

# 23-6590

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## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PAUL ANTHONY JOHNSON,  
*Petitioner,*

v.

MERRICK B. GARLAND, United States Attorney General,  
*Respondent.*

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On Petition for Review of a Final Decision  
of the Board of Immigration Appeals, No. A040-122-361

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**BRIEF OF THE AMERICAN IMMIGRATION COUNCIL, CAPITAL  
AREA IMMIGRANTS' RIGHTS COALITION, HIAS PENNSYLVANIA,  
IMMIGRANT DEFENSE PROJECT, THE NATIONAL IMMIGRATION  
PROJECT OF THE NATIONAL LAWYERS GUILD, NATIONALITIES  
SERVICE CENTER, PENNSYLVANIA IMMIGRATION RESOURCE  
CENTER, AND PROFESSORS KATE EVANS AND JOANNE  
GOTTESMAN AS *AMICI CURIAE* IN SUPPORT OF PETITIONER**

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February 9, 2024

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/s/Amelia Marritz

Amelia Marritz

Immigrant Defense Project

Dated: February 9, 2024

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## **INTRODUCTION AND STATEMENT OF IDENTIFICATION OF *AMICI*<sup>1</sup>**

*Matter of Laguerre* violates the Supreme Court’s categorical approach and divisibility precedents. 28 I. & N. Dec. 437 (BIA 2022). The Supreme Court, and this Court, demand “certainty” that the elements of a prior conviction fall categorically within a federal statute in order to trigger conviction-based immigration consequences. *Mathis v. United States*, 579 U.S. 500, 519 (2016). If a review of state case law and the text of the statute of conviction, or, in limited circumstances, a “peek” at certain record of conviction documents, does not show with certainty that statutory alternatives at issue are elements, then the statute must be found indivisible. The Supreme Court expressly acknowledges that, where allowed, the “peek” will sometimes or often be unhelpful, inconclusive, or uncertain. *Id.* In such cases, the statute is indivisible.

While the Board in *Laguerre* correctly found that the New Jersey statute at issue<sup>2</sup> and the associated case law do not prove divisibility with certainty,<sup>3</sup> the

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<sup>1</sup> No party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than amici curiae, its members, and its counsel contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

<sup>2</sup> In *Laguerre*, the specific controlled dangerous substance (“CDS”) statute at issue was N.J. Stat. Ann. § 2C:35-10(a)(1). One of Petitioner’s judgments of conviction identifies that statute, while Petitioner has a second conviction under N.J. Stat. Ann. §§ 2C:35-5(a)(1) and 2C:35-5(b)(1).

<sup>3</sup> *Amici* disagree with the Board that the case law and statutory language are ambiguous, thus necessitating a peek at the record, and agree with Petitioner that

“peek” at the record of conviction documents betrayed the demand for certainty. The Board decided that the identity of a controlled substance is an element of certain New Jersey controlled substance laws. From one document from one prosecution, the Board drew a broad-reaching conclusion about New Jersey criminal law. This conclusion is contrary to New Jersey law and other New Jersey *Shepard*<sup>4</sup> documents.

In Section I, *amici* discuss the categorical approach’s settled demand for “certainty.” In Section II, *amici* discuss record of conviction documents from New Jersey prosecutions and from Petitioner’s case which controvert the BIA’s conclusion drawn from its “peek” in *Laguerre*. The documents show that New Jersey charges multiple substances in single counts, uses umbrella terms in *Shepard* documents, and allows conviction where charging and conviction documents name different substances. They show that the specific substance is not an element under state law.

*Amici* are organizations providing specialized advice to immigrants and lawyers on the interrelationship of criminal and immigration law. *Amici* have a strong interest in assuring that rules governing classification of criminal convictions are fair and accord with longstanding precedent on which immigrants, attorneys, and

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New Jersey law unambiguously demonstrates that the subsections of New Jersey’s CDS statute are indivisible as to particular substance. *See* Pet. Br. at 21-35, 43-47. *But see Gayle v. Att’y Gen.*, No. 22-1811, 2023 WL 4077332 (3d Cir. June 15, 2023) (unpublished) (finding §§ 2C:35-5(a)(1) and (b)(1) divisible).

<sup>4</sup> *Shepard v. United States*, 544 U.S. 13 (2005).

the courts have relied for over a century. *Amici* have also submitted briefs to the Supreme Court and this Court in numerous cases involving the immigration consequences of convictions. *See, e.g., Pereida v. Wilkinson*, 141 S. Ct. 754 (2021); *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017); *Mathis v. United States*, 579 U.S. 500 (2016); *Padilla v. Kentucky*, 559 U.S. 356 (2010); *Leocal v. Ashcroft*, 543 U.S. 1 (2004); *I.N.S. v. St. Cyr*, 533 U.S. 289, 323 n. 50 (2001) (citing brief of *amicus* IDP); *Khalid v. Sessions*, 904 F.3d 129, 139-140 (2d Cir. 2018) (same); *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018). Statements of interest for individual *amici* are attached at Appendix A.

## **ARGUMENT**

### **I. FOR A PRIOR “CONVICTION” TO TRIGGER AN INA PROVISION, THE SUPREME COURT REQUIRES CERTAINTY THAT THE ELEMENTS—NOT MEANS OR FACTS—OF A CONVICTION FALL CATEGORICALLY WITHIN THE REMOVAL GROUND.**

#### **A. The demand for certainty is a threshold component of the longstanding categorical approach.**

The categorical approach and divisibility are grounded in the need for certainty. The categorical and modified categorical approach “focus[] on the legal question of what a conviction *necessarily* established.” *Mellouli v. Lynch*, 575 U.S. 798, 806 (2015) (emphasis in original); *see Moncrieffe v. Holder*, 569 U.S. 184, 190, 196 (2013) (holding that under the categorical approach courts “examine what the state conviction necessarily involved”). The “categorical approach’s central feature”

is *always* “a focus on the *elements*, rather than the facts, of a crime.” *Descamps v. United States*, 570 U.S. 254, 263 (2013) (emphasis added); *see also Hylton v. Sessions*, 897 F.3d 57, 60 (2d Cir. 2018) (“Under the categorical approach, courts identify the minimum criminal conduct necessary for conviction under a particular statute by looking only to the statutory definitions—i.e., the elements—of the offense, and not to the particular underlying facts.”) (cleaned up); *Taylor v. United States*, 495 U.S. 575, 602 (1990); *Matter of Kim*, 26 I. & N. Dec. 912, 913 (BIA 2017) (citing *Taylor*’s requirement that a prior conviction necessarily involve facts equating to the generic ground). Because of this demand for certainty, a categorical analysis presumes that a conviction “rested upon nothing more than the least of the acts criminalized, and then determine[s] whether even those acts are encompassed by the generic federal offense.” *Moncrieffe*, 569 U.S. at 190–91.

“Th[e] categorical approach has a long pedigree in our Nation’s immigration law.” *Id.* at 191 (citing Alina Das, *The Immigration Penalties of Criminal Convictions: Resurrecting Categorical Analysis in Immigration Law*, 86 N.Y.U. L. Rev. 1669, 1688–1702, 1749–52 (2011)). For over a century, courts and the agency have applied a categorical analysis to determine whether a conviction “necessarily” carries an immigration consequence. Das, *supra* at 1688–1701; *see United States ex rel. Guarino v. Uhl*, 107 F.2d 399, 400 (2d Cir. 1939) (L. Hand, J.) (determining what a conviction “‘necessarily’” establishes by examining the least conduct

punished by the statute); *Matter of P-*, 3 I. & N. Dec. 56, 59 (BIA 1947) (explaining that “a crime must by its very nature and at its minimum, as defined by statute” match a removal ground). The approach is “[r]ooted in Congress’ specification of conviction, not conduct, as the trigger for immigration consequences.” *Mellouli*, 575 U.S. at 806; see *Moncrieffe*, 569 U.S. at 191 (“Conviction is ‘the relevant statutory hook.’”) (quoting *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 580 (2010)); *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 513 (BIA 2008) (“For nearly a century, the Federal circuit courts of appeals have held that where a ground of deportability is premised on the existence of a ‘conviction’ for a particular type of crime, the focus of the immigration authorities must be on the crime of which the alien was *convicted*, to the exclusion of any other criminal or morally reprehensible acts he may have *committed*.”).

The certainty requirement is particularly significant when viewed against the realities of a large administrative adjudicative system where the outcome for the noncitizen may be “the loss ‘of all that makes life worth living.’” *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)). “By focusing on the legal question of what a conviction necessarily established, the categorical approach ordinarily works to promote efficiency, fairness, and predictability in the administration of immigration law.” *Mellouli*, 575 U.S. at 806. The BIA has acknowledged it as “the only workable approach in cases where



deportability is premised on the existence of a conviction.” *Matter of Pichardo-Sufren*, 21 I. & N. Dec. 330, 335 (BIA 1996) (en banc). The alternative, in which the agency considers the crime *committed* rather than the crime of *conviction*, would be contrary to the statute and inconsistent “with the streamlined adjudication that a deportation hearing is intended to provide and with the settled proposition that an Immigration Judge cannot adjudicate guilt or innocence.” *Id.*

**B. The categorical approach demands certainty regarding whether statutory alternatives are “means” or “elements.”**

The demand for certainty applies across the categorical approach, including in divisibility determinations. This is compelled by Supreme Court and circuit court precedent concluding that ambiguous statutes are indivisible statutes, and by the criminal rule of lenity.

**1. Supreme Court and circuit court precedent establish that an ambiguous statute is an indivisible statute.**

The categorical approach applies when determining whether a noncitizen’s conviction triggers a removal ground. *See, e.g., Mellouli*, 575 U.S. at 804. The categorical approach “compare[s] the elements of the statute forming the basis of the [prior] conviction with the elements of the ‘generic’ crime.” *Descamps*, 570 U.S. at 257. An “element” is a “constituent part[] of a crime’s legal definition” that a jury must find unanimously and beyond a reasonable doubt to sustain a conviction.

*Mathis*, 579 U.S. at 504. A categorical match results only if the statute contains the same or narrower elements than those of the generic offense. *Id.* The individual’s actual conduct is irrelevant. *Mellouli*, 575 U.S. at 805.

Essential to the categorical approach, therefore, is proper identification of the conviction elements. Only by accurately identifying the elements is it possible to satisfy the “demand for certainty.” *Mathis*, 579 U.S. at 519; *see Mellouli*, 575 U.S. at 806. This is because, when examining a prior conviction in subsequent immigration proceedings, “the only facts the court can be sure the jury so found are those constituting elements of the offense—as distinct from amplifying but legally extraneous circumstances.” *Descamps*, 570 U.S. at 269-70.

Where a statute of conviction “sets out a single (or ‘indivisible’)” set of elements, the categorical approach is “straightforward.” *Mathis*, 579 U.S. at 504-05. “[W]hen a statute lists multiple, alternative elements, and so effectively creates ‘several different . . . crimes[,]’” the modified categorical approach “adds . . . a mechanism for making that comparison.” *Descamps*, 570 U.S. at 263-64 (quoting *Nijhawan v. Holder*, 557 U.S. 29, 41 (2009)).

To determine whether the modified categorical approach applies to an “alternatively phrased law,” the adjudicator must determine whether the alternatives are distinct elements, or simply various factual means of committing a single element. *Mathis*, 579 U.S. at 505. If they are elements, the statute is divisible and

the modified categorical approach applies, permitting the adjudicator to review certain documents from the record of conviction in order to identify the offense of conviction. *See id.* at 505-06. But if the alternatives are means, the statute is indivisible and the modified categorical approach is inapplicable. *See id.* at 512-13.

*Mathis* affirmed the methodology for distinguishing elements and means. The inquiry starts—and often concludes—by consulting “authoritative sources of state law,” which often “readily” answer the question. *Id.* at 518. These sources include state court decisions and statutory text. Conceptually, markers of means versus elements include whether juror unanimity is required, which can be established by statute or case law; whether “statutory alternatives carry different punishments;” and whether “a statutory list is drafted to offer illustrative examples.” *Id.* at 518 (cleaned up).

If, and *only* if, these state sources do not provide a clear answer, an adjudicator may “peek” at the record of conviction “for the sole and limited purpose of determining whether the listed items are elements of the offense.” *Id.* (cleaned up). But if an authorized peek at the record of conviction documents does not “speak plainly” as to the means or elements question, *Mathis* and the categorical approach’s “demand for certainty” command that the alternatives are means, not elements. *Id.* at 519.

Six sister circuit courts have applied *Mathis* accordingly by finding statutes indivisible when faced with uncertain state case law and an ambiguous peek at a record of conviction.

In *Najera-Rodriguez v. Barr*, 926 F.3d 343 (7th Cir. 2019), the Seventh Circuit ruled in favor of a noncitizen convicted under an Illinois drug statute. The court applied *Mathis* to determine whether the statute was divisible as to the substance and concluded that “[t]he state law sources, let alone the record materials, do not speak plainly, so we are not able to satisfy *Taylor*’s demand for certainty.” *Id.* at 356 (cleaned up).<sup>5</sup> The court found the statute indivisible where a charging

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<sup>5</sup> The Seventh Circuit also added “a note of caution” as to the utmost importance of requiring certainty as to divisibility, stating that

“In applying this now-extensive body of law concerning collateral federal consequences of state convictions, lawyers for the federal government often urge federal courts to define the elements of state criminal offenses in particular ways essential or helpful in the particular case. If federal courts interpret state law incorrectly, by finding that state laws include essential elements that state courts have not treated as such, we could mistakenly cast doubt on the much higher volume of state criminal prosecutions under those same state statutes. To reduce that risk, we need to insist on clear signals—signals that convince us to a certainty that the elements are correct and support divisibility before imposing additional federal consequences for those state convictions.

*Najera-Rodriguez*, 926 F.3d at 356. The Fourth Circuit cited these same concerns in a case involving a South Carolina drug statute. *United States v. Hope*, 28 F.4th 487, 503–04 (4th Cir. 2022). There, the court found the means-elements question

document identified one substance, and a sentencing document did not. *Id.* The circuit later looked at a different Illinois statute, again finding the statute indivisible after a peek at the record of conviction failed to resolve the ambiguity from a review of the statute and case law. *Elion v. United States*, 76 F.4th 620, 634 (7th Cir. 2023). The court found the statute indivisible because divisibility could not be proven with certainty, despite the inclusion of one component of the statute to the exclusion of others, as charging documents “regularly include factual details that are not elements of the crime” and must be used with care. *Id.* (cleaned up).

In *United States v. Hamilton*, 889 F.3d 688 (10th Cir. 2018), the Tenth Circuit conducted a divisibility analysis for an Oklahoma burglary statute. The court determined that “neither Oklahoma case law, the text of the Oklahoma statute, nor the record of conviction establishes with certainty whether the locational alternatives constitute elements or means.” *Id.* at 698–99 (finding that a charging document specifying the location did not answer the question because such documents often allege non-elemental facts). The court reached a similar conclusion in analyzing Oklahoma’s aggravated assault and battery statute, finding limited significance in

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to be a close call, but ultimately found that the “best reading” of the case law and record of conviction documents was that the statute was indivisible. The court emphasized that the lack of a state supreme court decision clearly signaling divisibility in fact limited the federal court’s ability to find the statute divisible due to the certainty requirement. *Id.*

the fact that the criminal information alleged only one statutory alternative. *See United States v. Winrow*, 49 F.4th 1372, 1380 (10th Cir. 2022). In *United States v. Degeare*, the Tenth Circuit likewise ruled a separate statute indivisible in the face of ambiguity in the record of conviction: “In any event, we need not decide which of the parties’ competing interpretations of the charging documents is correct. We hold only that, whatever the charging documents might have to say about the means-or-elements question in this case, they don’t say it ‘plainly.’” 884 F.3d 1241, 1258 (10th Cir. 2018).

In *Alejos-Perez v. Garland*, the Fifth Circuit found a Texas drug statute indivisible due to uncertainty as to means versus elements. 991 F.3d 642, 651 (5th Cir. 2021). The court found that (1) one state decision read as if the alternative were an element, (2) state double jeopardy cases did not answer the indivisibility question with certainty, and (3) the record of conviction did reference one statutory alternative to the exclusion of all others but also referred to the drug penalty group as a whole. *See id.* In the face of such uncertainty, the court duly recognized that the statute was indivisible. Similarly, in *United States v. Perlaza-Ortiz*, the Fifth Circuit found a Texas statute indivisible where a charging document referenced one statutory alternative to the exclusion of the others. 869 F.3d 375, 378 (5th Cir. 2017). The court found that the document did not meet the demand for certainty, noting

unpublished case law indicating the statutory alternative was a means not an element. *See id.* at 380.

The Sixth Circuit reached a similar conclusion in analyzing a Michigan breaking and entering statute, explaining that “at bottom, record materials will resolve the elements-means dilemma only when they speak plainly” and that “[b]ecause the documents in this case are, at the very most, inconclusive on this score, they cannot form the basis of . . . divisibility.” *United States v. Ritchey*, 840 F.3d 310, 321 (6th Cir. 2016) (examining record of conviction documents that included (1) a charge identifying one location not listed in the statute, (2) a charge alleging breaking and entering into a “BARN/GARAGE,” and (3) offense captions indicating “the term ‘building’ is a placeholder that encompasses a broad swath of locations”) (quoting *Mathis*, 579 U.S. at 519).

In *Lopez-Marroquin v Garland*, the Ninth Circuit found a statute indivisible because “[s]tate law sources and a ‘peek’ at the record [did] not satisfy ‘*Taylor*’s demand for certainty’ when deciding if” an individual “was necessarily convicted of a generic offense.” 9 F.4th 1067, 1073 (9th Cir. 2021) (quoting *Mathis*, 579 U.S. at 518-19). The court found that statutory text gave “no clue on the question of divisibility,” though the court ultimately agreed that the text in combination with the structure “tend[ed]” to support the noncitizen petitioner’s argument that the statute was indivisible. *Id.* at 1072. The court found the state case law conflicting. *See id.* at

1072-73. Because the answer was “not clear,” the court took a “peek” at the record of conviction and found those documents “ambiguous at best” in that they simply restated statutory language. *Id.* at 1073. Accordingly, the court found the statute indivisible.

In *Rosa v. Att’y Gen.*, 950 F.3d 67 (3d Cir. 2020), the Third Circuit acknowledged the certainty requirement in analyzing N.J. Stat. Ann. § 2C:35-7, a different New Jersey CDS statute. After finding that neither state case law nor the statutory language resolved statutory divisibility as to the *actus reus*, the court remanded the case to supplement the incomplete record of conviction materials.<sup>6</sup> *See id.* at 82. The court concluded, “[I]f the record cannot be supplemented to satisfy the demand for certainty in analyzing whether the statute lists means or elements, Rosa cannot be found to have committed an aggravated felony.” *Id.* at 82-83 (internal quotation omitted).

*Amici* urge this Court to affirm the decisions of its sister circuits finding that an ambiguous statute is an indivisible statute.

**2. The criminal rule of lenity further reinforces that ambiguous criminal statutes must be found indivisible.**

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<sup>6</sup> *But see Gayle v. Att’y Gen.*, No. 22-1811, 2023 WL 4077332 (3d Cir. June 15, 2023) (unpublished) (finding §§ 2C:35-5(a)(1) and (b)(1) divisible as to the particular substance).



The certainty requirement for determining divisibility is also supported by the canonical criminal rule of lenity. The “venerable” rule of lenity requires “ambiguous criminal laws to be interpreted in favor of the defendants subjected to them.” *United States v. Santos*, 553 U.S. 507, 514 (2008); *see also United States v. Valle*, 807 F.3d 508, 523 (2d Cir. 2015). It is grounded in principles of fair notice and separation of powers. *See id.*; *see also Ali v. Reno*, 22 F.3d 442, 446 (2d Cir. 1994). The rule is equally applicable when construing a statute with both criminal and civil immigration applications, such as the aggravated felony provision. *See Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8 (2004) (holding that when interpreting a dual-application statute “the rule of lenity applies,” because courts “must interpret the statute consistently, whether [courts] encounter its application in the criminal or noncriminal context”); *see also Carachuri-Rosendo v. Holder*, 560 U.S. 563, 581 (2010) (“[A]mbiguities in criminal statutes referenced in immigration laws should be construed in the noncitizen’s favor.”); *cf. Mendez v. Barr*, 960 F.3d 80, 87 (2d Cir. 2020) (applying the rule of lenity in an analysis of what constitutes a CIMT under the INA).

If federal adjudicators were to conclude that ambiguous state criminal laws are divisible, the consequence would be deprivations of liberty and enhanced criminal penalties for federal defendants and noncitizens. For example, the baseline maximum sentence for a previously removed noncitizen convicted of illegal reentry under 8 U.S.C. § 1326 is two years. *See* 8 U.S.C. § 1326(a). But a noncitizen

previously removed following a conviction that qualifies as an aggravated felony is subject to a ten-fold enhancement of up to twenty years' imprisonment. *See* 8 U.S.C. § 1326(b); *United States v. Resendiz-Ponce*, 549 U.S. 102, 105 (2007). Courts apply the rule of lenity to prevent such an unjust outcome and to “perhaps most importantly” to “serve[] our nation’s strong preference for liberty.” *United States v. Nasir*, 17 F.4th 459, 473 (3d Cir. 2021) (Bibas, J., concurring).

**II. THE BIA MISAPPLIED THE “PEEK” AT THE RECORD OF CONVICTION IN *LAGUERRE* AND DREW AN INCORRECT CONCLUSION ABOUT NEW JERSEY LAW THAT IS CONTROVERTED BY *SHEPARD* DOCUMENTS FROM PETITIONER’S OWN CASE AND OTHER NEW JERSEY RECORDS.**

The BIA’s “peek” at the record of conviction documents in *Laguerre* suffers from two fatal flaws. First, it is controverted by records of conviction from other New Jersey prosecutions, including Petitioner’s. *See* Appendix B. These record documents show that New Jersey law treats the specific substance as a means of violating the generic controlled dangerous substance element. These documents, at a minimum, introduce ambiguity such that the statutes cannot be found divisible with certainty. The Board’s contrary conclusion, based on part of the record of conviction in one New Jersey prosecution, was incorrect.

Second, the BIA wrongly examined the record of conviction document or documents in *Laguerre*. The Board concluded that because one substance was mentioned, New Jersey law must mandate the specific substance is an element. This

is contrary to *Mathis*. Where a statutory alternative is exclusively identified in a record of conviction, *Mathis* requires more to conclude that the statutory alternative is an element. Without more certain indication, the statute is presumed indivisible. In *Laguerre*, the Board was wrong to hold otherwise.

**A. Record of conviction documents show with certainty that the particular substance is a means of violating New Jersey law, not an element.**

After finding that state case law did not answer divisibility with certainty, the BIA in *Laguerre* conducted a “peek” at Mr. Laguerre’s record of conviction to reach its divisibility holding. 28 I. & N. Dec. at 447. In conducting this “peek”, the BIA wrote only the following two sentences:

The indictment in the respondent’s case reflects that he was charged with possessing the controlled dangerous substance of cocaine. Because this charging document “referenc[es] one alternative [controlled dangerous substance] to the exclusion of all others,” the *Mathis* “peek” supports our view that the identity of the controlled dangerous substance possessed is an “element” of section 2C:35-10(a)(1), as opposed to a “means” of violating the statute.

28 I. & N. at 447. Without further analysis, the BIA concluded that because the indictment in Mr. Laguerre’s case referenced “cocaine,” the specific substance is an element of section 2C:35-10(a)(1).

This hasty conclusion is clearly controverted by Petitioner’s own record of conviction documents as well as records of other New Jersey prosecutions. *See*

Appendix B. *Shepard* documents that use an umbrella term or list multiple statutory alternatives definitively prove indivisibility. *See Mathis*, 579 U.S. at 519; *see infra* Section II.B. Evidence that the state allows such charges and convictions proves that juror unanimity as to one specific statutory alternative is not required. Both Petitioner’s record of conviction and *Shepard* documents from other New Jersey cases reflect these two scenarios contemplated in *Mathis* and show with certainty that New Jersey does not treat the specific substance as an element.

**1. New Jersey case law confirms that a single count cannot contain multiple alternative elements.**

Were the specific substance an element, multiple substances could not be included under a single count, as that would violate New Jersey’s rule against duplicity of charges. As the Supreme Court of New Jersey has ruled, “[i]t is well settled in this State that separate and distinct offenses cannot be charged in the same count of an indictment.” *State v. New Jersey Trade Waste Ass’n*, 96 N.J. 8, 21 (1984). *See also State v. Jeannotte-Rodriguez*, 469 N.J. Super. 69, 99 (App. Div. 2021) (finding two offenses under N.J. Stat. Ann. § 2C:21-20 charged in a single count to be duplicitous as they are “separate and distinct because they have different elements and require different proofs”) (cleaned up). A duplicitous charge—one that contains separate offenses in a single count—“is unacceptable because it prevents the jury from deciding guilt or innocence on each offense separately and may make it difficult to determine whether the conviction rested on only one of the offenses or

both.” 5 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 19.3(d) Duplicity (4<sup>th</sup> ed.). Duplicitous indictments threaten defendants’ constitutional rights to a unanimous verdict, an appropriate sentence, and adequate judicial review. *Id.* (stating that “duplicity can result in prejudice to the defendant in the shaping of evidentiary rulings, in producing a conviction on less than a unanimous verdict as to each separate offense, in determining the sentence, and in limiting review on appeal” as well as creating possible double jeopardy concerns); *see also New Jersey Trade Waste Ass’n*, 96 N.J. at 21 (citing the discussion in *United States v. Starks*, 515 F.2d 112, 116–117 (3d Cir. 1975), of prejudice to defendants from duplicitous counts).

Conversely, multiple means of commission can be included within a single count. *See* N.J. Ct. R. 3:7-3 (“It may be alleged in a single count either that the *means* by which the defendant committed the offense are *unknown* or that the defendant committed it by *one or more specified means.*”) (emphasis added)). Therefore, New Jersey law makes clear that if multiple statutory alternatives are contained within a single count, the alternative must be a means of commission.

**2. New Jersey record of conviction documents containing umbrella terms and multiple possible controlled substances within a single count controvert the BIA’s conclusion in *Laguerre*.**

Petitioner’s own judgment of conviction (“JOC”) and the associated indictment demonstrate that a single charge and resulting conviction can permissibly

(1) identify a different drug than charged, (2) identify multiple substances within a single count, or (3) employ the generic umbrella term. *See* A.R. 96-100.

<u>Petitioner's Indictment</u> <u>08-10-01732-I</u>	<u>Petitioner's Judgment of Conviction</u> <u>08-10-01732-I</u>
-charging, under each of three counts, actions related to “ <b>a controlled dangerous substance, or its analog, namely 3, 4-METHYLENEDIOXYMETHAM PHETAMINE (MDMA) “ECSTASY”</b> .” A.R. 99-100 (emphasis added).	- charges and a conviction for violations of §2C:35-5(a)(1) as “ <b>MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS.</b> ” A.R. 96 (emphasis added).  -charge and conviction for violation of §2C:35-(b)(1) as “ <b>CDS – MANU/DIST/PWID – HEROIN/COCAINE - =&gt; 5OZ.</b> ” <i>Id.</i>  -charges for violations of §2C:35-(b)(2) as “ <b>CDS...HEROIN/COCAINE - .5OZ TO &lt;5OZ.</b> ” <i>Id.</i>

The record documents do not actually identify a specific drug “to the exclusion of all others.” *Mathis*, 579 U.S. at 519. Petitioner’s JOC uses a generic umbrella term (controlled dangerous substance or “CDS”) and identifies multiple possible substances (heroin/cocaine) under the relevant subsection. Petitioner’s indictment in turn uses an umbrella term and, after a videlicet,<sup>7</sup> identifies a different

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<sup>7</sup> Words such as “to wit” or “namely” are called the “videlicet.” Videlicets “point out, particularize, or render more specific that which has been previously stated in general . . . language.” Videlicet, Black’s Law Dictionary (11th ed. 2019). A videlicet is often used to separate the charged offense from the supporting facts. *See State v. Callary*, 159 A. 161, 161-62 (N.J. 1932) (noting the words “dwelling house and store” specified after “to wit” were merely “parenthetical identification of the building” and incidental to the charged offense).

substance (MDMA) from either of the possible substances named in the JOC (heroin/cocaine). As such, Petitioner’s own case reflects that, where included, a particular substance is simply an underlying fact specified to fulfill the essential element of the existence of *a* controlled dangerous substance and comply with required procedural protections. *See* Section II.B., *infra*.

Additional New Jersey *Shepard* documents (JOCs, indictments, and accusations)<sup>8</sup> reflect failure to identify any particular substance in addition to charging multiple substances in a single count and using umbrella terms.<sup>9</sup> Multiple

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<sup>8</sup> “Accusations” and “Indictments” are both charging documents under New Jersey law. *See* N.J. Ct. R. 3:7-2.

<sup>9</sup>The Court should take judicial notice of these record of conviction documents. *Mathis* specifically lists record of conviction materials as a source to aid in the means-elements determination. 579 U.S. at 518-19. *Amici* submit both charging documents and the associated judgments of conviction in order to aid in the means-elements determination. *Cf. Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (“[C]ourts routinely take judicial notice of documents filed in other courts . . . to establish the fact of such litigation and related filings.”); *Matthews v. Barr*, 927 F.3d 606, 625 (2d Cir. 2019) (Carney, J., dissenting) (disagreeing with the majority’s decision not to consider “the full spectrum of publicly available data and evidence of prosecutions under the statute”). The fact of these charges and convictions are “not subject to reasonable dispute” as they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” including an online system of court records available to attorneys licensed in New Jersey, and were submitted into the administrative record by the government in prior cases. Fed. R. Evid. 201(b)(2); *see* Appendix C, Marritz Declaration ¶¶ 2-6; *see also Vurimindi v. Att’y Gen.*, 46 F.4th 134, 147 (3d Cir. 2022) (conducting, while doing a “peek” at the record in a divisibility analysis, a survey of record of conviction documents obtained from a Pennsylvania court portal); *but see Matthews v. Barr*, 927 F.3d 606, 622 (2d Cir. 2019) (in the realistic

charging documents fail to specify a specific substance, even with use of a videlicet after an umbrella term. *See* Appendix B-1; Appendix B-3; Appendix B-5. These charging documents are “as clear an indication as any” that the substances under New Jersey CDS statutes are means of commission, not elements. *Mathis*, 579 U.S. at 519. The following *Shepard* documents are attached at Appendix B:

	<u>New Jersey State Case Name and/or Number</u>	<u>Shepard documents</u>
B-1	<i>State v. M.B.</i> , No. 17-09-00887-A (emphasis added) (JOC and accusation both use umbrella terms and specify multiple alternative substances or categories).	<p>-JOC listing charge and conviction for 2C:35-10(a)(1) as “<b>POSS CDS/ANALOG - SCHD I II III IV.</b>” At B3.</p> <p>-JOC listing charge for 2C:35-5 as “<b>MANUF/DISTR CDS-HEROIN/METH/LSD.</b>” <i>Id.</i></p> <p>-Waiver of indictment and accusation charging 2C:35-10(a)(1) for “<b>POSSESSION OF CDS (SCHEDULE I, II, III, OR IV).</b>” At B5-6.</p>
B-2	<i>State v. M.B.</i> , No. 10-11-101074-A (emphasis added) (JOC uses umbrella terms or identifies entire schedules, accusation uses umbrella term and videlicet).	<p>-JOC listing charge and conviction under 2C:35-5 as “<b>POSSESSION CDS WITH INTENT TO DISTRIBUTE.</b>” At B8, B11.</p> <p>-JOC listing charge under 2C:35-10 as “<b>POSSESSION CDS.</b>” At B8.</p>

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probability context, declining to consider documents outside of the administrative record).



		-Accusation charging 2C:35-10(a)(1) under count 7 and 2C:35-5 under count 8 for “a <b>controlled dangerous substance, namely PERCOCET.</b> ” At B19-20.
B-3	No. 04- [redacted] (emphasis added) (accusation uses umbrella term and specifies multiple substances)	-Accusation charging 2C:35-5(a)(1), for “intent to distribute a <b>controlled dangerous substance, namely, heroin and/or cocaine.</b> ” At B23.
B-4	<i>State v. R.G.</i> , No. 15-03-00180-I (emphasis added) (JOC and indictment both use umbrella terms, indictment uses videlicet.)	<p>- JOC showing 2C:35-5(b)(1) charge for “MANUF/DISTR <b>CDS OR INTENT TO MANUF/DISTR CDS</b>” and conviction for “<b>CDS - MANU/DIST/PWID - HEROIN/COCAINE - =&gt; 5OZ.</b>” At B26.</p> <p>-JOC charging 2C:35-10(a)(1) for “<b>POSS CDS/ANALOG - SCHD I II III IV.</b>” At B29.</p> <p>-Indictment count six charging possession with intent to distribute “a <b>Controlled Dangerous Substance, namely Heroin.</b>” At B38.</p>
B-5	<i>State v. A.A.</i> , No. 16-06-00388-I (emphasis added) (JOC and indictment both use umbrella terms and specify multiple alternative substances).	<p>- JOC listing charge and conviction for 2C:35-10(a)(1) as “<b>POSS CDS/ANALOG - SCHD I II III IV.</b>” At B48.</p> <p>- JOC listing charge and conviction for 2C:35-5(a)(1) as “<b>MANUF/DISTR CDS</b>”, and for 2C:35- 5(b)(3) as “<b>CDS - MANU/DIST/PWID - HEROIN/COCAINE - &lt; .5OZ.</b>” At B48.</p> <p>-Indictment count one charging under section 35-10(a)(1) for “a <b>controlled</b></p>

		<b>dangerous substance, namely, Heroin, Schedule I, and/or Pentylone, Schedule I, and/or Cocaine, Schedule II,”</b> and count 3 charging under 2C:35- 5(b)(3) for <b>“Heroin, Schedule I, and/or Pentylone, Schedule I, and/or Cocaine, Schedule II.”</b> At B53.
B-6	<i>State v. U.C.</i> , No. 13-09-02295-I (emphasis added) (JOC uses umbrella terms or identifies entire schedules)	-JOC listing original charge and ultimate conviction for 2C:35-10(a)(1) as <b>“POSS SCHD I II III IV.”</b> At B56.  -JOC listing charge for 2C:35-5(a)(1) as <b>“POSS/DIST/MANUFACTURING/DISPENSING OF CDS.”</b> <i>Id.</i>
B-7	<i>State v. [redacted]</i> , No. 18-10-00609-I (emphasis added) (JOC uses umbrella terms and specifies multiple alternative substances)	- JOC listing charges for 2C:35-10(a)(1) as <b>“POSS CDS/ANALOG-SCHD I II III IV.”</b> At B59.  -JOC listing charges for 2C:35-5(a)(1) as <b>“MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS,”</b> and for 2C:35-5(b)(3) as <b>“CDS - MANU/DIST/PWID - HEROIN/COCAINE - &lt; .5OZ.”</b> <i>Id.</i>
B-8	<i>State v. M.C.</i> , No. 19-04-00313-A (emphasis added) (JOC uses umbrella terms and identifies multiple substances, accusation uses umbrella term and videlicet)	-JOC listing charges for 2C:35-10(a)(1) as <b>“POSS CDS/ANALOG-SCHD I II III IV.”</b> At B64.  -JOC listing charges and conviction for 2C:35-5(a)(1) as <b>“MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS”</b> and 2C:35-5(b)(2) as <b>“CDS - MANU/DIST/PWID - HEROIN/COCAINE - .5OZ TO &lt; 5OZ.”</b> <i>Id.</i>

		-Accusation charging 2C:35-5(a)(1) and 2C:35-5(b)(2) for possessing “a <b>controlled dangerous substance, namely, Cocaine.</b> ” At B67.
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Because these documents demonstrate that someone can be charged and convicted without specifying a single substance, they demonstrate that the substance is a means of commission, not an element. In the alternative, at minimum they expose that the document the Board relied on in *Laguerre* does not meet the categorical approach’s demand for certainty. *See supra*, Sections I-II; *see also Najera-Rodriguez*, 926 F.3d at 356; *Hamilton*, 889 F.3d at 698; *Degeare*, 884 F.3d at 1258; *Alejos-Perez*, 991 F.3d at 651 *Perlaza-Ortiz*, 869 F.3d at 378; *Ritchey*, 840 F.3d at 321; *Lopez-Marroquin*, 9 F.4th at 1073.

**B. The BIA’s “peek” at Mr. Laguerre’s record of conviction was methodologically and legally flawed, and caused an incorrect conclusion that violates New Jersey law and the categorical approach.**

The BIA’s cursory “peek” at the record of conviction documents in *Laguerre*, which formed the basis of its decision, noted only that the noncitizen’s indictment mentioned a specific substance. 28 I. & N. Dec. at 447. This misunderstands what an “element” is under the categorical approach and is the kind of flawed methodology the Supreme Court specifically prohibits, as it ignores relevant state law regarding independent reasons for identifying the means of commission of an offense in a charging document. A review of relevant federal and state law makes

clear that where a statutory alternative is exclusively identified in a record of conviction, further analysis is needed to confirm divisibility with certainty. In discussing the concept of the “peek” at the record of conviction at the indivisibility/divisibility step of the categorical approach, it is apparent that the *Mathis* court envisioned a circumstance where state law is inconclusive, and record of conviction documents “help in making that [means-elements] determination.” 579 U.S. at 518 n.7. The Court by no means meant that the mention of a single statutory alternative in a charging document suffices to resolve divisibility. The Court had already rejected this suggestion in *Descamps*. See 570 U.S. at 270 (discussing that facts stated in the record of conviction—such as, what “a defendant admitted in a plea colloquy, or a prosecutor showed at trial”— may nevertheless be “unnecessary to the crime of conviction” and therefore not elements). Rather, the Court was indicating that *Shepard* documents might be structured or written in a way that interacts with state law sources to provide a clear answer regarding means-or-elements. The Court discussed three possibilities.

First, a scenario where the “peek” would be “as clear an indication as any” that the statute is indivisible. *Mathis*, 579 U.S. at 519. The Court gives the example of “one count of an indictment and correlative jury instructions charg[ing] a defendant with burgling a ‘building, structure, or vehicle’—thus reiterating all the alternative statutory terms of” an Iowa burglary statute. *Id.*

Second, another scenario where indivisibility is clear: where the *Shepard* “documents use a single umbrella term like ‘premises.’” *Mathis*, 579 U.S. at 519. Such a “record *would* then reveal what the prosecutor has to (and does not have to) demonstrate to prevail.” *Id.* (citing *Descamps*, 570 U.S. at 272) (emphasis added).

Third, the Court gave a final example of “an indictment *and* jury instructions” that “referenc[e] one alternative term to the exclusion of all others.” *Mathis*, 579 U.S. at 519 (emphasis added). Such a record of conviction “*could* indicate” “that the statute contains a list of elements.” *Id.* (emphasis added). But the Court cautions that this is an example of a record of conviction with especially plain meaning, which will not always be the case. *See id.* Thus, the Court recognized that identification of a single statutory alternative does not *automatically* mean that the alternative is an element rather than a means of violating a statute.

This third scenario requires further analysis because statutory alternatives are frequently identified in records of conviction for reasons unrelated to the means-or-elements distinction. For example, non-element facts are included to provide sufficient notice to a defendant to mount a defense. *See* LaFave et al., Criminal Procedure § 19.3(c) Factual Specificity (“As courts repeatedly note, an indictment [or information] must not only contain all the elements of the offense charged, but must also provide the accused with a sufficient description of the acts he is alleged

to have committed to enable him to defend himself adequately.”) (internal quotation omitted).

*Descamps* “demonstrate[d]” the very “point” that the mention of a fact or term in a *Shepard* document does not automatically render the fact or term an element of conviction. *Descamps*, 570 U.S. at 268. In that case, the government tried to rely on an admission to “breaking and entering” in Mr. Descamps’s plea colloquy, arguing that the reliability of record of conviction documents overrode the fact that it agreed the manner of unlawful entry was not an element of the offense. See Brief of Respondent-Appellee at 34, 49, *Descamps v. United States*, 570 U.S. 254 (2013), available at <https://tinyurl.com/2x4tp6af> (February 2, 2024). Rejecting this view, the Court found that non-elemental facts contained in record of conviction documents cannot be considered under the categorical approach regardless of the reliability of such documents. See *Descamps*, 570 U.S. at 268 (“At most, the colloquy showed that Descamps committed generic burglary, and so hypothetically could have been convicted under a law criminalizing that conduct. But that is just what we said, in *Taylor* and elsewhere, is not enough.”).

*Laguerre*’s “peek” to find divisibility therefore violated *Mathis* and *Descamps*. The BIA did not review a complete record of conviction or explain how the single document affirmed its conclusion under New Jersey law. It did not address the authoritative sources of state law that cause the routine inclusion of non-

elemental facts in *Shepard* documents. *See, e.g.*, N.J. Ct. R. 3:7-3 (stating a count of indictment can include information about the “means” of commission); *State v. Dorn*, 182 A.3d 938, 946 (N.J. 2018) (stating the New Jersey Constitution requires indictments to include facts to satisfy each element to avoid double jeopardy and to allow the defendant to adequately prepare a defense); *State v. Salter*, 42 A.3d 196, 203 (N.J. Super. Ct. App. Div. 2012) (an indictment must “[set] forth all . . . critical facts and . . . essential elements’ . . . so as to enable defendant to prepare a defense.”) (quoting *State v. Wein*, 404 A.2d 302, 305 (N.J. 1979))).

This Court and sister circuit courts have applied this reasoning about non-elemental facts to find statutes indivisible. *See, e.g.*, *Harbin v. Sessions*, 860 F.3d 58, 66 (2d Cir. 2017) (discounting the probative value of certain New York case law as to means-or-elements because “the values of fair notice and avoidance of double jeopardy often demand that the government specify accusations in ways unrelated to a crime’s elements”); *see also, e.g.*, *Hamilton*, 889 F.3d at 698 (finding Oklahoma statute indivisible due to lack of certainty in part because “charging documents often allege additional facts that are not elements of the crime”); *United States v. Edwards*, 836 F.3d 831, 837 (7th Cir. 2016) (finding Wisconsin statute indivisible in part because under state law “the complaint and information . . . must allege every element of the crime charged, but they may also (and usually do) include additional

facts that need not be proved to the jury beyond a reasonable doubt”). *Laguerre*’s holding is unauthorized by law and must be reversed.

### **CONCLUSION**

Using flawed methodology, the BIA in *Matter of Laguerre* incorrectly concluded that N.J. Stat § 2C:35-10(a)(1) is divisible by substance and subject to the modified categorical approach. The BIA’s decision and its application to Petitioner’s case violate the Supreme Court’s categorical approach precedents demanding certainty as to the elements of conviction for immigration consequences to trigger, and both violate and misunderstand New Jersey criminal law. *Amici* respectfully urge this Court to overturn *Laguerre* and grant the petition for review to avoid unauthorized consequences for New Jersey noncitizens and defendants.

Dated: New York, NY  
February 9, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure, I, Amelia Marritz, hereby certify that this brief complies with the type-volume limitation in Rule 32(a)(7)(B). As measured by the word processing system used to prepare this brief, this brief contains 6,954 words.

Dated: February 9, 2024

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I, Amelia Marritz, Attorney for *Amici Curiae*, certify that I served the forgoing BRIEF OF THE AMERICAN IMMIGRATION COUNCIL, CAPITAL AREA IMMIGRANTS' RIGHTS COALITION, HIAS PENNSYLVANIA, IMMIGRANT DEFENSE PROJECT, THE NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, NATIONALITIES SERVICE CENTER, PENNSYLVANIA IMMIGRATION RESOURCE CENTER, AND PROFESSORS KATE EVANS AND JOANNE GOTTESMAN AS *AMICI CURIAE* IN SUPPORT OF PETITIONER, and attachments, electronically via ECF, pursuant to L.A.R. 25.1 and L.A.R. Misc. 113.4, on:

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February 9, 2024

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Immigrant Defense Project  
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Attorney for *Amici Curiae*

## **APPENDIX VOLUME I**

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**23-6590**

**APPENDIX A**

**STATEMENTS OF  
INTEREST OF *AMICI  
CURIAE***

Amicus **American Immigration Council** is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the just and fair administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council regularly litigates and advocates around issues involving the intersection of criminal and immigration law.

Amicus **Capital Area Immigrants' Rights (CAIR) Coalition** ("CAIR Coalition") is a nonprofit legal services provider that represents noncitizen adults and children, including individuals with prior contact with the criminal justice system, who are facing detention and removal proceedings. The outcome in this case is central to CAIR Coalition's ongoing mission to advance the rights and dignity of all immigrants and increase access to pro bono representation in an area of critical legal need at the intersection of criminal and immigration law. CAIR Coalition provides legal services to noncitizens detained across the Third, Fourth, and Eleventh Circuits. Therefore, CAIR Coalition has a strong interest in this Court's fair and consistent application of the categorical approach and divisibility analysis.

Amicus **HIAS Pennsylvania** ("HIAS PA") is a not-for-profit legal services and refugee resettlement agency that supports low-income immigrants of all

backgrounds as they build new lives in Pennsylvania. HIAS PA's attorneys and other legal staff regularly advocate for immigrants with criminal records applying for immigration benefits and relief before the Citizenship and Immigration Service (USCIS) and Immigration Courts. HIAS PA seeks to ensure that its clients are given full due process of law in how the federal courts and administrative agencies evaluate the impact of criminal convictions on non-citizens' eligibility to obtain and maintain legal status in the United States.

Amicus **Immigrant Defense Project** Immigrant Defense Project (IDP) is a not-for-profit legal resource and training center dedicated to promoting fundamental fairness for immigrants having contact with the criminal legal and immigration deportation systems. IDP provides defense attorneys, immigration attorneys, immigrants, and judges with expert legal advice, publications, and training on issues involving the interplay between criminal and immigration law. IDP seeks to improve the quality of justice for immigrants accused of crimes and therefore has a keen interest in ensuring that immigration law is correctly interpreted to give noncitizens the full benefit of their constitutional and statutory rights. IDP has submitted amicus curiae briefs in many key cases before the U.S. Supreme Court and Courts of Appeals involving the interplay between criminal and immigration law and the rights of immigrants in the criminal legal and immigration systems. *See, e.g.,* *Pereida v. Wilkinson*, 141 S. Ct. 754 (2021);

*Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017); *Mathis v. United States*, 579 U.S. 500 (2016); *Padilla v. Kentucky*, 559 U.S. 356 (2010); *Leocal v. Ashcroft*, 543 U.S. 1 (2004); *I.N.S. v. St. Cyr*, 533 U.S. 289, 322–23 (2001) (citing IDP brief).

Amicus **National Immigration Project of the National Lawyers Guild (NIPNLG)** is a national membership organization of lawyers, law students, legal workers, advocates, and jailhouse lawyers working to defend and extend the rights of all noncitizens in the United States, regardless of immigration status. NIPNLG pursues all forms of legal advocacy on behalf of immigrants and provides technical assistance, training, and support to legal practitioners, community-based immigrant organizations, and advocates working to advance the rights of noncitizens.

NIPNLG is also the author of *Immigration Law and Crimes* (Summer 2022 ed.) and three other treatises published by Thomson-West. NIPNLG has participated as *amicus* in several significant immigration related cases before the U.S. Supreme Court, the courts of appeals, and the Board of Immigration Appeals. *See, e.g., United States v. Palomar-Santiago*, 141 S. Ct. 1615 (2021); *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020); *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018); *Mathis v. United States*, 579 U.S. 500 (2016); *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010); *Nijhawan v. Holder*, 557 U.S. 29 (2009); *Lopez v.*



*Gonzales*, 549 U.S. 47 (2006); *Leocal v. Ashcroft*, 543 U.S. 1 (2004); and *I.N.S. v. St. Cyr*, 533 U.S. 289 (2001).

Amicus **Nationalities Service Center** (NSC) has been serving refugees and immigrants in the greater Philadelphia area for over 100 years. As part of this work, NSC has provided legal representation to non-citizens since the 1950s and NSC has maintained a decade long relationship with the Defender Association of Philadelphia in providing legal advice to non-citizens charged with criminal convictions. NSC attorneys often represent residents of New Jersey. As such, NSC is both interested in greater clarity on this issue under the New Jersey statute, as well as how these issues touch similar provisions of Pennsylvania law.

Since its inception in 1996, amicus **The Pennsylvania Immigration Resource Center (PIRC)**, has been the primary provider of legal services to immigrants in ICE custody in Central Pennsylvania. PIRC zealously represents vulnerable persons, people unable to represent themselves due to mental incapacity by assignment through the National Qualified Representative Program (NQRP), and under merits-blind selection through PIRC's participation in the Pennsylvania Immigrant Family Unity Project, Pennsylvania's first publicly funded defense counsel project for detained immigrants. PIRC regularly litigates around issues involving the intersection of criminal and immigration law.

Amicus **Kate Evans** is a Clinical Professor of Law and the Director of the Immigrant Rights Clinic at the Duke University School of Law (for identification purposes only).

Amicus **Joanne Gottesman** directs the Immigrant Justice Clinic at Rutgers Law School (for identification purposes only).

# 23-6590

## Appendix B

### Shepard Documents from New Jersey State Prosecutions

## **Appendix B-1**

**No. 17-09-0087-A**



## Judgment of Conviction

## Superior Court of New Jersey, HUDSON County

State of New Jersey v.

Last Name

First Name

Middle Name

Also Known As

Date of Birth

SBI Number

Date(s) of Offense

08/04/2017

Date of Arrest

PROMIS Number

17 004038-001

Date Ind / Acc / Complt Filed

09/25/2017

Original Plea

☐ Not Guilty☐ Guilty

Date of Original Plea

Adjudication By



Guilty Plea



Jury Trial Verdict



Non-Jury Trial Verdict



Dismissed / Acquitted

Date: 09/25/2017

## Original Charges

Ind / Acc / Complt	Count	Description	Statute	Degree
17-09-00887-A	1	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
W-2017-003995-0906	1	POSS CDS - < 50G MARIJUANA, 5G-HASHISH	2C:35-10A(4)	DP
W-2017-003995-0906	2	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
W-2017-003995-0906	3	MANUF/DISTR CDS-HEROIN/METH/LSD <1/2OZ/ETC	2C:35-5A(1)	3
W-2017-003995-0906	4	MANUF/DISTR CDS-HEROIN/METH/LSD <1/2OZ/ETC	2C:35-5A(1)	3
W-2017-003995-0906	5	MANUF/DISTR CDS-HEROIN/METH/LSD <1/2OZ/ETC	2C:35-5A(1)	3
W-2017-003995-0906	6	POSS/DIST WITHIN 500 FT CERTAIN PUBLIC PROPERTY	2C:35-7.1A	2

(Cont...)

## Final Charges

Ind / Acc / Complt	Count	Description	Statute	Degree
17-09-00887-A	1	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3

## Sentencing Statement

It is, therefore, on 10/27/2017

ORDERED and ADJUDGED that the defendant is sentenced as follows:

Count 1 : The defendant is sentenced to Probation for a period of 2 years with the following special conditions: (1) obtain and maintain gainful employment; (2) Counseling as required by probation; (3) remain drug free; (4) forfeit \$712.00, seized on 8/4/17.

Dismissals: Underlying co. W-2017-3995-0906, count 1, 3rd degree. MV tickets 0906-9-532354; 532355 and 532356.

Defendant has 45 days Right to Appeal Sentence.

B [REDACTED] MA [REDACTED]

S.B.I. #

Ind / Acc / Compl # 17-09-00887-A

## Time Credits

<b>Time Spent in Custody</b>	<b>Gap Time Spent in Custody</b>	<b>Prior Service Credit</b>
R. 3:21-8 Date: From - To	N.J.S.A. 2C:44-5b(2) Date: From - To	Date: From - To
08/04/2017 - 08/05/2017	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
Total Number of Days	Total Number of Days	Total Number of Days
2		
<b>Rosado Time</b>		
Date: From - To		
-		
-		
-		
-		
-		
Total Number of Days	Total Number of Days	Total Number of Days

Statement of Reasons - Include all applicable aggravating and mitigating factors

**AGGRAVATING FACTORS**

3. The risk that the defendant will commit another offense.
9. The need for deterring the defendant and others from violating the law.

### MITIGATING FACTORS

10. The defendant is particularly likely to respond affirmatively to probationary treatment.

Mitigating factors outweigh the Aggravating factors.

Attorney for Defendant at Sentencing MARSHALL J WOFSY	Public Defender <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Prosecutor at Sentencing JOHN WOJTAL	Deputy Attorney General <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Judge at Sentencing PAUL M. DEPASCALE, J.S.C.	

B4

HUDSON COUNTY  
CRIMINAL DIVISION

**B5**

Superior Court of New Jersey  
HUDSON COUNTY  
CRIMINAL DIVISION

THE STATE OF NEW JERSEY

) ACCUSATION  
)  
)  
) for  
) POSS CDS/ANALOG - SCHD I II III IV  
) (3RD Degree)  
)  
)

VS.

M [REDACTED] B [REDACTED]

Accusation No. 887-17  
Complaint No. W-2017-003995-0906  
File No. 17004038

THE STATE OF NEW JERSEY )

) ss:

COUNTY OF HUDSON )

M [REDACTED] B [REDACTED] having been charged upon oath, before a Judge in the said County of Hudson, with POSSESSION OF CDS (SCHEDULE I, II, III, OR IV) (3RD Degree) and having in writing, addressed to the County Prosecutor of said County, waived indictment and trial by jury, and requested to be tried upon said charge, and request having been duly reported and granted:



## **Appendix B-2**

**No. 10-11-101074-A**



# Judgment of Conviction & Order for Commitment

## Superior Court of New Jersey, ESSEX County

State of New Jersey

v.

Last Name

B [REDACTED]

First Name

M [REDACTED]

Middle Name

Also Known As

Date of Birth

SBI Number

Date(s) of Offense

10/05/2010

Date of Arrest

10/05/2010

PROMIS Number

10 007275-001

Date Ind / Acc / Compl't Filed

11/12/2010

Original Plea

☐ Not Guilty☒ Guilty

Date of Original Plea

11/12/2010

Adjudication By

☒ Guilty Plea☐ Jury Trial Verdict☐ Non-Jury Trial Verdict☐ Dismissed / Acquitted

Date: 11/12/2010

**Original Charges**

Ind / Acc / Compl't	Count	Description	Statute	Degree
10-11-01074-A	1	PRESCRIPTION LEGEND DRUGS NOT IN ORIG CONTAINER	2C:35-10.5	3
10-11-01074-A	2	TO OBTAIN OR ATTEMPT TO OBTAIN PRESC DRUGS BY DECEPTION	2C:35-10.5D	4
10-11-01074-A	3	OBTAIN CDS BY FRAUD	2C:35-13	3
10-11-01074-A	4	THEFT BY DECEP-FALSE IMPR	2C:20-4A	3
10-11-01074-A	5	RECEIVING STOLEN PROPERTY	2C:20-7	3
10-11-01074-A	6	FORGERY-ELEMENTS	2C:21-1A	3
10-11-01074-A	7	POSSESSION CDS	2C:35-10	3

(Cont...)

**Final Charges**

Ind / Acc / Compl't	Count	Description	Statute	Degree
10-11-01074-A	3	OBTAIN CDS BY FRAUD (percodet)	2C:35-13	3
10-11-01074-A	6	POSSESSION CDS WITH INTENT TO DISTRIBUTE	2C:35-5	3

**Sentencing Statement**

It is, therefore, on 02/14/2011 **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

**COUNT 3:** DEFENDANT IS HEREBY SENTENCED TO TIME SERVED, WHICH IS TWENTY-SIX (26) DAYS AT THE ESSEX COUNTY JAIL. DEFENDANT IS PLACED ON PROBATION FOR A TERM OF 3 YEARS. FURTHER CONDITION DEFENDANT SHALL OBTAIN/MAINTAIN EMPLOYMENT; ENROLL IN DRUG/ALCOHOL TREATMENT PROGRAM; DRUG/ALCOHOL TESTING; AND SERVE 150 HOURS COMMUNITY SERVICE.

**COUNT 6:** DEFENDANT IS HEREBY SENTENCED TO TIME SERVED, WHICH IS TWENTY-SIX (26) DAYS AT THE ESSEX COUNTY JAIL. DEFENDANT IS PLACED ON PROBATION FOR A TERM OF 3 YEARS. FURTHER CONDITION DEFENDANT SHALL OBTAIN/MAINTAIN EMPLOYMENT; ENROLL IN DRUG/ALCOHOL TREATMENT PROGRAM; DRUG/ALCOHOL TESTING; AND SERVE 150 HOURS COMMUNITY SERVICE. THIS SENTENCE TO RUN CONCURRENT TO COUNT 3.

JAIL \_\_\_\_\_ P.D. ☒ \_\_\_\_\_  
 PROB. \_\_\_\_\_ A.D.C. \_\_\_\_\_ D.C. \_\_\_\_\_  
 PAROLE \_\_\_\_\_ P.S.L. \_\_\_\_\_ OTHER **MV** ☒

**TRUE COPY** B8

☒ It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

State of New Jersey v.

B [REDACTED] M [REDACTED]

S.B.I. # [REDACTED] Ind / Acc / Compl # 10-11-01074-A

**DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)**

A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)

☐ DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))

	Standard	Doubled
1st Degree	_____ @ \$	_____ @ \$
2nd Degree	_____ @ \$	_____ @ \$
3rd Degree	2 @ \$ 1,000.00	_____ @ \$
4th Degree	_____ @ \$	_____ @ \$
DP or	_____ @ \$	_____ @ \$
Petty DP	_____ @ \$	_____ @ \$

Total DEDR Penalty \$ 2,000.00

☐ The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)

Forensic Laboratory Fee (N.J.S.A. 2C:35-20)

Total Lab Fee

2 Offenses @ \$ 50.00

\$ 100.00

**VCCA Assessment (N.J.S.A. 2C:43-3.1)**

Counts	Number	Amount
3, 6	2 @	\$ 50.00
	@	\$
	@	\$
	@	\$

Total VCCA Assessment \$ 100.00

**Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)**

Offense	Mandatory Penalty
	\$

**Other Fees and Penalties**

Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)

☒ \$ 30.00

Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2)

☒ 2 Offenses @ \$ 75.00

Total: \$ 150.00

Probation Supervision Fee (N.J.S.A. 2C:45-1d)

☒ \$ 25.00

Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)

☐ Offenses @ \$

Total \$

Transaction Fee (N.J.S.A. 2C:46-1.1)

☒ \$

Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)

☐ \$

Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)

☐ \$

Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)

☐ \$

Fine

\$

Restitution

\$

Total Financial Obligation

\$ 2,380.00

**Additional Conditions**

- ☒ The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20).
- ☐ The defendant is hereby sentenced to community supervision for life. (If offense occurred before 1/14/04) (N.J.S.A. 2C:43-6.4)
- ☐ The defendant is hereby sentenced to parole supervision for life. (If offense occurred on or after 1/14/04) (N.J.S.A. 2C:43-6.4)
- ☐ The defendant is hereby ordered to serve a \_\_\_\_\_ year term of parole supervision, which term shall begin as soon as defendant completes the sentence of incarceration. (N.J.S.A. 2C:43-7.2)
- ☐ The court imposes a restraining order pursuant to DORA. (N.J.S.A. 2C:35-5.7(h)). Restraining Order expires \_\_\_\_\_

**Findings Per N.J.S.A. 2C:47-3**

- ☐ The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- ☐ The court finds that the defendant is amenable to sex offender treatment.
- ☐ The court finds that the defendant is willing to participate in sex offender treatment.

**License Suspension**

- ☒ CDS / Paraphernalia (N.J.S.A. 2C:35-16) ☐ Waived
- ☐ Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)
- ☐ Eluding (N.J.S.A. 2C:29-2)
- ☐ Other \_\_\_\_\_

Number of Months

12

☐ Non-resident driving privileges revoked

Start Date

02/14/2011

End Date

02/14/2012

Details

Driver's License Number

Jurisdiction

If the court is unable to collect the license, complete the following:  
Defendant's Address

78 MAPLE AVENUE, 1ST FL.

City  
IRVINGTON

State  
NJ

Zip  
07111-0000

Date of Birth

08/26/1983

Sex

☒ M ☐ F

Eye Color

BROWN

Details  
TRANS FEE \$2

State of New Jersey v.

B. [REDACTED] M. [REDACTED]

S.B.I. # [REDACTED] Ind / Acc / Complt # 10-11-01074-A

**Time Credits****Time Spent in Custody**

R. 3:21-8

Date: From - To  
 10/05/2010 - 10/17/2010  
 11/01/2010 - 11/13/2010

Total Number of Days 26

**Gap Time Spent in Custody**

N.J.S.A. 2C:44-5b(2)

Date: From - To

Total Number of Days

**Rosado Time**

Date: From - To

Total Number of Days

**Prior Service Credit**

Date: From - To

Total Number of Days

**Statement of Reasons - Include all applicable aggravating and mitigating factors****AGGRAVATING FACTORS**

3. The risk that the defendant will commit another offense.
9. The need for deterring the defendant and others from violating the law.

**MITIGATING FACTORS: NONE**

THE COURT FINDS THAT THE AGGRAVATING FACTORS OUTWEIGHS THE NON-EXISTENT MITIGATING FACTOR.

**Form Prepared By**

SHEILA VAZQUEZ

**Preparer Telephone Number**

(973) 693-5991

**Attorney for Defendant at Sentencing**

SUSAN FREEDMAN

**Public Defender**☒ Yes ☐ No**Prosecutor at Sentencing**

LYNNE BORASIO

**Deputy Attorney General**☐ Yes ☒ No**Judge at Sentencing**

RONALD D. WIGLER

**Judge (Signature)**

B10

Date

State of New Jersey v.

E. M.

S.B.J. # Ind / Acc / Compl # 10-11-01074-A

## Continuation

## ORIGINAL CHARGES (Cont:)

Ind / Acc / Compl	Count	Description	Statute	Degree
10-11-01074-A	8	POSSESSION CDS WITH INTENT TO DISTRIBUTE	2C:35-5	3
10-11-01074-A	9	POSS/DIST WITHIN 500 FT PUB HOUSING FACILITY	2C:35-7.1	2

ROBERT D. LAURINO  
ACTING ESSEX COUNTY PROSECUTOR  
ESSEX COUNTY VETERANS COURTHOUSE  
NEWARK, NEW JERSEY 07102  
(973) 621-4700

STATE OF NEW JERSEY,

PLAINTIFF,

vs.

M. [REDACTED] B. [REDACTED]

DEFENDANT.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY  
P#: 10007275

CRIMINAL ACTION

ACC. # 10-11-1074

M. [REDACTED] B. [REDACTED] having been charged upon oath, before a Municipal Court Judge in the said County of Essex with

PWI Prescription Legend Drugs, Obtain Prescription Legend Drugs by Fraud, Obtain CDS by Fraud, Poss CDS, PWI, 500', Theft by Deception, RSP, Forgery

and having in writing addressed to the County Prosecutor, waived indictment and trial by jury and requested to be tried upon said charge(s) by the Court, and said request having been duly reported and granted.



COUNT ONE

N.J.S. 2C: 35-10.5(4)  
**PRESCRIPTION LEGEND DRUGS**  
(3RD degree)

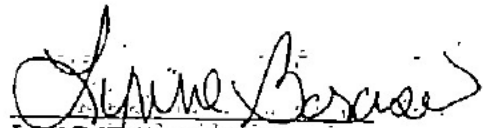
The County Prosecutor, aforesaid, alleges that the defendant M [REDACTED] B [REDACTED], on 10/5/2010, in the CITY OF NEWARK in the County of Essex, aforesaid and within the jurisdiction of this Court, possess or have under his control with intent to distribute a prescription legend drug in an amount of at least five but less than 100 dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication contrary to N.J.S. 2C: 35-10.5(3); and against the peace of this State, the Government and dignity of same.

  
LYNNE BORASIO  
ASSISTANT PROSECUTOR

## COUNT TWO

N.J.S. 2C: 35-10.5(d)  
**PRESCRIPTION LEGEND DRUGS BY FRAUD**  
**(4TH degree)**

The County Prosecutor, aforesaid, alleges that the defendant M [REDACTED] B [REDACTED], on 10/5/2010, in the CITY OF NEWARK in the County of Essex, aforesaid and within the jurisdiction of this Court, obtain possession of a prescription legend drug by forgery or deception contrary to N.J.S. 2C: 35-10.5(d), and against the peace of this State, the Government and dignity of same.


  
LYNNE BORASIO  
ASSISTANT PROSECUTOR



## COUNT THREE

N.J.S. 2C: 35-13  
**CONTROLLED DANGEROUS SUBSTANCE BY FRAUD**  
(3RD degree)

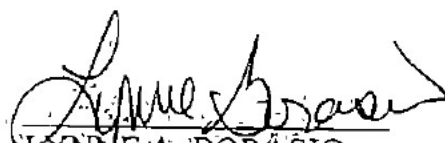
The County Prosecutor, aforesaid, alleges that the defendant M [REDACTED] B [REDACTED], on 10/5/2010, in the CITY OF NEWARK in the County of Essex, aforesaid and within the jurisdiction of this Court, obtain possession of a controlled dangerous substance by misrepresentation, fraud, forgery, deception or subterfuge contrary to N.J.S. 2C: 35-13 and against the peace of this State, the Government and dignity of same.

  
LYNNE BORASIO  
ASSISTANT PROSECUTOR

COUNT 4

**N.J.S. 2C: 20-4**  
**THEFT BY DECEPTION**  
**(3RD degree)**

The County Prosecutor, aforesaid, alleges that the defendant M. [REDACTED] B. [REDACTED] on 10/5/2010, in the city of NEWARK in the County of Essex, aforesaid and within the jurisdiction of this Court, purposely obtained property of another, a controlled dangerous substance, by deception, contrary to N.J.S. 2C: 20-4, and against the peace of this State, the Government and dignity of same.

  
LYNNE A. BORASIO  
ASSISTANT PROSECUTOR

COUNT

5

N.J.S. 2C: 20-7**RECEIVING STOLEN PROPERTY****( 3RD Degree )**

The County Prosecutor, aforesaid, alleges that the defendant, M [REDACTED] B [REDACTED] on 10/5/2010 in the City of NEWARK in the County of Essex, aforesaid and within the jurisdiction of this Court, did commit an act of theft by knowingly receiving moveable property, to wit: NEW JERSEY PRESCRIPTION BLANKS knowing same to be stolen or believing it had probably been stolen contrary to N.J.S. 2C: 20-7, and against the peace of this State, the Government and dignity of same.

  
(PROSECUTOR)

COUNT 6**FORGERY  
2C:21-1a  
(THIRD DEGREE)**

The County Prosecutor, aforesaid, alleges that the defendant,

M [REDACTED] B [REDACTED]


on or about 10/5/2010 in the City of Newark County of Essex, and within the jurisdiction of this Court, did with the purpose to defraud or injure anyone, or with the knowledge that he/she is facilitating a fraud or injury to perpetrate by anyone, utters any writing which he knows to be forged contrary to NJS 2C:21-1a

  
LYNNE A. BORASIO  
ASSISTANT PROSECUTOR

COUNT 7

N.J.S. 2C: 35-10  
**POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE**  
(3<sup>RD</sup> degree)

The County Prosecutor, aforesaid, alleges that the defendant M [REDACTED] B [REDACTED] on 10/5/2010, in the CITY OF NEWARK, in the County of Essex, aforesaid and within the jurisdiction of this Court, unlawfully did possess a controlled dangerous substance, namely, PERCOCET contrary to N.J.S. 2C: 35-10, and against the peace of this State, the Government and dignity of same.

  
LYNNE BORASIO, SDAG/AAP

COUNT

8

N.J.S. 2C: 35-5.  
**POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE  
WITH INTENT TO DISTRIBUTE**

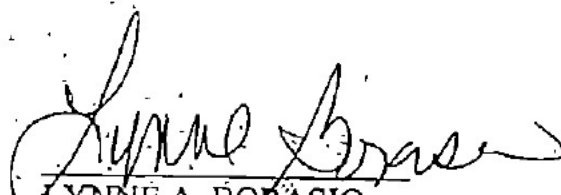
The County Prosecutor, aforesaid, alleges that the defendant, M[REDACTED] B[REDACTED], on 10/5/2010, in the city of Newark in the County of Essex, aforesaid and within the jurisdiction of this Court, unlawfully did possess a controlled dangerous substance, namely, PERCOCET with intent to distribute the same contrary to N.J.S. 2C: 35-5, and against the peace of this State, the Government and dignity of same.

  
LYNNE A. BORASIO, SDAG/AAP

COUNT 9

N.J.S. 2C: 35-7.1  
**POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE  
WITHIN 500 FEET OF PUBLIC HOUSING,  
PUBLIC PARK OR A PUBLIC LIBRARY  
(2<sup>ND</sup> degree)**

The County Prosecutor, aforesaid, alleges that the defendant, Ma [REDACTED] B [REDACTED] on 10/5/2010, in the city of NEWARK in the County of Essex, aforesaid and within the jurisdiction of this Court, unlawfully possess with intent to distribute a controlled dangerous substance, namely, PERCOCET within 500 feet of public housing, public park or a public library contrary to N.J.S. 2C: 35-7.1, and against the peace of this State, the Government and dignity of same.

  
LYNNE A. BORASIO  
ASSISTANT PROSECUTOR

**Appendix B-3**

**No. 04 [redacted]**



UNION COUNTY PROSECUTOR'S OFFICE  
Andrew K. Ruotolo Justice Center  
32 Rahway Avenue  
Elizabeth, New Jersey 07202-2115  
(908) 527-4500  
Attorney for the State of New Jersey

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION UNION COUNTY  
CRIMINAL  
ACCUSATION

The State of New Jersey :

v. :

[REDACTED]  
(NAME) :

Defendant :

04- [REDACTED]

N.J.S.A 2C:35-5 (a) (1)

POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE WITH INTENT  
TO DISTRIBUTE (3<sup>rd</sup>) DEGREE

The defendant, having been charged upon oath, before a Magistrate in the said County of Union with the above charge and having in writing, addressed to the County Prosecutor, waived indictment and trial by jury, and requested be tried upon said charge by the Court, and said request having been duly reported and granted:

The County Prosecutor, aforesaid, alleges that the defendant on

9/9/04

(date)

, in the City of Elizabeth

(place of incident)

, in the County of

Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with intent to distribute a controlled dangerous substance, namely, heroin and/or cocaine;  
(drug Possessed)

contrary to the provisions of N.J.S.A. 2C:35-5 (a) (1) and against the peace of this State, the government and dignity of the same.

STATE OF NJ, COUNTY OF UNION, I, ELIZABETH DOMINGO,  
DEPUTY CLERK, SUPERIOR COURT OF NEW JERSEY, DO  
HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE. I HAVE HEREUNTO SET MY HAND  
AND AFFIXED THE SEAL OF SAID COURT THIS 12th DAY  
OF May 2011

Marylouise D. Rose  
ELIZABETH DOMINGO

designee  
B23

Annie Finn  
(PROSECUTOR)

UNION COUNTY PROSECUTOR'S OFFICE  
32 Rahway Avenue  
Elizabeth, New Jersey 07202-2115  
(908) 527-4500  
Attorney for the State of New Jersey

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION UNION COUNTY  
CRIMINAL

The State of New Jersey

v.

WAIVER  
of  
INDICTMENT AND TRIAL BY JURY

[REDACTED]  
(Name)

Defendant

04-[REDACTED]

To the County Prosecutor of Union County:

The defendant, who is charged with Poss. CDS w/ Intent  
(offense)

in violation of N.J.S.A. 2C:35-5  
(statutory number)

being advised of the nature of the charge against him and of his right to indictment and trial by jury,  
hereby waives prosecution and trial by jury and requests to be tried before this Court.

Dated in Elizabeth, New Jersey, the 13<sup>th</sup> day of October, 2004.

STATE OF NJ, COUNTY OF UNION, I, ELIZABETH DOMINGO,  
DEPUTY CLERK, SUPERIOR COURT OF NEW JERSEY, DO  
HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE. I HAVE HEREUNTO SET MY HAND  
AND AFFIXED THE SEAL OF SAID COURT THIS 13<sup>th</sup> DAY  
OF October, 2004.

[Signature] Defendant  
[Signature] ELIZABETH DOMINGO designee

Signed and delivered in the presence of

[Signature]  
(Defendant's attorney)

Reported by:

[Signature]  
County Prosecutor

[Signature]  
Judge

## **Appendix B-4**

**No. 15-03-00180-I**

UNN-14-00336 8/09/2019 4:22:10 PM Pg 1 of 4 Tra : CRM2019699476



# Change of Judgment of Conviction & Order for Commitment AMENDED-REMOVE PAROLE SUPERVISOR Superior Court of New Jersey, UNION County

State of New Jersey

v.

Last Name

C

First Name

R

Middle Name

J

A

C

Date(s) of Offense

11/14/2014

D

PROM

14 00

3

Date Ind / Acc / Compl Filed

03/04/2015

Original Plea

☒ Not Guilty ☐ Guilty

Date of Original Plea

04/21/2015

Adjudication By

☒ Guilty Plea☐ Jury Trial Verdict☐ Non-Jury Trial Verdict☐ Dismissed / Acquitted

Date: 07/17/2017

**Original Charges**

Ind / Acc / Compl	Count	Description	Statute	Degree
15-03-00180-I	2	RACKETEERING-CONSPIRE IN RACKETEERING-VIOL/1ST DEG/ETC	2C:41-2D	1
15-03-00180-I	3	RACKETEERING-EMPLOYEE PARTICIPATES-VIOLENCE/1ST DEG/ETC	2C:41-2C	1
15-03-00180-I	4	MAINTAINING/OPERATING CDS PRODUCTION FACILITY	2C:35-4	1
15-03-00180-I	6	MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	1
		CDS - MANUF/DIST/PWID - HEROIN/COCAINE - > 50Z	2C:35-5B(1)	
15-03-00180-I	8	CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSTITUTE A CRIME	2C:5-2A(1)	2
		CDS - MANUF/DIST/PWID - HEROIN/COCAINE - > 50Z	2C:35-5B(1)	

(Cont...)

**Final Charges**

Ind / Acc / Compl	Count	Description	Statute	Degree
15-03-00180-I	3	RACKETEERING-EMPLOYEE PARTICIPATES-VIOLENCE/1ST DEG/ETC	2C:41-2C	1
15-03-00180-I	6	MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	1
		CDS - MANUF/DIST/PWID - HEROIN/COCAINE - > 50Z	2C:35-5B(1)	

**Sentencing Statement**It is, therefore, on 06/21/2019 ORDERED and ADJUDGED that the defendant is sentenced as follows:

On count 3:

Defendant is remanded to the custody of the Commissioner of the Department of Corrections for a period of 10 YEARS flat.

Sentence is to run concurrent to Count 6.

(Note: Count 3 is to be treated as 2nd degree for sentencing purposes.)

On count 6:

Defendant is remanded to the custody of the Commissioner of the Department of Corrections for a period of 10 YEARS with 5 YEARS parole ineligibility.

Dismiss Counts 2, 4, 8, 10, 14 and 17 of indictment: 15-03-00180-I.

☒ It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term

010 Years 00 Months 000 Days

Institution Name

CARE COMMISS/CORR

Total Probation Term

00 Years 00 Months

New Jersey Judiciary, Revised Form Effective August 1, 2017, CN: 10070

Copies to: County Probation Division Defendant Defense Counsel Prosecutor State Parole Board Dept of Corrections or County Penal Institution Juvenile Justice Commission

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Exh. 2 - Adm.

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S. B. J. # [REDACTED] Ind / Acc / Compl # 15-03-00180-1

<b>DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)</b>		<b>Additional Conditions</b>																			
<p>A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)</p> <p><input type="checkbox"/> DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))</p> <table style="width: 100%;"> <tr> <th></th> <th style="text-align: center;">Standard</th> <th style="text-align: center;">Doubled</th> </tr> <tr> <td>1st Degree</td> <td style="text-align: center;">@ \$</td> <td style="text-align: center;">@ \$</td> </tr> <tr> <td>2nd Degree</td> <td style="text-align: center;">@ \$</td> <td style="text-align: center;">@ \$</td> </tr> <tr> <td>3rd Degree</td> <td style="text-align: center;">@ \$</td> <td style="text-align: center;">@ \$</td> </tr> <tr> <td>4th Degree</td> <td style="text-align: center;">@ \$</td> <td style="text-align: center;">@ \$</td> </tr> <tr> <td>DP or Petty DP</td> <td style="text-align: center;">@ \$</td> <td style="text-align: center;">@ \$</td> </tr> </table> <p style="text-align: center;">Total DEDR Penalty \$</p> <p><input type="checkbox"/> The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)</p>			Standard	Doubled	1st Degree	@ \$	@ \$	2nd Degree	@ \$	@ \$	3rd Degree	@ \$	@ \$	4th Degree	@ \$	@ \$	DP or Petty DP	@ \$	@ \$	<p><input checked="" type="checkbox"/> The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20 and N.J.S.A. 53:1-20.29).</p> <p><input type="checkbox"/> The defendant is hereby sentenced to community supervision for life (CSL) if offense occurred before 1/14/04 (N.J.S.A. 2C:43-6.4).</p> <p><input type="checkbox"/> The defendant is hereby sentenced to parole supervision for life (PSL) if offense occurred on or after 1/14/04 (N.J.S.A. 2C:43-8.4).</p> <p><input type="checkbox"/> The defendant is hereby ordered to serve a _____ year term of parole supervision, pursuant to the No Early Release Act (NERA), which term shall begin as soon as the defendant completes the sentence of incarceration (N.J.S.A. 2C:43-7.2).</p> <p><input type="checkbox"/> The court imposes a Drug Offender Restraining Order (DORO) (N.J.S.A. 2C:35-5.7h). DORO expires _____</p> <p><input type="checkbox"/> The court continues/imposes a Sex Offender Restraining Order (SORO) if the offense occurred on or after 8/7/07 (Nicole's Law N.J.S.A. 2C:14-12 or N.J.S.A. 2C:44-8).</p> <p><input type="checkbox"/> The court imposes a Stalking Restraining Order (N.J.S.A. 2C:12-10.1).</p> <p><input type="checkbox"/> The defendant is prohibited from purchasing, owning, possessing, or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun (N.J.S.A. 2C:25-27c(1)).</p>	
	Standard	Doubled																			
1st Degree	@ \$	@ \$																			
2nd Degree	@ \$	@ \$																			
3rd Degree	@ \$	@ \$																			
4th Degree	@ \$	@ \$																			
DP or Petty DP	@ \$	@ \$																			
<p>Forensic Laboratory Fee (N.J.S.A. 2C:35-20) _____ Total Lab Fee _____</p> <p>Offenses @ \$ _____ \$ _____</p>																					
<b>VCCO Assessment (N.J.S.A. 2C:43-3.1)</b>																					
Counts	Number	Amount																			
	@	\$ 50.00																			
	@	\$																			
	@	\$																			
	@	\$																			
Total VCCO Assessment \$																					
<b>Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)</b>																					
Offense		Mandatory Penalty \$																			
<b>Offense Based Penalties</b>																					
Penalty		Amount \$																			
<b>Other Fees and Penalties</b>																					
<p>Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)</p> <p><input type="checkbox"/> \$</p>		<p>Safe Neighborhoods Services Fund Assessment (N.J.S.A. 2C:43-3.2)</p> <p><input type="checkbox"/> Offenses @ \$</p> <p style="text-align: center;">Total: \$</p>																			
<p>Probation Supervision Fee (N.J.S.A. 2C:45-1d)</p> <p><input type="checkbox"/> \$</p>		<p>Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)</p> <p><input type="checkbox"/> Offenses @ \$</p> <p style="text-align: center;">Total \$</p>																			
<p>Transaction Fee (N.J.S.A. 2C:46-1.1)</p> <p><input type="checkbox"/></p>																					
<p>Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)</p> <p><input type="checkbox"/> \$</p>		<p>Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)</p> <p><input type="checkbox"/> \$</p>																			
<p>Fine</p> <p>\$</p>		<p>Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)</p> <p><input type="checkbox"/> \$</p>																			
<p>Restitution Joint &amp; Several</p> <p>\$ <input type="checkbox"/></p>		<p>Total Financial Obligation</p> <p>\$</p>																			
Details																					
<b>License Suspension</b>																					
<p><input type="checkbox"/> CDS / Paraphernalia (N.J.S.A. 2C:35-18) <input type="checkbox"/> Waived</p> <p><input type="checkbox"/> Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)</p> <p><input type="checkbox"/> Eluding (N.J.S.A. 2C:29-2)</p> <p><input type="checkbox"/> Other</p>		<p>Number of Months <input type="checkbox"/> Non-resident driving privileges revoked</p>																			
Start Date		End Date																			
Details																					
Driver's License Number		Jurisdiction																			
If the court is unable to collect the license, complete the following:																					
Defendant's Address																					
City		State	Zip																		
Date of Birth	Sex <input type="checkbox"/> M <input type="checkbox"/> F	Eye Color																			



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State of New Jersey v.

J

S.B.I. # Ind / Acc / Compl # 15-03-00180-I

**Continuation****ORIGINAL CHARGES (Cont.)**

Ind / Acc / Compl	Count	Description	Statute	Degree
15-03-00180-I	10	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
15-03-00180-I	14	CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS	2C:35-7	3
15-03-00180-I	17	POSS/DIST WITHIN 500 FT CERTAIN PUBLIC PROPERTY	2C:35-7.1A	2

New Jersey Judiciary, Revised Form Effective August 1, 2017, CN:10070

Copies to: County Probation Division Defendant Defense Counsel Prosecutor State Parole Board Dept of Corrections or County Penal Institution Juvenile Justice Commission

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Kathryn Gilbertson Shabel, Esq.  
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Richard J. Hughes Justice Complex • P.O. Box 971 • Trenton, NJ 08625-0037

njcourts.gov • Tel: 609-815-2900 ext. 54200 •

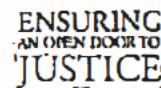
## Superior Court Certification

I, Michelle Smith, Clerk of the Superior Court for the State of New Jersey, certify that this record is a true copy of the Judgment of Conviction, dated August 9, 2019 on file in my office. This document is electronically signed on this 1<sup>ST</sup> Day of October 2020 in accordance with the New Jersey Supreme Court Orders dated April 24, 2020 and May 15, 2020.

/s/ Michelle M. Smith, Clerk of Court  
CLERK OF THE SUPERIOR COURT

SIGNED IN THE SUPERIOR COURT OF NEW JERSEY

/s/ Michelle M. Smith, Clerk of Court  
CLERK OF THE SUPERIOR COURT





PROSECUTOR'S DOCKET NO. 14003383 & 14003291

C.D.R. NOS. W-2014-001145-2009, W-2014-001152-2009, W-2014-001152-2009,  
W-2014-001155-2009, W-2014-001147-2009, W-2014-001150-2009,  
W-2014-001149-2009, W-2014-001146-2009, W-2014-001144-2009,  
W-2014-001156-2009, W-2014-001157-2009, W-2014-001173-2009,  
W-2014-001148-2009, W-2014-001151-2009, W-2014-001153-2009,  
W-2014-001154-2009, W-2014-001597-2019, W-2014-004068-2004,  
W-2014-003728-2004, W-2014-003724-2004, W-2014-003720-2004,  
W-2014-003723-2004, W-2014-003729-2004

GRACE H. PARK  
Acting Prosecutor of Union County  
32 Rahway Avenue  
Elizabeth, New Jersey 07202  
(908) 527-4500  
Attorney for the State of New Jersey

THE STATE OF NEW JERSEY

v.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - UNION COUNTY  
CRIMINAL

INDICTMENT NO.

15-03-001801

N.J.S.A. 2C:35-3  
LEADER OF A NARCOTICS NETWORK  
(FIRST DEGREE) (ONE COUNT)

N.J.S.A. 2C:41-2d  
RACKETEERING CONSPIRACY  
(FIRST DEGREE) (ONE COUNT)

N.J.S.A. 2C:41-2c  
RACKETEERING  
(FIRST DEGREE) (ONE COUNT)

N.J.S.A. 2C:35-4  
MAINTAINING A CONTROLLED DANGEROUS  
SUBSTANCE PRODUCTION FACILITY  
(FIRST DEGREE) (TWO COUNTS)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(1)  
POSSESSION OF A CONTROLLED DANGEROUS

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: SUBSTANCE WITH THE INTENT TO  
DISTRIBUTE  
: (FIRST DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:35-5a(1) and*  
*N.J.S.A. 2C:35-5b(2)*  
: POSSESSION OF A CONTROLLED DANGEROUS  
SUBSTANCE WITH THE INTENT TO  
: DISTRIBUTE  
(SECOND DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:5-2a(1) and 2C:5-2a(2) and*  
*N.J.S.A. 2C:35-5a(1) and 2C:35-5b(1)*  
: CONSPIRACY TO DISTRIBUTE A CONTROLLED  
DANGEROUS SUBSTANCE  
: (SECOND DEGREE) (TWO COUNT)  
:  
: *N.J.S.A. 2C:5-2a(1) and 2C:5-2a(2) and*  
*N.J.S.A. 2C:35-5a(1) and 2C:35-5b(2)*  
: CONSPIRACY TO DISTRIBUTE A CONTROLLED  
DANGEROUS SUBSTANCE  
: (SECOND DEGREE) (TWO COUNTS)  
:  
: *N.J.S.A. 2C:35-5a(1) and*  
*N.J.S.A. 2C:35-5b(2)*  
: DISTRIBUTION OF A CONTROLLED  
DANGEROUS SUBSTANCE  
: (FIRST DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:35-10a(1)*  
: POSSESSION OF A CONTROLLED DANGEROUS  
SUBSTANCE  
: (THIRD DEGREE) (TWO COUNTS)  
:  
: *N.J.S.A. 2C:35-7*  
POSSESSION OF A CONTROLLED DANGEROUS  
SUBSTANCE WITH THE INTENT TO  
DISTRIBUTE WITHIN 1000' OF SCHOOL  
PROPERTY  
: (THIRD DEGREE) (THREE COUNTS)  
:  
: *N.J.S.A. 2C:35-7.1a*  
POSSESSION OF A CONTROLLED DANGEROUS  
SUBSTANCE WITH THE INTENT TO  
DISTRIBUTE WITHIN 500' OF A PUBLIC PARK  
(SECOND DEGREE) (TWO COUNTS)

-2-

:  
: *N.J.S.A. 2C:39-4.1a*  
: POSSESSION OF A FIREARM IN THE COURSE  
: OF COMMITTING A CONTROLLED  
: DANGEROUS SUBSTANCE OFFENSE  
: (SECOND DEGREE) (TWO COUNTS)  
:  
: *N.J.S.A. 2C:39-4.1c*  
: POSSESSION OF A WEAPON IN THE COURSE OF  
: COMMITTING A CONTROLLED DANGEROUS  
: SUBSTANCE OFFENSE  
: (SECOND DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:39-3c*  
: UNLAWFUL POSSESSION OF A FIREARM  
: SILENCER  
: (FOURTH DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:39-9c*  
: UNLAWFUL TRANSPORTATION OF A FIREARM  
: SILENCER  
: (FOURTH DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:39-3j*  
: UNLAWFUL POSSESSION OF A LARGE  
: CAPACITY AMMUNITION MAGAZINE  
: (FOURTH DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:12-3b*  
: TERRORISTIC THREATS  
: (THIRD DEGREE) (ONE COUNT)  
:  
: *N.J.S.A. 2C:39-4a(1)*  
: POSSESSION OF A WEAPON FOR AN  
: UNLAWFUL PURPOSE  
: (SECOND DEGREE) (ONE COUNT)  
:

COUNT ONE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED], between October 20, 2014 and November 14, 2014, in the Cities of Linden, Elizabeth, and/or Union, County of Union, aforesaid, and within the jurisdiction of this Court, did conspire with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to unlawfully manufacture, distribute, dispense, bring into or transport in this State a Controlled Dangerous Substance, namely Heroin, Schedule I; contrary to the provisions of *N.J.S.A. 2C:35-3*, and against the peace of this State, the Government and dignity of the same.

COUNT TWO

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that between October 20, 2014 and November 14, 2014, in the Cities of Linden, Elizabeth, and/or Union, County of Union, and other locations, aforesaid, and within the jurisdiction of this Court, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] who are named defendants herein and other

persons whose identities are known and unknown to the Grand Jurors, who are named as co-conspirators but not as defendants herein, at the times and places herein after specified, with the purpose of promoting or facilitating the commission of the crime of Racketeering, did agree with such other person or persons that they or one or more of them will engage in conduct which constitutes Racketeering; or did agree to aid such

other person or persons in the planning or commission of Racketeering, that is, the defendants and other co-conspirators, being persons employed by or associated with an enterprise engaged in or participated in activities of which affect trade or commerce, would conduct or participate, directly or indirectly, in the conduct of the enterprises' affairs through a pattern of racketeering activity, involving a crime of the first degree; contrary to the provisions of *N.J.S.A. 2C:41-2d* and against the peace of this State, the Government and dignity of the same.

#### The Enterprise

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and other persons whose identities are known and unknown to the Grand Jurors, would constitute an enterprise within the meaning of *N.J.S.A. 2C:41-1c*, that is, a group of individuals associated in fact, organized to distribute controlled dangerous substances.

#### The Pattern of Racketeering Activity

The pattern of racketeering activity, as defined in *N.J.S.A. 2C:41-1d*, consists of at least two incidents of racketeering conduct, including Maintaining a Controlled Dangerous Substance Facility, in violation of *N.J.S.A. 2C:35-4*, and Distribution and/or Possession of a Controlled Dangerous Substance with the Intent to Distribute, in violation of *N.J.S.A. 2C:35-5*. The pattern of racketeering activity involved a crime of the first degree, as set forth in counts four, five and/or six below.

COUNT THREE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that between October 20, 2014 and November 14, 2014, in the Cities of Linden, Elizabeth, and/or Union, County of Union, and other locations, aforesaid, and within the jurisdiction of this Court, [REDACTED]

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED], who are named defendants herein and other persons whose identities are known and unknown to the Grand Jurors, who are named as co-conspirators but not as defendants herein, while employed by or associated with any enterprise engaged in or activities of which affect trade or commerce, did conduct or participate, directly or indirectly, in the conduct of the enterprises affairs through a pattern of racketeering activity; contrary to the provisions of *N.J.S.A. 2C:41-2c* and against the peace of this State, the Government and dignity of the same.

The Enterprise

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], and other persons whose identities are known and unknown to the Grand Jurors, would constitute an enterprise within the meaning of



*N.J.S.A. 2C:41-1c*, that is, a group of individuals associated in fact, organized to distribute controlled dangerous substances.

The Pattern of Racketeering Activity

The pattern of racketeering activity, as defined in *N.J.S.A. 2C:41-1d*, consists of at least two incidents of racketeering conduct, including Maintaining a Controlled Dangerous Substance Facility, in violation of *N.J.S.A. 2C:35-4*, and Distribution and/or Possession of a Controlled Dangerous Substance with the Intent to Distribute, in violation of *N.J.S.A. 2C:35-5*. The pattern of racketeering activity involved a crime of the first degree, as set forth in counts four, five and/or six below.

COUNT FOUR

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED]

[REDACTED]

[REDACTED],

between October 20, 2014 and November 14, 2014, in the City of Linden, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly maintain or operate a premises, place or facility used for the manufacturing of a Schedule I narcotic: to wit, Heroin, namely 303 Richford Terrace, Linden, New Jersey; contrary to the provisions of *N.J.S.A. 2C:35-4*, and against the peace of this State, the Government and dignity of the same.

COUNT FIVE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED],

between October 20, 2014 and November 14, 2014, in the Township of Union, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly maintain or operate a

premises, place or facility used for the manufacturing of a Schedule I narcotic: to wit, Heroin, namely 2165 Morris Avenue, Suite 20C, Union, New Jersey; contrary to the provisions of *N.J.S.A. 2C:35-4*, and against the peace of this State, the Government and dignity of the same.

COUNT SIX

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] on or about November 14, 2014, in the Cities of Linden and/or Elizabeth, and/or Township of Union, County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with the intent to distribute a Controlled Dangerous Substance, namely Heroin, a Schedule I narcotic, in a quantity of five ounces or more; contrary to the provisions of *N.J.S.A. 2C:35-5a(1)* and *2C:35-5b(1)*, and against the peace of this State, the Government and dignity of the same.

COUNT SEVEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED], on or about November 6, 2014, in the City of Elizabeth, County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with the intent to distribute a Controlled Dangerous Substance, namely Heroin, a Schedule I narcotic; in excess of half an ounce but less than five ounces; contrary to the provisions of *N.J.S.A. 2C:35-5a(1)* and *2C:35-5b(2)*, and against the peace of this State, the Government and dignity of the same.



COUNT EIGHT

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], between October 20, 2014  
to November 14, 2014, in the Cities of Linden and/or Elizabeth, and/or Township of Union, County of  
Union, aforesaid, and within the jurisdiction of this Court, conspire with each other and/or another to  
commit the crime of Distribution of a Controlled Dangerous Substance, namely Heroin, a Schedule I  
narcotic, in excess of five ounces; contrary to the provisions of *N.J.S.A. 2C:5-2a(1)* and *2C:5-2a(2)* and  
*N.J.S.A. 2C:35-5a(1)* and *2C:35-5b(1)*, and against the peace of this State, the Government and dignity of  
the same.

COUNT NINE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED]  
[REDACTED]  
[REDACTED], between October 20, 2014 to  
November 14, 2014, in the Cities of Linden and/or Elizabeth, and/or Township Union, County of Union,  
and within the jurisdiction of this Court, conspire with each other and/or another to commit the crime of  
Distribution of a Controlled Dangerous Substance, namely Heroin, a Schedule I narcotic; in excess of half  
an ounce but less than five ounces; contrary to the provisions of *N.J.S.A. 2C:5-2a(1)* and *2C:5-2a(2)* and

*N.J.S.A.* 2C:35-5a(1) and 2C:35-5b(2), and against the peace of this State, the Government and dignity of the same.

COUNT TEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] on or about November 14, 2014, in the Cities of Linden, Elizabeth and/or Union, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a controlled dangerous substance, namely, Heroin, Schedule I; contrary to the provisions of *N.J.S.A.* 2C:35-10a(1), and against the peace of this State, the Government and dignity of the same.

COUNT ELEVEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED], on or about November 7, 2014, in the Cities of Linden and/or Elizabeth, County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely distribute a Controlled Dangerous Substance, namely Heroin, a Schedule I narcotic, in a quantity of five ounces or more; contrary to the provisions of *N.J.S.A.* 2C:35-5a(1) and 2C:35-5b(1), and against the peace of this State, the Government and dignity of the same.

COUNT TWELVE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED] on or about November 7, 2014, in the Cities of Linden and/or Elizabeth, County of Union, aforesaid, and

within the jurisdiction of this Court, conspire with each other and/or another to commit the crime of Distribution of a Controlled Dangerous Substance, namely Heroin, a Schedule I narcotic, in excess of five ounces; contrary to the provisions of *N.J.S.A. 2C:5-2a(1)* and *2C:5-2a(2)* and *N.J.S.A. 2C:35-5a(1)* and *2C:35-5b(1)*, and against the peace of this State, the Government and dignity of the same.

### COUNT THIRTEEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED] on or about November 6, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a controlled dangerous substance, namely, Heroin, Schedule I; contrary to the provisions of *N.J.S.A. 2C:35-10a(1)*, and against the peace of this State, the Government and dignity of the same.

### COUNT FOURTEEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED]  
[REDACTED]  
[REDACTED], on or about November 14, 2014, in the City of Linden, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Controlled Dangerous Substance, namely, Heroin, Schedule I, with the Intent to Distribute on or within 1,000 feet of property owned by, or leased to, an elementary or secondary school or school board and which is used for school purposes, namely Elizabeth Public School #50; contrary to the provisions of *N.J.S.A. 2C:35-7*, and against the peace of this State, the Government and dignity of the same.

COUNT FIFTEEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED],

on or about November 14, 2014, in the Township of Union, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Controlled Dangerous Substance, namely, Heroin, Schedule I, with the Intent to Distribute on or within 1,000 feet of property owned by, or leased to, an elementary or secondary school or school board and which is used for school purposes, namely Burnet Middle School; contrary to the provisions of *N.J.S.A. 2C:35-7*, and against the peace of this State, the Government and dignity of the same.

COUNT SIXTEEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED] on or about November 6, 2014, in the City of Elizabeth, in

the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Controlled Dangerous Substance, namely, Heroin, Schedule I, with the Intent to Distribute on or within 1,000 feet of property owned by, or leased to, an elementary or secondary school or school board and which is used for school purposes, namely Guadalupe School; contrary to the provisions of *N.J.S.A. 2C:35-7*, and against the peace of this State, the Government and dignity of the same.

COUNT SEVENTEEN

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED]

[REDACTED]

[REDACTED], on or

about November 14, 2014, in the City of Linden, in the County of Union, aforesaid, and within the

jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Controlled Dangerous Substance, namely, Heroin, Schedule I, with the Intent to Distribute, in or within 500 feet of a public park, namely Hagel Park; contrary to the provisions of *N.J.S.A. 2C:35-7.1*, and against the peace of this State, the Government and dignity of the same.

**COUNT EIGHTEEN**

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED], on or about November 6, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a Controlled Dangerous Substance, namely, Heroin, Schedule I, with the Intent to Distribute on or within 500 feet of a public park, namely O'Brien Park and/or the Pruden Section of the Elizabeth River Parkway; contrary to the provisions of *N.J.S.A. 2C:35-7.1*, and against the peace of this State, the Government and dignity of the same.

**COUNT NINETEEN**

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED], on or about November 14, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, knowingly and unlawfully did possess a firearm while in the course of committing, attempting to commit or conspiring to commit the crime of Possession of a Controlled Dangerous Substance with the Intent to Distribute, in violation of *N.J.S.A. 2C:35-5*; contrary to the provisions of *N.J.S.A. 2C:35-4.1a*, and against the peace of this State, the Government and dignity of the same.

**COUNT TWENTY**

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED], on or about November 14, 2014, in the City of Elizabeth,



COUNT TWENTY-THREE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED],  
on or about November 14, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, knowingly and unlawfully did possess a certain device, to wit: a firearm silencer; contrary to the provisions of *N.J.S.A. 2C:39-3c*, and against the peace of this State, the Government and dignity of the same.

COUNT TWENTY-FOUR

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED], on or about November 14, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, knowingly and unlawfully did transport and/or sell a certain device, to wit: a firearm silencer; contrary to the provisions of *N.J.S.A. 2C:39-9c*, and against the peace of this State, the Government and dignity of the same.

COUNT TWENTY-FIVE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED], on or about November 14, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, knowingly and unlawfully did possess a certain weapon, to wit: brass knuckles, under circumstances not manifestly appropriate for such lawful uses as it may have; contrary to the provisions of *N.J.S.A. 2C:39-5d*, and against the peace of this State, the Government and dignity of the same.

COUNT TWENTY-SIX

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that

[REDACTED], on or about November 5, 2014, in the City of Elizabeth, in

in the County of Union, aforesaid, and within the jurisdiction of this Court, did knowingly and unlawfully possess a large capacity magazine without first having registered an assault firearm as provided in *N.J.S.A. 2C:58-12*; contrary to the provisions of *N.J.S.A. 2C:39-3j*, and against the peace of this State, the Government and dignity of the same.

#### COUNT TWENTY-ONE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED], on or about November 6, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, knowingly and unlawfully did possess a firearm while in the course of committing, attempting to commit or conspiring to commit the crime of Possession of a Controlled Dangerous Substance with the Intent to Distribute, in violation of *N.J.S.A. 2C:35-5*; contrary to the provisions of *N.J.S.A. 2C:35-4.1a*, and against the peace of this State, the Government and dignity of the same.

#### COUNT TWENTY-TWO

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED], on or about November 14, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, knowingly and unlawfully did possess a weapon, to wit: a Gamo bb gun, under circumstances not manifestly appropriate for such lawful uses as the weapon may have, while in the course of committing, attempting to commit or conspiring to commit the crime of Possession of a Controlled Dangerous Substance with the Intent to Distribute, in violation of *N.J.S.A. 2C:35-5*; contrary to the provisions of *N.J.S.A. 2C:35-4.1c*, and against the peace of this State, the Government and dignity of the same.

the County of Union, aforesaid, and within the jurisdiction of this Court, did threaten to kill [REDACTED] with the purpose to place her in imminent fear of death under circumstances reasonably causing her to believe the immediacy of the threat and the likelihood that it would be carried out; contrary to the provisions of *N.J.S.A. 2C:12-3b*, and against the peace of this State, the Government and dignity of the same.

**COUNT TWENTY-SEVEN**

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that [REDACTED] on or about November 5, 2014, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did knowingly and unlawfully possess a certain weapon, to wit: a handgun with the purpose to use it unlawfully against the person of [REDACTED]; contrary to the provisions of *N.J.S.A. 2C:39-4a(1)*, and against the peace of this State, the Government and dignity of the same.

  
SPECIAL DEPUTY ATTORNEY GENERAL/  
ACTING ASSISTANT PROSECUTOR



## **Appendix B-5**

**No. 16-06-00388-I**



# Judgment of Conviction & Order for Commitment

## Superior Court of New Jersey, UNION County

State of New Jersey

v.

Last Name

A. [REDACTED]

First Name

A. [REDACTED]

Middle Name

Also Known As

[REDACTED]

(Cont...)

Date of Birth

[REDACTED]

SBI Number

[REDACTED]

Date(s) of Offense

01/20/2016

Date of Arrest

PROMIS Number

16 000250-001

Date Ind / Acc / Compl Filed

06/14/2016

Original Plea

☒ Not Guilty

☐ Guilty

Date of Original Plea

06/27/2016

Adjudication By

☐ Guilty Plea

☒ Jury Trial Verdict

☐ Non-Jury Trial Verdict

☐ Dismissed / Acquitted

Date: 08/08/2017

### Original Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
16-06-00388-I	1	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
16-06-00388-I	2	POSS CDS - > 50G MARIJUANA, 5G HASHISH	2C:35-10A(3)	4
16-06-00388-I	3	CDS - MANU/DIST/PWID - HEROIN/COCAINE - < .50Z	2C:35-5B(3)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	
16-06-00388-I	4	CDS - MANU/DIST/PWID - MARIJ=>10Z<5LB, HASH=>5G<1LB	2C:35-5B(11)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	
W-2016-000238-2004	901	USE/POSS W/INTENT TO USE DRUG PARAPHERNALIA	2C:36-2	DP

### Final Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
16-06-00388-I	1	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
16-06-00388-I	3	CDS - MANU/DIST/PWID - HEROIN/COCAINE - < .50Z	2C:35-5B(3)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	

### Sentencing Statement

It is, therefore, on 01/12/2018 ORDERED and ADJUDGED that the defendant is sentenced as follows:

On Count 1:

- The Defendant is sentenced to 8 YEARS in the NJSP, with a 4 year parole disqualifier.
- Sentence is to run concurrent to Count 3.

On Count 3:

- The Defendant is sentenced to 8 YEARS in the NJSP, with a 4 year parole disqualifier.
- Sentence is to run concurrent to Count 1.

STATE OF NJ, COUNTY OF UNION, I, JAMES S. AGRO,  
DEPUTY CLERK, SUPERIOR COURT OF NEW  
JERSEY, DO HEREBY CERTIFY THAT THIS IS A TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE.  
I HAVE HEREUNTO SET MY HAND AND AFFIXED THE  
SEAL OF SAID COURT THIS 20TH DAY  
OF March 2019

JAMES S. AGRO



It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term

008 Years 00 Months 000 Days

Institution Name

CARE COMMISS/CORR

Total Probation Term

00 Years 00 Months

**DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)**

A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)

☐ DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))

	Standard		Doubled	
1st Degree	@ \$		@ \$	
2nd Degree	@ \$		@ \$	
3rd Degree	2 @ \$ 1,000.00		@ \$	
4th Degree	@ \$		@ \$	
DP or	@ \$		@ \$	
Petty DP	@ \$		@ \$	

Total DEDR Penalty \$ 2,000.00

☐ The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)

Forensic Laboratory Fee (N.J.S.A. 2C:35-20)

1 Offenses @ \$ 50.00

Total Lab Fee

\$ 50.00

**VCCO Assessment (N.J.S.A. 2C:43-3.1)**

Counts	Number	Amount
1, 3	1 @	\$ 50.00
	@	\$
	@	\$
	@	\$

Total VCCO Assessment \$ 50.00

**Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)**

Offense

Mandatory Penalty  
\$

**Offense Based Penalties**

Penalty

Amount  
\$

**Other Fees and Penalties**

Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)

☒ \$ 30.00

Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2)

☒ 1 Offenses @ \$ 75.00

Total: \$ 75.00

Probation Supervision Fee (N.J.S.A. 2C:45-1d)

☐ \$

Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)

☐ Offenses @ \$

Total \$

Transaction Fee (N.J.S.A. 2C:46-1.1)

☒

Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)

☐ \$

Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)

☐ \$

Fine

\$

Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)

☐ \$

Restitution

Joint & Several

\$

☐

Total Financial Obligation

\$ 2,205.00

Details

**Additional Conditions**

- ☒ The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20 and N.J.S.A. 53:1-20.29).
- ☐ The defendant is hereby sentenced to community supervision for life (CSL) if offense occurred before 1/14/04 (N.J.S.A. 2C:43-6.4).
- ☐ The defendant is hereby sentenced to parole supervision for life (PSL) if offense occurred on or after 1/14/04 (N.J.S.A. 2C:43-6.4).
- ☐ The defendant is hereby ordered to serve a \_\_\_\_\_ year term of parole supervision, pursuant to the No Early Release Act (NERA), which term shall begin as soon as the defendant completes the sentence of incarceration (N.J.S.A. 2C:43-7.2).
- ☐ The court imposes a Drug Offender Restraining Order (DORO) (N.J.S.A. 2C:35-5.7h). DORO expires \_\_\_\_\_.
- ☐ The court continues/imposes a Sex Offender Restraining Order (SORO) if the offense occurred on or after 8/7/07 (Nicole's Law N.J.S.A. 2C:14-12 or N.J.S.A. 2C:44-8).
- ☐ The court imposes a Stalking Restraining Order (N.J.S.A. 2C:12-10.1).
- ☐ The defendant is prohibited from purchasing, owning, possessing, or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun (N.J.S.A. 2C:25-27c(1)).

**Findings Per N.J.S.A. 2C:47-3**

- ☐ The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- ☐ The court finds that the defendant is amenable to sex offender treatment.
- ☐ The court finds that the defendant is willing to participate in sex offender treatment.

**License Suspension**

- ☐ CDS / Paraphernalia (N.J.S.A. 2C:35-16) ☐ Waived
- ☐ Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)
- ☐ Eluding (N.J.S.A. 2C:29-2)
- ☐ Other

Number of Months

☐ Non-resident driving privileges revoked

Start Date

End Date

Details

Driver's License Number

Jurisdiction

If the court is unable to collect the license, complete the following:  
Defendant's Address

City

State

Zip

Date of Birth

Sex

☐ M ☐ F

Eye Color

### Time Credits

#### Time Spent in Custody

R. 3:21-8

Date: From - To  
01/20/2016 - 05/27/2016  
08/08/2017 - 01/11/2018

Total Number of Days 286

#### Gap Time Spent in Custody

N.J.S.A. 2C:44-5b(2)

Date: From - To

Total Number of Days

#### Rosado Time

Date: From - To

Total Number of Days

#### Prior Service Credit

Date: From - To

Total Number of Days

### Statement of Reasons - Include all applicable aggravating and mitigating factors

- The Court is clearly convinced that aggravating factors 3, 9 and 6 outweigh the nonexistent mitigating factors.

Attorney for Defendant at Sentencing

[REDACTED]

Public Defender

☐ Yes ☒ No

Prosecutor at Sentencing

KATHLEEN A DILLON

Deputy Attorney General

☐ Yes ☒ No

Judge at Sentencing

Robert Kirsch, J.S.C.

Judge (Signature)

/s Robert Kirsch, J.S.C.

Date

01/19/2018

State of New Jersey v.

A [REDACTED], A [REDACTED]

S.B.I. # [REDACTED] Ind / Acc / Complt # 16-06-00388-I

**Continuation**

ALSO KNOWN AS (Cont.)

[REDACTED]

PROSECUTOR'S DOCKET NO. 16000250  
C.D.R. NO. W-2016-000233-2004, W-2016-000234-2004, W-2016-000239-2004,  
W-2016-000240-2004

GRACE H. PARK  
Acting Prosecutor of Union County  
32 Rahway Avenue  
Elizabeth, New Jersey 07202  
(908) 527-4500  
Attorney for the State of New Jersey

RECEIVED AND FILED  
SUPERIOR COURT, UNION COUNTY  
CRIMINAL DIVISION

JUN 14 2016

ROBERT EPPENSTEIN  
Criminal Division Manager

THE STATE OF NEW JERSEY

v.

A [REDACTED] A [REDACTED] and  
[REDACTED]

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – UNION COUNTY  
CRIMINAL

INDICTMENT NO.

16-06-00388

N.J.S.A. 2C:35-10a(1)

POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE  
(THIRD DEGREE)

N.J.S.A. 2C:35-10a(3)

POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE  
(FOURTH DEGREE)

N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3)

POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE WITH INTENT  
TO DISTRIBUTE  
(THIRD DEGREE)

N.J.S.A. 2C:35-5a(1) and 2C:35-5b(11)

POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE WITH INTENT  
TO DISTRIBUTE  
(THIRD DEGREE)

STATE OF NJ, COUNTY OF UNION, I, JAMES S. AGRO,  
DEPUTY CLERK, SUPERIOR COURT OF NEW  
JERSEY, DO HEREBY CERTIFY THAT THIS IS A TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE.  
I HAVE HEREUNTO SET MY HAND AND AFFIXED THE  
SEAL OF SAID COURT THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_

JAMES S. AGRO

### COUNT ONE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that A. [REDACTED] A. [REDACTED] and [REDACTED], on January 20, 2016, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a controlled dangerous substance, namely, Heroin, Schedule I, and/or Pentylone, Schedule I, and/or Cocaine, Schedule II; contrary to the provisions of *N.J.S.A. 2C:35-10a(1)*, and against the peace of this State, the Government and dignity of the same.

### COUNT TWO

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that A. [REDACTED] A. [REDACTED] and [REDACTED], on January 20, 2016, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a controlled dangerous substance, namely, marijuana in a quantity of over 50 grams; contrary to the provisions of *N.J.S.A. 2C:35-10a(3)*, and against the peace of this State, the Government and dignity of the same.

### COUNT THREE

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that A. [REDACTED] A. [REDACTED] and [REDACTED], on January 20, 2016, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with intent to distribute Heroin, Schedule I, and/or Pentylone, Schedule I, and/or Cocaine, Schedule II; contrary to the provisions of *N.J.S.A. 2C:35-5a(1)* and *N.J.S.A. 2C:35-5b(3)*, and against the peace of this State, the Government and dignity of the same.

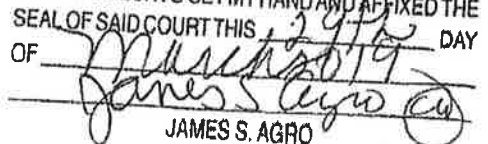
COUNT FOUR

The Grand Jurors of the State of New Jersey, for the County of Union, upon their oaths present that A [REDACTED] A [REDACTED] and [REDACTED] on January 20, 2016, in the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess with intent to distribute marijuana in a quantity of one ounce or more; contrary to the provisions of *N.J.S.A. 2C:35-5a(1)* and *N.J.S.A. 2C:35-5b(11)*, and against the peace of this State, the Government and dignity of the same.



SPECIAL DEPUTY ATTORNEY GENERAL/  
ACTING ASSISTANT PROSECUTOR

AS/dms

STATE OF NJ, COUNTY OF UNION, I, JAMES S. AGRO,  
DEPUTY CLERK. SUPERIOR COURT OF NEW  
JERSEY, DO HEREBY CERTIFY THAT THIS IS A TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE.  
I HAVE HEREUNTO SET MY HAND AND AFFIXED THE  
SEAL OF SAID COURT THIS 29th DAY  
OF March 2019  
  
JAMES S. AGRO



## **Appendix B-6**

**No. 13-09-02295-I**



# Judgment of Conviction

## Superior Court of New Jersey, ESSEX County

State of New Jersey

v.

Last Name

First Name

Middle Name

U. [REDACTED]

C. [REDACTED]

G

Also Known As

Date of Birth

SBI Number

Date(s) of Offense

05/05/2013

Date of Arrest

PROMIS Number

Date Ind / Acc / Complt Filed

Original Plea

Date of Original Plea

13 003218-002

09/13/2013

☒ Not Guilty ☐ Guilty

10/21/2013

Adjudication By



Guilty Plea



Jury Trial Verdict



Non-Jury Trial Verdict



Dismissed / Acquitted

Date: 11/18/2013

### Original Charges

Ind / Acc / Complt	Count	Description	Statute	Degree
13-09-02295-I	4	POSS SCHD I II III IV	2C:35-10A(1)	3
13-09-02295-I	5	POSS/DIST/MANUFACTURING/DISPENSING OF CDS	2C:35-5A(1)	3

### Final Charges

Ind / Acc / Complt	Count	Description	Statute	Degree
13-09-02295-I	4	POSS SCHD I II III IV	2C:35-10A(1)	3

### Sentencing Statement

It is, therefore, on 03/07/2014 **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

COUNT 4: PROBATION THREE (3) YEARS. MAINTAIN EMPLOYMENT; SUPPORT DEPENDANTS; NO WEAPONS; ENROLL/COMPLETE IN/OUT PATIENT PROG; 100 HRS COMMUNITY SERVICE. VCCB \$50.00, SNSF \$75.00, LEOP \$30.00, LAB \$50.00, DEDR \$1000.00, P/A \$15.00/MTH - TO BE PAID @ \$60.00/MTH

COUNT 5: DISMISSED.

JAIL CREDIT - 1 DAY

TRUE COPY

☐ It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term

Institution Name

000 Years 00 Months 000 Days

Total Probation Term

03 Years 00 Months

**DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)**

A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)

☐ DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))

	Standard	Doubled
1st Degree	@ \$	@ \$
2nd Degree	@ \$	@ \$
3rd Degree	1 @ \$ 1,000.00	@ \$
4th Degree	@ \$	@ \$
DP or	@ \$	@ \$
Petty DP	@ \$	@ \$

Total DEDR Penalty \$ 1,000.00

☐ The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)

Forensic Laboratory Fee (N.J.S.A. 2C:35-20)

Total Lab Fee

1 Offenses @ \$ 50.00

\$ 50.00

**VCCA Assessment (N.J.S.A. 2C:43-3.1)**

Counts	Number	Amount
4	1 @	\$ 50.00
	@	\$
	@	\$
	@	\$

Total VCCA Assessment \$ 50.00

**Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)**

Offense

Mandatory Penalty

\$

**Offense Based Penalties**

Penalty

Amount

\$

**Other Fees and Penalties**

Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)

☒ \$ 30.00

Safe Neighborhood Services Fund Assessment (N.J.S.A. 2C:43-3.2)

☒ 1 Offenses @ \$ 75.00

Total: \$ 75.00

Probation Supervision Fee (N.J.S.A. 2C:45-1d)

☒ \$ 15.00

Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)

☐ Offenses @ \$

Total \$

Transaction Fee (N.J.S.A. 2C:46-1.1)

☐

Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)

☐ \$

Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)

☐ \$

Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)

☐ \$

Fine

\$

Restitution

\$

Total Financial Obligation

\$ 1,205.00

Details

**Additional Conditions**

- ☒ The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20).
- ☐ The defendant is hereby sentenced to community supervision for life. (If offense occurred before 1/14/04) (N.J.S.A. 2C:43-6.4)
- ☐ The defendant is hereby sentenced to parole supervision for life. (If offense occurred on or after 1/14/04) (N.J.S.A. 2C:43-6.4).
- ☐ The defendant is hereby ordered to serve a \_\_\_\_\_ year term of parole supervision, which term shall begin as soon as defendant completes the sentence of incarceration. (N.J.S.A. 2C:43-7.2).
- ☐ The court imposes a restraining order pursuant to DORA. (N.J.S.A. 2C:35-5.7(h)). Restraining Order expires \_\_\_\_\_

**Findings Per N.J.S.A. 2C:47-3**

- ☐ The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- ☐ The court finds that the defendant is amenable to sex offender treatment.
- ☐ The court finds that the defendant is willing to participate in sex offender treatment.

**License Suspension**

- ☐ CDS / Paraphernalia (N.J.S.A. 2C:35-16) ☐ Waived
- ☐ Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)
- ☐ Eluding (N.J.S.A. 2C:29-2)
- ☐ Other \_\_\_\_\_

Number of Months

☐ Non-resident driving privileges revoked

Start Date

End Date

Details

Driver's License Number

Jurisdiction

If the court is unable to collect the license, complete the following:  
Defendant's Address

City

State

Zip

Date of Birth

Sex

☐ M ☐ F

Eye Color

## **Appendix B-7**

**No. 18-10-00609-I**



# Judgment of Conviction & Order for Commitment

## Superior Court of New Jersey, UNION County

**State of New Jersey**
**v.**

Last Name

First Name

Middle Name

Also Known As

Date of Birth

SBI Number

Date(s) of Offense

07/18/2018

Date of Arrest

PROMIS Number

18 002635-001

Date Ind / Acc / Complt Filed

10/16/2018

Original Plea

☒ Not Guilty

☐ Guilty

Date of Original Plea

10/29/2018

Adjudication By

☒ Guilty Plea

☐ Jury Trial Verdict

☐ Non-Jury Trial Verdict

☐ Dismissed / Acquitted

Date: 08/02/2019

### Original Charges

Ind / Acc / Complt	Count	Description	Statute	Degree
18-10-00609-I	1	UNLAWFUL POSS WEAPON- PRIOR CONV IN NERA	2C:39-5J	1
18-10-00609-I	2	PROHIBITED WEAPONS AND DEVICES - LARGE CAPACITY AMMO	2C:39-3J	4
18-10-00609-I	3	PROHIBITED WEAPONS AND DEVICES - HOLLOW NOSE/DUM-DUM	2C:39-3F(1)	4
18-10-00609-I	4	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
18-10-00609-I	5	CDS - MANU/DIST/PWID - HEROIN/COCAINE - < .50Z	2C:35-5B(3)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	
18-10-00609-I	6	CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS	2C:35-7A	3

(Cont...)

### Final Charges

Ind / Acc / Complt	Count	Description	Statute	Degree
18-10-00609-I	1	UNLAWFUL POSS WEAPON- PRIOR CONV IN NERA	2C:39-5J	1
18-10-00609-I	6	CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS	2C:35-7A	3

### Sentencing Statement

It is, therefore, on 05/21/2020

**ORDERED and ADJUDGED** that the defendant is sentenced as follows:

- AS TO COUNT 1: THE DEFENDANT IS COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 10 YEARS WITH 5 YEARS OF PAROLE INELIGIBILITY PURSUANT TO THE GRAVES ACT.
- AS TO COUNT 6: THE DEFENDANT IS COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 4 YEARS FLAT. THE DEFENDANT'S DRIVING PRIVILEGES ARE HEREBY SUSPENDED IN THE STATE OF NEW JERSEY FOR A PERIOD OF 6 MONTHS.
- COUNTS 1 AND 6 ARE TO RUN CONCURRENT TO EACH OTHER.
- THIS SENTENCE IS TO RUN CONSECUTIVE TO THE DEFENDANT'S PAROLE HIT.
- COUNTS 2, 3, 4, 5 AND 7 OF 18-10-00609-I ARE HEREBY DISMISSED.
- MOTOR VEHICLE CITATIONS E18-021412 AND E18-021413 ARE HEREBY DISMISSED.

☐ It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term

010 Years 00 Months 000 Days

Institution Name

CARE COMMISS/CORR

Total Probation Term

00 Years 00 Months

State of New Jersey v.

S.B.I. # Ind / Acc / Compl # 18-10-00609-I

**DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)**

A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)

☐ DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))

	Standard		Doubled	
1st Degree	@ \$		@ \$	
2nd Degree	@ \$		@ \$	
3rd Degree	1 @ \$ 1,000.00		@ \$	
4th Degree	@ \$		@ \$	
DP or	@ \$		@ \$	
Petty DP	@ \$		@ \$	

**Total DEDR Penalty \$ 1,000.00**

☐ The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)

Forensic Laboratory Fee (N.J.S.A. 2C:35-20)

Total Lab Fee

1 Offenses @ \$ 50.00

\$ 50.00

**VCCO Assessment (N.J.S.A. 2C:43-3.1)**

Counts	Number	Amount
1	1 @	\$ 50.00
6	1 @	\$ 50.00
	@	\$
	@	\$

**Total VCCO Assessment \$ 100.00**

**Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)**

Offense

Mandatory Penalty

\$

**Offense Based Penalties**

Penalty

Amount

\$

**Other Fees and Penalties**

Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)

☒ \$ 30.00

Safe Neighborhoods Services Fund Assessment (N.J.S.A. 2C:43-3.2)

☒ 2 Offenses @ \$ 75.00

**Total: \$ 150.00**

Probation Supervision Fee (N.J.S.A. 2C:45-1d)

☐ \$

Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)

☐ Offenses @ \$

**Total \$**

Transaction Fee (N.J.S.A. 2C:46-1.1)

☐

Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)

☐ \$

Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)

☐ \$

Fine

\$

Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)

☐ \$

Restitution

Joint & Several

\$ ☐

**Total Financial Obligation**

\$ 1,330.00

Details

**Additional Conditions**

- ☒ The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20 and N.J.S.A. 53:1-20.29).
- ☐ The defendant is hereby sentenced to community supervision for life (CSL) if offense occurred before 1/14/04 (N.J.S.A. 2C:43-6.4).
- ☐ The defendant is hereby sentenced to parole supervision for life (PSL) if offense occurred on or after 1/14/04 (N.J.S.A. 2C:43-6.4).
- ☐ The defendant is hereby ordered to serve a \_\_\_\_\_ year term of parole supervision, pursuant to the No Early Release Act (NERA), which term shall begin as soon as the defendant completes the sentence of incarceration (N.J.S.A. 2C:43-7.2).
- ☐ The court imposes a Drug Offender Restraining Order (DORO) (N.J.S.A. 2C:35-5.7h). DORO expires \_\_\_\_\_
- ☐ The court continues/imposes a Sex Offender Restraining Order (SORO) if the offense occurred on or after 8/7/07 (Nicole's Law N.J.S.A. 2C:14-12 or N.J.S.A. 2C:44-8).
- ☐ The court imposes a Stalking Restraining Order (N.J.S.A. 2C:12-10.1).
- ☐ The defendant is prohibited from purchasing, owning, possessing, or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun (N.J.S.A. 2C:25-27c(1)).

**Findings Per N.J.S.A. 2C:47-3**

- ☐ The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- ☐ The court finds that the defendant is amenable to sex offender treatment.
- ☐ The court finds that the defendant is willing to participate in sex offender treatment.

**License Suspension**

- ☐ CDS / Paraphernalia (N.J.S.A. 2C:35-16) ☐ Waived
- ☐ Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)
- ☐ Eluding (N.J.S.A. 2C:29-2)
- ☐ Other

Number of Months

6

☐ Non-resident driving privileges revoked

Start Date

05/21/2020

End Date

11/21/2020

Details

Driver's License Number

Jurisdiction

If the court is unable to collect the license, complete the following:

Defendant's Address

129 CHANCELLOR AVE APT D3

City

NEWARK

State

NJ

Zip

07112-1940

Date of Birth

Sex

☐ M ☐ F

Eye Color

State of New Jersey v.

S.B.I. # Ind / Acc / Compl # 18-10-00609-I

**Time Credits**

Time Spent in Custody	Gap Time Spent in Custody	Prior Service Credit
R. 3:21-8	N.J.S.A. 2C:44-5b(2)	
Date: From - To	Date: From - To	Date: From - To
07/18/2019 - 07/19/2019	-	-
03/20/2020 - 05/20/2020	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
-	-	-
Total Number of Days 64	Total Number of Days	Total Number of Days

**Statement of Reasons - Include all applicable aggravating and mitigating factors**

## AGGRAVATING FACTORS

3. The risk that the defendant will commit another offense.

6. The extent of the defendant's prior criminal record and the seriousness of the offenses of which he/she has been convicted.

9. The need for deterring the defendant and others from violating the law.

- THIS COURT FINDS THAT AGGRAVATING FACTORS 3, 6 AND 9 OUTWEIGHS THE NON-EXISTENT MITIGATING FACTORS. THIS IS THE RESULT OF THE NEGOTIATION BETWEEN DEFENSE AND THE STATE AND, ALTHOUGH A GREATER SENTENCE CAN BE IMPOSED, THE DEFENDANT IS RECEIVING THE BENEFIT OF THE PLEA AGREEMENT.

- THE JAIL CREDITS AWARDED FROM MARCH 20, 2020 THROUGH MAY 20, 2020 ARE HEREBY AWARDED TO THE DEFENDANT WITH THE AGREEMENT OF THE STATE, DEFENSE AND THIS COURT IN THE INTERSET OF JUSTICE DUE TO THE COVID-19 PANDEMIC.

Attorney for Defendant at Sentencing

MICHAEL B CAMPAGNA

Public Defender

☐ Yes ☒ No

Prosecutor at Sentencing

ESTRELLA LOPEZ

Deputy Attorney General

☐ Yes ☒ No

Judge at Sentencing

Lisa Walsh, J.S.C.

Judge (Signature)

/s Lisa Walsh, J.S.C.

Date

06/05/2020

State of New Jersey v.

S.B.I. # [REDACTED] Ind / Acc / Complt # 18-10-00609-I

**Continuation**

ORIGINAL CHARGES (Cont.)

Ind / Acc / Complt	Count	Description	Statute	Degree
18-10-00609-I	7	POSSESSION OF FIREARM WHILE COMMITTING CDS/BIAS CRIME	2C:39-4.1A	2



## **Appendix B-8**

**No. 19-04-00313-A**



# Judgment of Conviction & Order for Commitment

## Superior Court of New Jersey, MORRIS County

State of New Jersey

v.

Last Name

C. [REDACTED]

First Name

M. [REDACTED]

Middle Name

A

Also Known As

Date of Birth

[REDACTED]

SBI Number

[REDACTED]

Date(s) of Offense

10/16/2018

Date of Arrest

PROMIS Number

18 001743-001

Date Ind / Acc / Compl Filed

04/15/2019

Original Plea

☐ Not Guilty ☐ Guilty

Date of Original Plea

Adjudication By

☒ Guilty Plea

☐ Jury Trial Verdict

☐ Non-Jury Trial Verdict

☐ Dismissed / Acquitted

Date: 04/15/2019

### Original Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
19-04-00313-A	1	CDS - MANU/DIST/PWID - HEROIN/COCAINE - .50Z TO <50Z	2C:35-5B(2)	2
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	
W-2018-000310-1436	4	USE/POSS W/INTENT TO USE DRUG PARAPHERNALIA	2C:36-2	DP
W-2018-000310-1436	2	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
W-2018-000310-1436	3	MONEY LAUNDERING-TRANSP/POSSESS CRIM PROP: UNDER \$75K	2C:21-25A	3

### Final Charges

Ind / Acc / Compl	Count	Description	Statute	Degree
19-04-00313-A	1	CDS - MANU/DIST/PWID - HEROIN/COCAINE - .50Z TO <50Z	2C:35-5B(2)	2
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	

### Sentencing Statement

It is, therefore, on 10/18/2019 **ORDERED and ADJUDGED** that the defendant is sentenced as follows:

On Count 1, the Defendant is sentenced as a third degree offender and is committed to the custody of the Commissioner of the Department of Corrections for a period of 3 years flat, with credit for time served of 2 days, which credit has been agreed to by the State and Defendant. Defendant must provide a DNA sample, if not already done, and pay all costs associated with that testing.

Loss of NJ Driving Privileges for a period of 6 months.

Pay \$50 VCCA; \$75 SNSF; \$30 LEOTEF; 2000 DEDR; \$50 Lab Fee; \$2 Transaction Fee. All fines are to be collected through the DOC.

Dismiss: Count 2, Count 3 and Count 4 of W-2018-000310-1436;

Dismiss: MV #1436-R-75613 and MV #1436-R-75614.

☒ It is further ORDERED that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term

003 Years 00 Months 000 Days

Institution Name

CARE COMMISS/CORR

Total Probation Term

00 Years 00 Months

<b>DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)</b>		<b>Additional Conditions</b>	
<b>A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)</b>		<input checked="" type="checkbox"/> The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20 and N.J.S.A. 53:1-20.29).	
<input type="checkbox"/> DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))		<input type="checkbox"/> The defendant is hereby sentenced to community supervision for life (CSL) if offense occurred before 1/14/04 (N.J.S.A. 2C:43-6.4).	
1st Degree	Standard @ \$ _____ Doubled @ \$ _____	<input type="checkbox"/> The defendant is hereby sentenced to parole supervision for life (PSL) if offense occurred on or after 1/14/04 (N.J.S.A. 2C:43-6.4).	
2nd Degree	1 @ \$ 2,000.00 @ \$ _____	<input type="checkbox"/> The defendant is hereby ordered to serve a _____ year term of parole supervision, pursuant to the No Early Release Act (NERA), which term shall begin as soon as the defendant completes the sentence of incarceration (N.J.S.A. 2C:43-7.2).	
3rd Degree	@ \$ _____ @ \$ _____	<input type="checkbox"/> The court imposes a Drug Offender Restraining Order (DORO) (N.J.S.A. 2C:35-5.7h). DORO expires _____	
4th Degree	@ \$ _____ @ \$ _____	<input type="checkbox"/> The court continues/imposes a Sex Offender Restraining Order (SORO) if the offense occurred on or after 8/7/07 (Nicole's Law N.J.S.A. 2C:14-12 or N.J.S.A. 2C:44-8).	
DP or	@ \$ _____ @ \$ _____	<input type="checkbox"/> The court imposes a Stalking Restraining Order (N.J.S.A. 2C:12-10.1).	
Petty DP	@ \$ _____ @ \$ _____	<input type="checkbox"/> The defendant is prohibited from purchasing, owning, possessing, or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun (N.J.S.A. 2C:25-27c(1)).	
<b>Total DEDR Penalty \$ 2,000.00</b>			
<input type="checkbox"/> The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)			
<b>Forensic Laboratory Fee (N.J.S.A. 2C:35-20)</b>		<b>Total Lab Fee</b>	
1 Offenses @ \$ 50.00		\$ 50.00	
<b>VCCO Assessment (N.J.S.A. 2C:43-3.1)</b>			
Counts	Number	Amount	
1	1 @	\$ 50.00	
	@	\$ _____	
	@	\$ _____	
	@	\$ _____	
<b>Total VCCO Assessment \$ 50.00</b>			
<b>Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)</b>			
Offense		Mandatory Penalty	
		\$ _____	
<b>Offense Based Penalties</b>			
Penalty		Amount	
		\$ _____	
<b>Other Fees and Penalties</b>			
Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3)		Safe Neighborhoods Services Fund Assessment (N.J.S.A. 2C:43-3.2)	
<input checked="" type="checkbox"/> \$ 30.00		<input checked="" type="checkbox"/> 1 Offenses @ \$ 5.00	
		<b>Total: \$ 75.00</b>	
Probation Supervision Fee (N.J.S.A. 2C:45-1d)		Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6)	
<input type="checkbox"/> \$ _____		<input type="checkbox"/> Offenses @ \$ _____	
Transaction Fee (N.J.S.A. 2C:46-1.1)		<b>Total \$ _____</b>	
<input checked="" type="checkbox"/>			
Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4)		Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7)	
<input type="checkbox"/> \$ _____		<input type="checkbox"/> \$ _____	
Fine		Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10)	
\$ _____		<input type="checkbox"/> \$ _____	
Restitution Joint & Several		Total Financial Obligation	
\$ _____ <input type="checkbox"/>		\$ 2,205.00	
<b>Details</b>			

<b>Findings Per N.J.S.A. 2C:47-3</b>		
<input type="checkbox"/> The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.		
<input type="checkbox"/> The court finds that the defendant is amenable to sex offender treatment.		
<input type="checkbox"/> The court finds that the defendant is willing to participate in sex offender treatment.		
<b>License Suspension</b>		
<input type="checkbox"/> CDS / Paraphernalia (N.J.S.A. 2C:35-16) <input type="checkbox"/> Waived		
<input type="checkbox"/> Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)		
<input type="checkbox"/> Eluding (N.J.S.A. 2C:29-2)		
<input type="checkbox"/> Other		
Number of Months 6		<input type="checkbox"/> Non-resident driving privileges revoked
Start Date 10/18/2019		End Date 04/18/2020
<b>Details</b>		
Driver's License Number XXXXXXXXXX		Jurisdiction XX
If the court is unable to collect the license, complete the following: Defendant's Address 117 KENDALL COURT		
City DOVER		State NJ
		Zip 07801-0000
Date of Birth 11/17/1982		Sex <input type="checkbox"/> M <input type="checkbox"/> F
Eye Color		





A

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION—CRIMINAL  
MORRIS COUNTY

THE STATE OF NEW JERSEY,

Plaintiff,

vs.

M. [REDACTED] A. [REDACTED]

Defendant.

Case no. 18001743

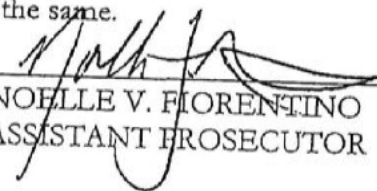
ACCUSATION NO. 19-04-60313-A

M. [REDACTED] A. [REDACTED] having been charged upon oath before a Judge in the said County of Morris with Possession one-half ounce or more, but less than five ounces of CDS with Intent to Distribute, and having in writing, addressed to the County Prosecutor, waived indictment and trial by jury and requested to be tried upon said charge(s) by the Court, and said request having been duly reported and granted:

COUNT ONE

(Possession of CDS with Intent to Distribute – Second Degree)

The County Prosecutor of said County of Morris alleges that the said M. [REDACTED] A. [REDACTED] on or about October 16, 2018, in the Township of Roxbury, in the County of Morris, aforesaid, and within the jurisdiction of this Court, did unlawfully and knowingly or purposely possess a controlled dangerous substance, namely, Cocaine, Schedule II, in a quantity of one-half ounce or more but less than five ounces, with the intent to distribute same, a crime of the Second Degree, contrary to the provisions of N.J.S. 2C:35-5a(1) and N.J.S. 2C:35-5b(2), and against the peace of this State, the Government and dignity of the same.

  
NOELLE V. FIORENTINO  
ASSISTANT PROSECUTOR

CASE NO. 18-1743

ACCUSATION NO. 19-04-00313-A

SUPERIOR COURT OF NEW JERSEY  
(LAW DIVISION - CRIMINAL)  
MORRIS COUNTY

THE STATE OF NEW JERSEY,  
Plaintiff,

vs.

M. A. C. [REDACTED]

Defendant.

ACCUSATION FOR

Possession of one-half ounce or more but less  
than five ounces of CDS with Intent to  
Distribute

FREDRIC M. KNAPP, ESQ.  
Attorney ID No.: 013641978  
COUNTY PROSECUTOR

BY: NOELLE V. FIORENTINO  
ASSISTANT PROSECUTOR  
Attorney ID No.: 028142008

**23-6590**

**APPENDIX C**

**DECLARATION OF  
AMELIA MARRITZ**

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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PAUL ANTHONY JOHNSON,

Petitioner,

v.

MERRICK B. GARLAND, UNITED STATES ATTORNEY  
GENERAL,

Respondent.

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Case No. 23-6590

**DECLARATION OF AMELIA MARRITZ  
IN SUPPORT OF BRIEF AS *AMICI CURIAE* IN SUPPORT OF  
PETITIONER**

I, Amelia Marritz, declare, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am a licensed attorney admitted to practice in the State of New York and before the United States Court of Appeals for the Second Circuit. I am a Senior Attorney at the Immigrant Defense Project and counsel for *amici* in the above-captioned matter. My address is P.O. Box 1765, New York, NY 10027.
2. I was also counsel for *amici* in related briefs filed with the U.S. Court of Appeals for the Third Circuit in *Brown v. Att’y Gen.*, No. 22-1779 (3d Cir.),



and *Gayle v. Att'y Gen.*, No. 22-1811, 2023 WL 4077332 (3d Cir. June 15, 2023).

3. The record of conviction documents at Appendix B-1, B-2 and B-3 were part of the administrative record in *Brown*. See Administrative Record at 894, 1182-99, *Brown v. Att'y Gen.*, No. 22-1779 (3d Cir.), ECF No. 8-2. The documents at B-1 and B-2 were filed by the Department of Homeland Security. See *id.* at 1159 (Department of Homeland Security table of contents for submission in immigration court on March 12, 2020).
4. The record of conviction documents at Appendix B-4 were part of the administrative record in *Gayle*. Administrative Record at 507-31, *Gayle v. Att'y Gen.*, No. 22-1811(3d Cir.), ECF No. 8-2. These documents were filed by the Department of Homeland Security. See *id.* at 494 ((Department of Homeland Security table of contents for submission in immigration court on January 27, 2021).
5. I received the following New Jersey criminal court documents directly from attorneys who have access to such records either through their own clients or through an online system available to attorneys licensed in New Jersey.
  - a. Appendix B-5: I received these documents directly from an attorney who represents the individual defendant in that case in immigration proceedings.

- b. Appendix B-6: I received these documents directly from an attorney who represents the individual defendant in that case in immigration proceedings.
  - c. Appendix B-7: I received these documents directly from an attorney who obtained them from New Jersey's attorney-access portal.
  - d. Appendix B-8: I received these documents directly from an attorney who represents the individual defendant in that case in immigration proceedings.
6. As a measure of protection to the individual defendants identified in these documents, their attorneys and I redacted identifying information, including name other than initials, date of birth, and identification number. We made no other modifications to these documents.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 9, 2024

/s/ Amelia Marritz

Amelia Marritz