, which may contain small amounts of methamphetamine. [21 C.F.R. § 1308.22](#). [Go To Headnote](#)

[United States v. Young, 862 F.2d 815, 1988 U.S. App. LEXIS 16619](#) (10th Cir Dec. 9, 1988).

**Overview:** *Conviction for possession with intent to manufacture drugs was proper when evidence was sufficient to support conviction, there was no fatal variance in indictment, and defendant did not show prejudice for ineffective assistance of counsel claim.*

- [21 U.S.C.S. § 841\(a\)\(1\)](#) makes it a crime to possess with intent to manufacture a controlled substance. Methamphetamine in liquid form is a Schedule II controlled substance. [21 U.S.C.S. § 812\(a\)](#), [21 C.F.R. § 1308.12\(d\)\(2\)](#). Methamphetamine in powder form is a Schedule II controlled substance. As an immediate precursor of methamphetamine, P2P is a Schedule II controlled substance. [21 U.S.C.S. § 811\(e\)](#), [21 C.F.R. § 1308.12\(g\)](#). [Go To Headnote](#)

[United States v. Schrock, 855 F.2d 327, 1988 U.S. App. LEXIS 11486](#) (6th Cir Aug. 24, 1988).

**Overview:** *Defendant was properly charged with conspiracy to distribute a Schedule II controlled substance; failure to identify the transacted substance by scientific evidence did not cause relevant testimony to become unfairly prejudicial.*

- Pursuant to the authority granted by congress in [21 U.S.C.S. § 811](#), and in conformity with the procedural requirements, the attorney general in 1974 redesignated noninjectable methamphetamine as a Schedule II controlled substance under [21 C.F.R. § 1308.12\(d\)\(2\) \(1987\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Miscellaneous Drugs**

[West v. Schofield, 2017 Tenn. LEXIS 185](#) (Tenn Mar. 28, 2017).

**Overview:** *Death-row inmates failed to establish that the lethal injection protocol violated the Eight Amendment because they did not show that the protocol imposed a substantial risk of serious harm. The inmates also failed to demonstrate a known and available alternative method of execution that entailed a lesser risk of pain.*

- Pentobarbital falls within the ambit of the federal Controlled Substances Act (CSA). [21 C.F.R. § 1308.12\(e\)\(3\)](#). The CSA limits physicians to prescribing sodium pentobarbital for legitimate medical purposes. [21 C.F.R. § 1306.04\(a\)](#). [Go To Headnote](#)

#### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Opiates**

[United States v. Anderson, 2015 U.S. App. LEXIS 2618](#) (6th Cir Feb. 19, 2015) (Unpublished).

**Overview:** *In determining the number of oxycodone tablets attributable to defendant for sentencing purposes, the district court's decision to credit a witness's testimony over that of defendant was not without foundation; enhancement under USSG § 3C1.1 was proper based on a finding that defendant lied about the number of pills he purchased.*

- [21 U.S.C.S. § 841\(b\)\(1\)\(C\)](#) sets out the penalties for Schedule I and II controlled substances; [21 C.F.R. § 1308.12](#) identifies oxycodone as a Schedule II controlled substance. [Go To Headnote](#)

[United States v. Butch, 256 F.3d 171, 2001 U.S. App. LEXIS 14598](#) (3rd Cir June 29, 2001).

**Overview:** *Defendant's drug conviction was affirmed, since evidence of prior thefts of oxycodone was properly admitted, and his sentence was affirmed, since the district court did not err in determining of the quantity of oxycodone attributable to him.*

- Oxycodone is not a Schedule II Depressant. It is a Schedule II Opiate, a classification distinguishable from Schedule II Depressants. [21 U.S.C.S. § 812](#); [21 C.F.R. § 1308.12\(b\)\(1\)](#); U.S. Sentencing Guidelines

## 21 CFR 1308.12

Manual § 2D1.1(c). Consequently, Amendment 517 does not operate to require that oxycodone be converted into a drug equivalency based on the number of pills as opposed to its weight. [Go To Headnote](#)

*United States v. Nelson*, 872 F.2d 1030, 1989 U.S. App. LEXIS 5408 (6th Cir Apr. 21, 1989) (Unpublished).

**Overview:** *The district court did not abuse its discretion in denying defendant's motion, which he made on the last day of trial, for a continuance of his trial for the unlawful distribution of a controlled substance where a handwriting expert was "extremely balky" and defendant had not submitted original documents for analysis.*

- Although hydromorphone is not listed in [21 U.S.C.S. § 812](#), [21 U.S.C.S. § 811](#) authorizes the Attorney General to add other drugs or substances to the schedules. [21 U.S.C.S. § 811](#). Under the Controlled Substance Act, the Attorney General has delegated his authority in this regard to the DEA. Hydromorphone was added to Schedule II by [21 C.F.R. § 1308.12\(b\)\(1\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Criminal Offenses : Controlled Substances : Substance Schedules : Phencyclidine**

[United States v. Johnson](#), 909 F.2d 1517, 1990 U.S. App. LEXIS 12937 (DC Cir Aug. 3, 1990).

**Overview:** *An appellate court reversed a judgment convicting defendant of possessing phencyclidine (PCP) laced marijuana with in intent to distribute in violation of [21 U.S.C.S. § 841](#)(a) because defendant, who was also convicted of possessing liquid PCP as the same time and place could only be convicted of one offense for possession of PCP.*

- [21 C.F.R. § 1308.12\(e\)\(3\) \(1989\)](#) defines as a controlled substance any material, compound, mixture, or preparation which contains any quantity of PCP. [Go To Headnote](#)

[United States v. Skelton](#), 901 F.2d 1204, 1990 U.S. App. LEXIS 6224 (4th Cir Apr. 20, 1990).

**Overview:** *After being convicted of drug charges relating to PCPy, defendants' base offense level was properly determined because PCPy was treated as the equal to PCP or heroin for purposes of determining the base offense level under the sentencing guidelines.*

- Phencyclidine, PCP, is listed as a Schedule II depressant, [21 C.F.R. § 1308.12\(e\)\(3\)](#), whereas PCPy is listed as a Schedule I hallucinogenic substance, [21 C.F.R. § 1308.11\(d\)\(24\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Accusatory Instruments : Indictments : General Overview**

[United States v. Boatright](#), 2005 U.S. Dist. LEXIS 9675 (ND Tex May 20, 2005).

**Overview:** *Magistrate recommended that an inmate's [28 U.S.C.S. § 2255](#) motion to vacate sentence be set aside; because the inmate's 106-month sentence was below the statutory maximum of 40 years, the Apprendi rule did not apply so as to require that the indictment have stated the exact amount of methamphetamine that the inmate had possessed.*

- Methamphetamine is a Schedule II drug and has been a Schedule II drug since 1971. [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Guilty Pleas : General Overview**

[United States v. Boatright](#), 2005 U.S. Dist. LEXIS 9675 (ND Tex May 20, 2005).

**Overview:** Magistrate recommended that an inmate's [28 U.S.C.S. § 2255](#) motion to vacate sentence be set aside; because the inmate's 106-month sentence was below the statutory maximum of 40 years, the Apprendi rule did not apply so as to require that the indictment have stated the exact amount of methamphetamine that the inmate had possessed.

- Methamphetamine is a Schedule II drug and has been a Schedule II drug since 1971. [21 C.F.R. § 1308.12\(d\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Sentencing : Guidelines : General Overview**

[United States v. Butch, 256 F.3d 171, 2001 U.S. App. LEXIS 14598](#) (3rd Cir June 29, 2001).

**Overview:** Defendant's drug conviction was affirmed, since evidence of prior thefts of oxycodone was properly admitted, and his sentence was affirmed, since the district court did not err in determining of the quantity of oxycodone attributable to him.

- Oxycodone is not a Schedule II Depressant. It is a Schedule II Opiate, a classification distinguishable from Schedule II Depressants. [21 U.S.C.S. § 812](#); [21 C.F.R. § 1308.12\(b\)\(1\)](#); U.S. Sentencing Guidelines Manual § 2D1.1(c). Consequently, Amendment 517 does not operate to require that oxycodone be converted into a drug equivalency based on the number of pills as opposed to its weight. [Go To Headnote](#)

[United States v. Skelton, 901 F.2d 1204, 1990 U.S. App. LEXIS 6224](#) (4th Cir Apr. 20, 1990).

**Overview:** After being convicted of drug charges relating to PCPy, defendants' base offense level was properly determined because PCPy was treated as the equal to PCP or heroin for purposes of determining the base offense level under the sentencing guidelines.

- Phencyclidine, PCP, is listed as a Schedule II depressant, [21 C.F.R. § 1308.12\(e\)\(3\)](#), whereas PCPy is listed as a Schedule I hallucinogenic substance, [21 C.F.R. § 1308.11\(d\)\(24\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Sentencing : Guidelines : Adjustments & Enhancements : Criminal History :**

[United States v. Daniels, 1992 U.S. App. LEXIS 2439](#) (4th Cir Feb. 24, 1992).

**Overview:** Notice was required only where defendant's statutory penalty under Part D of the Controlled Substances Act was sought to be enhanced, not where defendant's criminal history was used to increase his sentence under the guidelines as a career offender.

- The statutory penalty for distribution of crack cocaine, without enhancement for prior convictions, is a maximum of 20 years in prison. [21 U.S.C.S. § 841\(b\)\(1\)\(C\)](#); [21 C.F.R. § 1308.12\(b\)\(4\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Sentencing : Imposition : Factors**

[United States v. Tinoco, 304 F.3d 1088, 2002 U.S. App. LEXIS 18479](#) (11th Cir Sept. 4, 2002).

**Overview:** The jurisdictional requirement was not an essential ingredient or an essential element of the Maritime Drug Law Enforcement Act substantive offense, and, as a result, it did not have to be submitted to the jury for proof beyond a reasonable doubt.

- [21 U.S.C.S. § 960\(b\)\(3\)](#) is a catchall provision that provides for a term of imprisonment without reference to drug type or quantity. Section 960(b)(3) states that in cases that involve a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be



sentenced to a term of imprisonment of not more than 20 years. [21 U.S.C.S. § 960\(b\)\(3\)](#). Cocaine is a schedule II controlled substance. [21 U.S.C.S. § 812\(a\)\(4\)](#); [21 C.F.R. § 1308.12\(b\)\(4\)](#). Thus, § 960(b)(3) provides a penalty for violations involving cocaine without regard to the drug quantity involved. [Go To Headnote](#)

### **Criminal Law & Procedure : Sentencing : Ranges**

[United States v. Anderson, 2015 U.S. App. LEXIS 2618](#) (6th Cir Feb. 19, 2015) (Unpublished).

**Overview:** *In determining the number of oxycodone tablets attributable to defendant for sentencing purposes, the district court's decision to credit a witness's testimony over that of defendant was not without foundation; enhancement under USSG § 3C1.1 was proper based on a finding that defendant lied about the number of pills he purchased.*

- [21 U.S.C.S. § 841\(b\)\(1\)\(C\)](#) sets out the penalties for Schedule I and II controlled substances; [21 C.F.R. § 1308.12](#) identifies oxycodone as a Schedule II controlled substance. [Go To Headnote](#)

[United States v. Daniels, 1992 U.S. App. LEXIS 2439](#) (4th Cir Feb. 24, 1992).

**Overview:** *Notice was required only where defendant's statutory penalty under Part D of the Controlled Substances Act was sought to be enhanced, not where defendant's criminal history was used to increase his sentence under the guidelines as a career offender.*

- The statutory penalty for distribution of crack cocaine, without enhancement for prior convictions, is a maximum of 20 years in prison. [21 U.S.C.S. § 841\(b\)\(1\)\(C\)](#); [21 C.F.R. § 1308.12\(b\)\(4\)](#). [Go To Headnote](#)

### **Criminal Law & Procedure : Appeals : Standards of Review : Harmless & Invited Errors : Guilty Pleas**

[United States v. Pena, 2002 U.S. App. LEXIS 4667](#) (9th Cir Mar. 19, 2002).

**Overview:** *Because defendant's sentence was constitutional, the waiver of appeal in his plea agreement was enforceable. Accordingly, the appellate court lacked jurisdiction to review his claims on appeal.*

- [21 U.S.C.S. § 811](#) authorizes the Attorney General of the United States to transfer drugs between schedules. [21 C.F.R. § 1308.12](#) transfers amphetamine from Schedule III to Schedule II. [Go To Headnote](#)

### **Governments : Agriculture & Food : Federal Food, Drug & Cosmetic Act**

[United States v. Youngblood, 949 F.2d 1065, 1991 U.S. App. LEXIS 27691](#) (10th Cir Nov. 25, 1991).

**Overview:** *The fact that the Food and Drug Administration had approved certain over-the-counter nasal spray, which contained methamphetamine isomers, did not exempt methamphetamine from being a controlled substance.*

- Methamphetamine is properly classified as a Schedule II controlled substance pursuant to [21 C.F.R. 1308.12\(d\)](#). [Go To Headnote](#)
- Under [21 C.F.R. 1308.12\(d\)](#), methamphetamine or its isomers is a Schedule II controlled substance unless specially excepted. The FDA has granted a specific exception for the ingredients contained in the Rynal and Vicks inhalers. However, other uses or combinations of methamphetamines or its isomers remain controlled substances under Schedule II until the FDA approves and authorizes a specific exception. [Go To Headnote](#)

**Immigration Law : Deportation & Removal : Grounds : Criminal Activity : Controlled Substance Offenses**

[Jimenez-Vielma v. Whitaker, 2018 U.S. App. LEXIS 33436](#) (8th Cir Nov. 29, 2018).

**Overview:** Because petitioner was convicted of possessing cocaine base, which was criminalized under both Missouri and federal law, he was removable under [8 U.S.C.S. § 1182\(a\)\(2\)\(A\)\(i\)](#). His petition for review was denied, as he did not show that his right to procedural due process was violated or that BIA applied the wrong legal standard to his claim.

- Because an alien was convicted of possessing cocaine base, which is criminalized under both Mo. Rev. Stat. § 195.202 and federal law, he is removable under [8 U.S.C.S. § 1182\(a\)\(2\)\(A\)\(i\)](#). [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

[Vazquez v. Sessions, 885 F.3d 862, 2018 U.S. App. LEXIS 7110](#) (5th Cir Mar. 21, 2018).

**Overview:** Given that Oklahoma schedule of controlled substances was facially broader than federal analog, alien could prevail on challenge to BIA's order that he was eligible for deportation under [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#) only if realistic probability test were satisfied, but he failed to address issue in brief on appeal, so it was waived.

- An alien who, after admission to the United States, is convicted of violating any state, federal, or foreign law relating to a controlled substance (as defined in [21 U.S.C.S. § 802](#)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable. [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#). To trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the alien's conviction to a drug defined in § 802. Section 802 defines controlled substance as a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. § 802(6). Cocaine was classified as a Schedule II controlled substance under both Oklahoma and federal law. [21 C.F.R. § 1308.12\(b\)\(4\) \(2013\)](#); Okla. Stat. Ann. tit. 63, § 2-206(A)(4) (2013). [Go To Headnote](#)

[Vazquez v. Sessions, 881 F.3d 396, 2018 U.S. App. LEXIS 2543](#) (5th Cir Feb. 1, 2018).

**Overview:** Lawful permanent resident waived his only viable argument for avoiding removal under [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#) based on an Oklahoma controlled substance conviction, as he failed to address whether there was a realistic probability that the State would apply its statute to conduct falling outside the generic definition of controlled substance.

- An alien who, after admission to the United States, is convicted of violating any state, federal, or foreign law relating to a controlled substance (as defined in [21 U.S.C.S. § 802](#)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable. [8 U.S.C.S. § 1227\(a\)\(2\)\(B\)\(i\)](#). To trigger removal under § 1227(a)(2)(B)(i), the Government must connect an element of the alien's conviction to a drug defined in [21 U.S.C.S. § 802](#). Section 802 defines "controlled substance" as a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of the subchapter. [21 U.S.C.S. § 802\(6\)](#). Cocaine is classified as a Schedule II controlled substance under both Oklahoma and federal law. [21 C.F.R. § 1308.12\(b\)\(4\) \(2013\)](#); Okla. Stat. Ann. tit. 63, § 2-206(A)(4) (2013). [Go To Headnote](#)

**Immigration Law : Inadmissibility : Grounds : Criminal Activity**

[Jimenez-Vielma v. Whitaker, 2018 U.S. App. LEXIS 33436](#) (8th Cir Nov. 29, 2018).

**Overview:** Because petitioner was convicted of possessing cocaine base, which was criminalized under both Missouri and federal law, he was removable under [8 U.S.C.S. § 1182\(a\)\(2\)\(A\)\(i\)](#). His petition for review was denied, as he did not show that his right to procedural due process was violated or that BIA applied the wrong legal standard to his claim.

- Because an alien was convicted of possessing cocaine base, which is criminalized under both Mo. Rev. Stat. § 195.202 and federal law, he is removable under [8 U.S.C.S. § 1182\(a\)\(2\)\(A\)\(i\)](#). [21 C.F.R. § 1308.12](#). [Go To Headnote](#)

## Research References & Practice Aids

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### NOTES APPLICABLE TO ENTIRE TITLE:

Cross References: Food Safety and Inspection Services, Department of Agriculture: See Meat and Poultry Inspection, 9 CFR CHAPTER III.

Federal Trade Commission: See Commercial Practices, 16 CFR chapter I.

U.S. Customs Service, Department of the Treasury: See Customs Duties, 19 CFR chapter I.

Internal Revenue Service, Department of the Treasury: See Internal Revenue, 26 CFR chapter I.

Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury: See Alcohol, Tobacco Production and Firearms, 27 CFR chapter I.

### NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 1308 Controlled Substances Schedules, see: [62 FR 29288, 29289, 51774, 51776 \(1997\)](#); [65 FR 3124](#), Jan. 20, 2000, as confirmed at 43690, 43694, July 14, 2000; [66 FR 51530](#), Oct. 9, 2001; [68 FR 1964](#), Jan. 15, 2003, suspended at [68 FR 35293](#), June 13, 2003, withdrawn at [68 FR 53677](#), Sept. 12, 2003; [68 FR 53289](#), Sept. 10, 2003; [71 FR 10835](#), Mar. 3, 2006, as confirmed at [71 FR 61876, 61877](#), Oct. 20, 2006; [71 FR 51996](#), Sept. 1, 2006, as confirmed at [73 FR 14178, 14179](#), Mar. 17, 2008; [77 FR 12201](#), Feb. 29, 2012; [77 FR 64032](#), Oct. 18, 2012; [80 FR 27854](#), May 15, 2015; [84 FR 16397](#), Apr. 19, 2019.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 1308 Temporary rule, see: [83 FR 4411](#), Jan. 30, 2018.]

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