15-2070-cr

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ABDELMAJI K. LABABNEH,
aka Abu Khalaf, aka David,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF DEFENDANT-APPELLANT AND REMAND

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae National Association of Criminal Defense Lawyers ("NACDL") submits the following corporate disclosure statement, as required by Federal Rules of Appellate Procedure 26.1 and 29(c)(1): NACDL is a nonprofit corporation organized under the laws of the District of Columbia. It has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

Dated: New York, New York
March 31, 2016

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INTEREST OF *AMICUS*[1]

Amicus National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a membership of approximately 9,000 members in 28 countries and 90 state, provincial, and local affiliate organizations, totaling up to 40,000 attorneys. NACDL and its members are dedicated to advancing the proper, efficient, and fair administration of justice, including ensuring that criminal sentencing statutes are construed and applied in accordance with due process. NACDL submits this brief to provide this Court with a more comprehensive understanding of the scientific, legal, and policy issues surrounding the appropriate treatment of synthetic marijuana under the United States Sentencing Guidelines.

SUMMARY OF ARGUMENT

The Sentencing Guidelines endorse a 1:167 ratio for converting quantities of Tetrahydrocannabinol (often dubbed "THC") to marijuana for sentencing purposes—a ratio that the government now urges this Court to apply in converting

[1] Pursuant to Federal Rule of Appellate Procedure 29, counsel for *amicus* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Notice of intent to file this brief was provided to the Appellant and the Appellee, and no party opposes the filing of this brief.

quantities of synthetic marijuana to marijuana. Because this ratio lacks a sound empirical basis, *amicus* respectfully urges this Court to redress its inequitable effects on the growing number of synthetic marijuana offenders. And while the particular sentencing disparities involving synthetic marijuana are new, the policy problems they present are not—calling to mind the baleful effects of the unjustified 1:100 crack-to-cocaine sentencing ratio, which Congress eventually reduced in the Fair Sentencing Act of 2010.

Application of the 1:167 ratio to synthetic marijuana similarly lacks proper scientific support or other sound policy basis. As one district court recently reasoned in declining to apply the ratio at sentencing:

> In considering the THC to marijuana ratio, I find it troubling that there does not seem to be any reason behind the 1:167 ratio. Although I asked each of the experts at the hearing, no one could provide me with a reason for this ratio, which has major implications in determining the base level offense. After my own research and a phone call to the Sentencing Commission, I still could find no basis for this ratio. It appears to have been included in the first set of Guidelines in 1987, with no published explanation. While a sentence must reflect the seriousness of the offense to provide just punishment, a sentence based on a range that seems to have no cognizable basis is not just.

United States v. Hossain, No. 1:15-cr-14034, 2016 WL 70583, at *5 (S.D. Fla. Jan. 5, 2016). Yet most courts appear to apply the ratio to synthetic marijuana offenses without scrutiny, perpetuating inequitable treatment of defendants.

In the instant case, although the district court imposed a below-Guidelines sentence for a combination of reasons, it may not have fully recognized its

discretion to deviate from the 1:167 ratio. As the Supreme Court recognized in *Kimbrough v. United States*, 552 U.S. 85 (2007), district courts may deviate from such a ratio because they disagree with the ratio's policy rationale and because the ratio leads to sentences "greater than necessary" to accomplish the purposes of sentencing articulated in 18 U.S.C. § 3553(a). Accordingly, *amicus* respectfully urges this Court to remand the case for further proceedings. At that juncture, the district court can develop a record on which to evaluate whether further deviation from the Guidelines is warranted by the ratio's lack of scientific or other reasoned basis. Should this Court decide that remand is not proper—on procedural or other grounds—*amicus* respectfully urges the Court to reserve judgment on the 1:167 ratio's validity until a more fully developed record comes before it.

ARGUMENT

I. SENTENCING FOR SYNTHETIC MARIJUANA OFFENSES PRESENTS NEW AND GROWING POLICY CHALLENGES.

Application of the Sentencing Guidelines to synthetic marijuana poses novel—and increasingly significant—legal, scientific, and policy questions. Synthetic marijuana is a relatively new substance, and one only recently added to the federal list of Schedule 1 controlled substances.[2] XLR-11, the synthetic

[2] Unlike organic marijuana, "synthetic cannabinoid" or "synthetic marijuana" is comprised of man-made chemicals that mimic the effects of THC, one of the active ingredients responsible for producing many of marijuana's physiological *(cont'd)*

marijuana substance at issue in this case, first appeared on the list in May 2013—shortly before defendant-appellant was arrested.

Despite their novelty, synthetic marijuana substances appear to be a law enforcement priority. In January 2014, the U.S. Drug Enforcement Administration ("DEA") launched an initiative targeting the possession and distribution of synthetic drugs, leading to over 150 arrests in 29 states within several months. *See* U.S. Drug Enf't Admin., *DEA News: Huge Synthetic Drug Takedown, Project Synergy Phase II continues attack on drug networks, sources of supply, global money flow* (May 7, 2014), http://www.dea.gov/divisions/hq/2014/hq050714.shtml. This focus appears to persist: In September 2015, the DEA, Department of Homeland Security, New York Police Department, and New York City Sheriff's Office raided 80 locations throughout New York City, indicting and arresting a number of individuals in connection with synthetic marijuana. *See* Joe Valiquette et al., *10 Indicted, 80 Locations Raided in Biggest Synthetic Pot Crackdown in New York City History: Officials*, NBC N.Y. (Sept. 16, 2015), http://www.nbcnewyork.com/news/local/Synthetic-Marijuana-Pot-Crackdown-

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and psychological effects. *See* Office of Nat'l Drug Control Policy, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, https://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts (last visited Mar. 30, 2016).

New-York-City-Bodega-Raid-Store-Cannabinoids-Arrest-327864341.html; *see also* Indictment, *United States v. Deiban*, No. 15-cr-00554-TPG (S.D.N.Y. Sept. 10, 2015), ECF No. 2.

Yet synthetic marijuana is absent from the Sentencing Guidelines' Drug Quantity Table, which recommends a base offense level for weight-based quantities of certain controlled substances. *See* U.S. Sentencing Guidelines Manual § 2D1.1(c) (U.S. Sentencing Comm'n 2015) ("U.S.S.G."). A court must, therefore, convert a quantity of synthetic marijuana into a corresponding quantity of its organic counterpart. U.S.S.G. § 2D1.1 cmt. n.6. This ordinarily involves two steps: First, the court must identify the listed substance to which synthetic marijuana is "most closely related." *Id.* Second, using the appropriate conversion ratio in the Guidelines, the court must convert the quantity of the most closely related substance into a quantity of marijuana. U.S.S.G. § 2D1.1 cmt. n.8(A). The Guidelines offer the following conversion ratios for marijuana-related substances:

> 1 gm of Marihuana/Cannabis . . . = 1 gm of marihuana
> 1 gm of Hashish Oil = 50 gm of marihuana
> 1 gm of Cannabis Resin or Hashish = 5 gm of marihuana
> 1 gm of Tetrahydrocannabinol, organic = 167 gm of marihuana
> 1 gm of Tetrahydrocannabinol, synthetic = 167 gm of marihuana

U.S.S.G. § 2D1.1 cmt. n.8(D).

In cases involving synthetic marijuana, the government has generally taken the position: (1) that synthetic marijuana is more similar to Tetrahydrocannabinol

(or "THC") than to any other enumerated marijuana substance; and (2) that synthetic marijuana is subject to the Guidelines' 1:167 THC-to-marijuana ratio. Accordingly, the government has advocated treating one gram of synthetic marijuana like 167 grams of regular marijuana for sentencing purposes. As prosecutions for synthetic marijuana accelerate, judicial scrutiny of this conversion ratio is becoming increasingly critical to protecting the rights of criminal defendants.

II. THE SCIENTIFIC BASIS FOR THE GOVERNMENT'S PROPOSED 1:167 CONVERSION RATIO IS HIGHLY QUESTIONABLE.

The 1:167 ratio lacks scientific and empirical support and was never intended to apply to synthetic marijuana. By seeking to apply this ratio, the government also implies that synthetic marijuana is most similar to THC—an assumption with, at best, inconclusive support.

A. The 1:167 Ratio Lacked Scientific Basis When Promulgated and It Does Not Conform With Current Experience.

As one court recently determined, the Sentencing Commission's initial use of a 1:167 ratio in 1987 to convert THC to marijuana did not appear to rest on scientific or other evidence. *See Hossain*, 2016 WL 70583, at *5 ("After my own research and a phone call to the Sentencing Commission, I still could find no basis for this ratio. It appears to have been included in the first set of Guidelines in 1987, with no published explanation."); *see also id.* (finding it "troubling that there

does not seem to be any reason behind the 1:167 ratio"). Nor did the 1:167 ratio accurately reflect the level of THC contained in marijuana during the 1980s, when the ratio was first adopted. *See, e.g.*, Mahmoud A. ElSohly et al., *Potency Trends of* Δ^9*-THC and Other Cannabinoids in Confiscated Marijuana from 1980-1997*, J. Forensic Sci. 24, 25-26 (2000), *available at* http://www.datia.org/datia/resources/-potencytrends.pdf. Because marijuana's THC potency was then approximately 3%, the 1:167 ratio—even at its inception—misstated the amount of THC within marijuana by a factor of five. *See id.* at Table 2. Moreover, the ratio's promulgation predates the development of synthetic marijuana, so the Sentencing Commission did not give the substance any reasoned consideration.

Today's experience appears to belie the 1:167 ratio. That ratio implies that marijuana has 0.6% THC content, but the accurate proportion appears to be significantly higher. While one court has recognized that current THC content could be 14%, *see Hossain*, 2016 WL 70583, at *6 (acknowledging expert testimony that "[w]e know from Government studies that the average THC content in marijuana today is over 14 percent"), some researchers suggest that THC concentration may be even higher. *See, e.g.*, Fernanda Alonso, *So What Exactly Is In Our Legal Pot?*, Georgetown Univ., O'Neill Inst. for Nat'l & Glob. Health L. (Mar. 26, 2015) ("What the samples have shown is that THC levels have risen markedly, to up to 30%. . . . [S]ome labs in Washington have seen THC levels as

high as 40%."), http://www.oneillinstituteblog.org/so-what-exactly-is-in-our-legal-pot/. In response to expert testimony that estimated the accurate conversion ratio for synthetic marijuana at 1:7—not 1:167—one court recently adjusted a defendant's sentence accordingly, reflecting a sentence "more reasonable than the sentence that the Government suggest[ed] . . ., based off the 1:167 ratio." *Hossain*, 2016 WL 70583, at *6. Indeed, marijuana with very low THC-levels is likely not the product for individual use as a narcotic, but for industrial purposes in making hemp rope or cloth. *See generally Hemp Facts*, N. Am. Indus. Hemp Council, Inc., http://www.naihc.org/hemp-information/286-hemp-facts (last visited Mar. 30, 2016).

B. Whether XLR-11 Is Most Similar to THC Remains Questionable.

The 1:167 conversion ratio has been applied to XLR-11 and other forms of synthetic marijuana because the government maintains that these substances are most closely related—or equivalent—to THC, the conversion of which the Guidelines address. But this equivalency remains to be proven, and experts dispute the similarity of THC's and synthetic marijuana's pharmacological effects and potencies. In fact, XLR-11 and other forms of synthetic marijuana may be most similar to marijuana itself, such that a 1:1 conversion ratio would apply under the Guidelines.

Whether a substance is "substantially similar" to a controlled substance listed in the Guidelines is a factual question that sentencing courts must determine after considering the similarity between the two substances' (1) chemical structures; (2) pharmacological effects; and (3) potencies. U.S.S.G. § 2D1.1 cmt. n.6. Experts generally agree that the first factor is unhelpful in making an equivalency determination.[3] As a result, courts focus on the two remaining factors—pharmacological effects and potency—to determine whether a form of synthetic marijuana "most closely relates" to THC or to a different substance. *See, e.g.*, *Hossain*, 2016 WL 70583, at *2-4; *United States v. Ramos*, Nos. 15-1592, 15-1602, 2016 WL 497167, at *6-9 (8th Cir. Feb. 9, 2016) (as corrected Feb. 23, 2016).

With respect to the similarity of THC's and synthetic marijuana's pharmacological effects, experts remain divided. While government experts cite

[3] *See, e.g.*, *United States v. Ramos*, Nos. 15-1592, 15-1602, 2016 WL 497167, at *7 (8th Cir. Feb. 9, 2016) (as corrected Feb. 23, 2016) ("[S]ynthetic cannabinoids do not have a chemical structure similar to either THC or marijuana."); *Hossain*, 2016 WL 70583, at *2 (acknowledging same). Indeed, there are many reasons why substances can be difficult to compare from a forensic analytical standpoint including, *inter alia*, the large number of potential chemical structures and inadequate accessibility to standards. *See United States v. Makkar*, 810 F.3d 1139, 1143 (10th Cir. 2015) ("[It is] an open question . . . what exactly it means for chemicals to have a 'substantially similar' chemical structure—or effect."); *United States v. Forbes*, 806 F. Supp. 232, 237 (D. Colo. 1992) ("The scientific community cannot even agree on a methodology to use to determine structural similarity.").

drug discrimination studies suggesting that "animals could not differentiate between XLR-11 and the THC," other experts question these results because "animal studies are not reliable predictors of what a drug will produce in a human being," *Hossain*, 2016 WL 70583, at *3 (citation omitted); *see also Brock v. Merrell Dow Pharms., Inc.*, 874 F.2d 307, 313-14 (5th Cir. 1989) (noting the "very limited usefulness of animal studies" in determining a chemical's toxicity and recounting expert testimony that "the only way to tell whether a substance [produces similar pharmacological effects] in humans is to look to the human experience"). Similarly, with respect to the potency of each drug, many experts question the government's use of studies that rely on animal trials, utilize unreliable sample sizes, or generate irreproducible results. *See, e.g.*, *Hossain*, 2016 WL 70583, at *3; *United States v. Malone*, 809 F.3d 251, 255 (5th Cir. 2015). At best, the evidence of the pharmacological effects and potency of THC and synthetic marijuana is inconclusive.

Notably, a critical evaluation of these two factors may reveal that the "most closely related controlled substance" to forms of synthetic marijuana is not THC—but organic marijuana itself. *See Malone*, 809 F.3d at 255 (recounting expert testimony that synthetic and organic marijuana are "consumed in the same way and . . . for the same effect."). Indeed, the DEA has taken a similar position as recently as 2011, concluding that synthetic cannabinoids produce "[p]sychological

effects . . . similar to those of marijuana." U.S. Drug Enf't Admin., *Drugs of Abuse, A DEA Resource Guide* 62 (2011), *available at* https://roar.nevadaprc.org/-system/documents/2167/original/NPRC.1862.DrugsOfAbuse2011.pdf?1399062058; *see also* U.S. Drug Enf't Admin., *2013 National Drug Threat Assessment Summary* 14 (Nov. 2013), http://www.dea.gov/resource-center/DIR-017-13%20NDTA%20Summary%20final.pdf (asserting that "[s]ynthetic cannabinoids give the abuser an effect similar to marijuana"). This would support a conversion ratio of 1:1.

In short, the balance of evidence reveals much uncertainty over the true chemical and proportional relationships among THC, marijuana, and synthetic marijuana. But, at a minimum, the 1:167 ratio appears to lack scientific or other empirical support.

III. THE GOVERNMENT'S PROPOSED 1:167 RATIO HAS NOT RECEIVED ADEQUATE JUDICIAL SCRUTINY.

The emerging challenge of sentencing synthetic marijuana offenders requires greater judicial attention. Although a district court "must include the Guidelines range in the array of factors" it considers in sentencing, the court "may determine . . . that, in the particular case, a within-Guidelines sentence is 'greater than necessary' to serve the objectives of sentencing." *Kimbrough*, 552 U.S. at 91 (recognizing district courts' discretion to deviate from the Guidelines based on

policy disagreements with them).[4] In the past five years, aspects of the synthetic marijuana conversion ratio have been raised in at least 25 federal district court cases—as well as before three courts of appeals—but have not consistently received detailed treatment.

To date, only one court has critically examined, in the context of all of the statutory sentencing factors, whether the 1:167 ratio rests upon appropriate empirical foundations. *See Hossain*, 2016 WL 70583, at *5-7. In *Hossain*, the court thoroughly analyzed the sentencing factors and concluded that, "despite the potential dangers of synthetic cannabinoids, and the clear need for deterrence," *id.* at *5, the goals of sentencing are not achieved by imposing sentences "to upwards of thirty years in prison for dealing in a substance that was intended to mimic marijuana and so new that only a few years before . . . it was being sold in gas stations and convenience stores," *id.* at *7. Accordingly, the *Hossain* court deviated downward from the Guidelines-recommended range based in large part on "the newness of the regulation of XLR-11, . . . the infancy of our understanding of the effects of XLR-11 and other synthetic cannabinoids," *id.* at *6, and the fact that the ratio appears to lack a sound basis:

[4] To aid in this determination, a district court must consider certain factors, including: the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence to provide just punishment, deterrence, incapacitation, and rehabilitation. 18 U.S.C. § 3553(a)(2).

> For starters, I am not convinced that THC is a particularly relevant substitute for XLR-11. Based off of the testimony I heard, I believe synthetic cannabinoids need their own category in the Drug Equivalency Chart in order to account for the differences between XLR-11 and THC. But, in the absence of an amendment to the Guidelines, I will use the THC Guideline range as a starting point.
>
> In considering the THC to marijuana ratio, I find it troubling that there does not seem to be any reason behind the 1:167 ratio. Although I asked each of the experts at the hearing, no one could provide me with a reason for this ratio, which has major implications in determining the base level offense. After my own research and a phone call to the Sentencing Commission, I still could find no basis for this ratio. It appears to have been included in the first set of Guidelines in 1987, with no published explanation. While a sentence must reflect the seriousness of the offense to provide just punishment, a sentence based on a range that seems to have no cognizable basis is not just.

Id. at *5-6 (emphasis added).

Most synthetic marijuana offenders have not, however, benefited from a similarly searching inquiry. Although some district courts have deviated downward from the Guidelines-recommended penalty range based in part on the "uncertainties surrounding the appropriate multiple for [synthetic marijuana] product[s] relative to marijuana," *see, e.g.*, Sentencing Tr. at 38:21, *United States v. Marg*, No. 3:11-cr-00130 (W.D. Wis. Dec. 26, 2012), ECF No. 68, most have imposed Guidelines-range sentences without question.

Courts of appeals have generally declined to address the ratio directly. In *United States v. Makkar*, for instance, the Tenth Circuit declined to rule on whether the ratio created irrational sentences, instead vacating and remanding on other grounds. 810 F.3d 1139, 1148 (10th Cir. 2015) ("We see no need . . . to resolve the defendants' additional objections."). Other appellate courts have declined to disturb the district courts' decisions to apply the 1:167 ratio because those decisions did not reflect clear error. *See, e.g.*, *Malone*, 809 F.3d at 258 (finding that the district court's decision to apply the ratio was not so clearly erroneous that it required reversal, "[e]ven though both [the government's and the defendant's] experts testified that the 1:167 ratio has no scientific basis"); *see also United States v. Carlson*, 810 F.3d 544, 556 (8th Cir. 2016) (finding no clear error in the district court's application of the 1:167 ratio despite extensive expert testimony that marijuana contained higher levels of THC than the ratio assumed), *petition for cert. filed*, 84 U.S.L.W. 3529 (U.S. Mar. 9, 2016) (No. 15-1136).

The result—potentially disproportionate sentences calculated with a formula that lacks appropriate scientific or evidentiary basis—does not fulfill the objectives of federal sentencing. Although district courts are not required to analyze whether a sentencing guideline is supported by empirical evidence, they are charged with imposing sentences that are "sufficient, but not greater than necessary" to achieve the goals of sentencing articulated in 18 U.S.C. § 3553(a). This obligation calls for

greater scrutiny of the unjustified effects of the 1:167 conversion ratio in sentencing synthetic marijuana offenders.

IV. APPLYING THE 1:167 RATIO RISKS SIGNIFICANT INEQUITIES.

Application of the 1:167 conversion ratio will likely produce inconsistent and inequitable results at sentencing by relying on downward deviations to correct an unsound calculation. Defendants sentenced under this ratio can receive vastly disparate sentences that depend, almost entirely, on a trial judge's willingness to deviate from the Guidelines-recommended penalty range. *See, e.g.*, Sentencing Tr. at 13:4-12, *United States v. Mansour*, No. 5:13-cr-00429 (N.D.N.Y. Jan. 11, 2016), ECF. No. 252 (imposing a one year, one day sentence despite application of the ratio resulting in a Guidelines range of 46 to 57 months); *Hossain*, 2016 WL 70583 at *5-6 (applying a 1:7 ratio, given that "there does not seem to be any reason behind the 1:167 ratio"); Sentencing Tr. at 21:14-25, *United States v. Tebbetts*, No. 5:12-CR-567 (N.D.N.Y. August 6, 2014), ECF No. 64 (applying the ratio without deviation, sentencing defendant to 87 months—the lowest end of the Guidelines-recommended range); *Carlson*, 810 F.3d at 556 (affirming the district court's within-Guidelines sentence of 210 months); *Malone*, 809 F.3d at 255-56 (*accord*, 117 months).

In this case, had the sentencing judge applied a 1:1 conversion ratio, defendant's base offense level would have been 23 rather than 33 (after applying

final adjustments), which would have resulted in a sentencing range of 57–71 months rather than 168–210 months. *See* Sentencing Tr. at 12:13-17, *United States v. Lababneh*, No. 1:14-cr-189 (N.D.N.Y. Dec. 14, 2015), ECF No. 45. Although the district judge ultimately deviated downward from the guidelines, in part due to the "high disparity" between the two ratios, *id.* at 12:23-25, defendant-appellant's 97-month sentence still far exceeds the maximum sentencing range if a 1:1 ratio were used.

The inequity of the 1:167 ratio may be further exacerbated because defendants confronting it may experience overwhelming pressure to plead guilty, especially when prosecutors are willing to stipulate to sentencing factors that would lower the sentencing range under the Guidelines. *See* Human Rights Watch, *An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty* 102 & Table 3 (Dec. 2013) (observing that prosecutors may negotiate terms that would lead to lower sentencing, while district courts imposed, on average, three times longer sentences when defendants go to trial), https://www.hrw.org/sites/default/files/reports/us1213_ForUpload_0_0_0.pdf.

* * *

In *Kimbrough v. United States*, the Supreme Court recognized the district courts' discretion to deviate from a Guidelines-recommended ratio based solely on policy considerations, including disagreements with the Guidelines. 552 U.S. at

101. Here, although the district court acknowledged that the 1:167 ratio creates a "somewhat high disparity in the guidelines scoring for this offense involving synthetic marijuana as opposed to regular marijuana," *see* Sentencing Tr. at 12:23-25, *Lababneh*, it is not clear from the record that the court understood its discretion to deviate from the ratio based solely on a policy disagreement with it. For the reasons set forth above, such a disagreement would be exceedingly well founded.

If this Court agrees, and determines that the relevant issues have been properly preserved, the *amicus* respectfully urges the Court to remand this matter to the district court. The district court, in turn, should permit the record to be supplemented, as appropriate, to inform whether that court should deviate from the 1:167 ratio on the basis of a policy disagreement.

By contrast, should this Court believe that a remand along those lines is not appropriate, *amicus* respectfully urges this Court to defer a precedential determination of the validity of the 1:167 ratio for synthetic marijuana offenses until a future case presents a more comprehensive record on this issue.

CONCLUSION

For the foregoing reasons, *amicus* respectfully urges this Court to remand to the district court for further factual development and reconsideration of the sentence imposed in this case.

Dated: New York, New York
March 31, 2016

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C)(i), I certify that this brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(d) and 32(a)(7)B) in that it contains 4,244 words in proportionally spaced 14-Point Times New Roman font, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

Dated: New York, New York
March 31, 2016

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